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A JURIDICAL STUDY OF COPYRIGHT TRANSFER STATEMENTS IN JOURNAL PUBLICATIONS

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ABSTRACT

The publication of a scientific article is an obligation for members of the academic community within higher education institutions. On the other hand, a scientific article represents the intellectual output of its author, who, in this context, cannot independently publish it in a scientific journal. Therefore, authors transfer their copyright to the journal publisher as a means of relinquishing certain exclusive rights, specifically related to publication, reproduction, and distribution. These three elements constitute the economic rights of the author, which they exclusively possess as the creator. According to Article 16, Paragraph (1) of Law Number 28 of 2014 on copyright, copyright is recognized as an intangible movable property, which implies that it can be partially or wholly transferred to third parties. Typically, the transfer of copyright pertains to the economic rights of the author (i.e., publication, reproduction, and distribution), rather than the moral rights of the author. Copyright law stipulates that such transfers should be executed through written agreements. In practice, copyright transfers are often accomplished through a statement of copyright transfer by the author to the journal publisher, who becomes the copyright holder. However, Article 16, Paragraph (2) of Law Number 28 of 2014 on copyright does not specify that copyright can be transferred using a statement of copyright transfer. The use of a statement of transfer can be observed in the context of a copyright transfer form, which typically carries the title "Copyright Transfer Agreement." This article aims to examine the legal aspects of such agreements from the perspective of contract law and the norms governing copyright transfers as defined by the law. If the term "written agreement" in the law does not encompass a statement of copyright transfer, this article suggests that authors and journal publishers consider using the term "Copyright Transfer Agreement" rather than "Statement of Copyright Transfer" when drafting these documents.

KEY WORDS

Juridical study, copyright transfer, statement, journal, publication.

Copyright is the exclusive right of a creator, consisting of moral rights and economic rights. Copyright doctrine stipulates that the moral rights of a creator are perpetual and cannot be transferred to third parties. In contrast, the economic rights of a creator can be transferred to other parties. Moral rights held by a creator include, among other things, the right to have their name or pseudonym associated with their creation. Even if an author's name is not explicitly mentioned in a work, the author can request that their name be attributed when their creation is used. The use of a creation, within copyright doctrine, represents the economic rights of the creator, which can be transferred to third parties. The transfer of copyright to third parties occurs because Law No. 28 of 2014 on Copyright (hereafter referred to as UUHC) stipulates that copyright is an intangible movable property. The provision in the UUHC that copyright is considered a property implies that copyright can create property rights.

Article 40, Paragraph (1), Subparagraph a of the UUHC states that a scientific article is a creation protected by copyright, "a. books, pamphlets, the presentation of published written works, and all other written works." This provision does not explicitly mention that a scientific article is one of the creations covered. However, the phrase "all other written works" can be



interpreted to include scientific articles as one of the covered creations. Authors, being the creators, compose scientific articles. Copyright doctrine does not protect a creation if it remains an unembodied idea. Therefore, for a scientific article to be protected by copyright, the author's ideas need to be materialized in a medium and meet the standard of copyrightability, which includes embodiment, originality, and creativity. All three criteria apply cumulatively, meaning that if any one of the three criteria for copyrightability is not met, the creation cannot be protected by copyright.

A scientific article is a creation because, in creating a scientific article, the author materializes their ideas into writing and, through their creativity, produces a new or distinct work from other articles, thus achieving originality. Furthermore, a scientific article falls under the category of knowledge, which is different from the other two copyright scopes, which are art and literature. Based on these considerations, a scientific article is protected by copyright, and this copyright is a property right held by the author as the creator.

Scientific articles, created by authors, need to be published for the benefit of others. Authors typically lack the role of publishers or journal managers and, as such, need to engage third parties for publication. Copyright represents the exclusive rights of the author, so authors must transfer these rights to journal managers to grant them legal authority for publication. Article 4 of the UUHC clearly states that copyright is the exclusive right of the creator, encompassing moral and economic rights. Economic rights are outlined in Article 5 of the UUHC, representing rights that endure perpetually within the creator. Among these economic rights is the right to publish, reproduce, and distribute. At least these three rights need to be transferred to the journal manager to grant them the legal standing to carry out these activities.

Thus, the economic rights of the author need to be transferred to the journal manager. The partial or complete transfer of a copyright (economic rights) can be executed through "inheritance, grant, endowment, will, written agreement, and other legal means as stipulated by statutory regulations," as provided in Article 16, Paragraph (2) of the UUHC. Notably, copyright transfer is executed through a written agreement. In this context, inheritance and wills occur upon a legal event, the death of an individual, while grants and endowments represent voluntary actions by the rights holder to transfer their rights to others.

The landscape of journals in Indonesia is vast, with thousands of national journals in existence, not to mention those based outside Indonesia. Returning to Article 16, Paragraph (2), Subparagraph d of the UUHC, it is established that copyright can be transferred through written agreements. The written agreements referred to in the UUHC can be understood as licenses. Article 1, Point 20 of the UUHC defines a license as "a written permission granted by the copyright holder or owner of related rights to a third party to exercise economic rights over their creation or related rights with specific conditions." The copyright holder mentioned in this definition is the creator as the copyright owner, in this case, the author, and the recipient of the copyright from the creator (the journal manager). Explicitly, the transfer of copyright from the author to the journal manager is carried out through a written agreement, in the form of a license or permission, and not through a statement of copyright transfer. This legal research is conducted to determine and analyze whether the statement of copyright transfer is the written agreement contemplated by the UUHC, and thereby, it is hoped that it will be beneficial to authors, journal managers, and the creators of the regulations on the specific means of copyright transfer as referred to in Article 16, Paragraph (2), Subparagraph d of the UUHC.

METHODS OF RESEARCH

In principle, this paper undertakes an analysis from a philosophical perspective, particularly through hermeneutics and justice, with a focus on the use of copyright transfer statements. This analysis is undertaken within the normative framework of Article 16, Paragraph (2), Subparagraph d of the Indonesian Copyright Law (UUHC), where copyright is transferred and/or assigned through written agreements.



The research method employed in this paper is legal research, with an approach that encompasses legislative, conceptual, and philosophical perspectives. This multifaceted approach allows for a comprehensive analysis that reflects the underlying purpose of the law, namely, justice. Hermeneutics is employed to scrutinize copyright transfer statements through linguistic interpretation, thereby yielding an understanding of what is meant by the term "agreement" as stipulated in the UUHC. The theory of justice serves as a complementary lens to how hermeneutics examines the subject under investigation, by connecting it to the norms and concepts specified in the legal code concerning agreements, as well as their legal implications. Consequently, the analysis results in the assertion that copyright transfer statements carry the same implications as copyright transfer agreements.

RESULTS AND DISCUSSION

Copyright as a Movable Intangible Asset. Article 16, paragraph (1) of the Indonesian Copyright Law (UUHC) unambiguously stipulates that copyright is a movable intangible asset. Nevertheless, this section necessitates a discussion regarding the classification of copyright as an entity that concurrently serves as an object and subject of legal consideration. In the context of civil law, tangible entities are delineated in Book II of the Civil Code (BW). Copyright, classified as a movable intangible asset, is fundamentally governed by the principles articulated in Articles 503 and 504 of the BW. These provisions establish a dichotomy between tangible and intangible entities and between mobile and immobile entities, in accordance with the regulations set forth in the subsequent sections. However, it is noteworthy that the prevailing BW does not expressly identify copyright or intellectual property, in general, as independent entities. The current BW characterizes intangible movable assets simply under the terminology of "rights." The regulation of rights within the BW encompasses two interpretations, including rights associated with immobile entities and rights pertaining to mobile entities.

The categorization of entities can generally be subdivided into seven classifications, with the primary distinction focusing on tangible versus intangible and mobile versus immobile entities, as stipulated in Articles 503 and 504 of the Civil Code (BW). Article 511 of the Civil Code provides regulations concerning mobile entities as specified by law, encompassing rights such as the right to use mobile entities, rights to promised interest, and rights to claim debts that have been promised. Article 499 of the Civil Code establishes that entities constitute both physical objects and the rights serving as the subject of legal consideration. The phrase "...subject of legal consideration" conveys the notion that entities are either controlled or owned entirely by legal subjects. Within the framework of property law, exercising control or ownership over an entity carries distinct legal consequences. Generally, subjects of law who possess an entity are categorized as owners and are endowed with property rights. If disputes arise over ownership, they are entitled to safeguard their property rights. Conversely, when subjects of law control an entity, this does not necessarily entail ownership of property rights. In such cases, the concept of "beziit" comes into play, as defined in Article 529 of the Civil Code, signifying the position of controlling or enjoying an entity that is under one's personal dominion or through intermediaries, as though the entity were one's own.

The concept of full and absolute property rights, within the framework of property law, is referred to as ownership rights. The term ownership rights is typically employed to denote a right over immovable property, but in principle, the same term can also be utilized to depict ownership or property rights over movable assets. Damang and Apriyanto assert that ownership rights can be categorized as original rights, meaning rights possessed by individuals due to their existence (Damang & Nusa, 2017). This concept is fundamentally inspired by the theory of rights, which comprises the will theory and the interest theory (Damang & Nusa, 2017). Meanwhile, Houwing defines a right as an interest protected by the law through specific means (Damang & Nusa, 2017). In this context, we can construe that rights are innate attributes of human existence and are inherent to individuals themselves; in this context, the term "rights" pertains to fundamental rights. On the other hand, an alternate



interpretation of rights is that they represent something that can be possessed by legal subjects. In this regard, legal subjects can derive benefits from the rights they possess, akin to the enjoyment of tangible property (material assets).

Returning to Article 16, paragraph (1) of the UUHC (Copyright Law), copyright is identified as a proprietary right rather than the creation resulting from the intellectual effort of the author. In essence, this concept is relatively straightforward to comprehend. However, copyright, being an intangible entity, presents some difficulty in characterizing it as a tangible object. To facilitate a clearer understanding of copyright as a proprietary right, it is useful to consider the attributes associated with tangible objects, such as the transferability and absolute nature of property rights, as well as the property rights adapting to the location of the object (Mertokusumo, 2013).

Copyright, as a form of property, can be likened to a claim on a debt owned by a creditor. The right to claim a debt can be assigned to another party, enabling the recipient of the claim to subsequently demand payment from the debtor. In this context, the right to claim operates as a property right possessed by a legal entity, which can then be transferred or assigned to another party. In this scenario, the owner of the claim is the one capable of transferring it.

On this basis, copyright emerges as a proprietary right owned by a legal subject, and it is the owner of this proprietary right who has the capacity to transfer it to others. Furthermore, the conception of copyright as a property right conveys that it is not the creation itself that bestows proprietary rights but rather the copyright itself that generates these rights for its owner. Within the context of property law, rights are defined as assets owned by legal subjects aside from tangible objects.

A Written Agreement for Copyright Transfer. The presence of law aims to provide justice, utility, and certainty to society, and this extends to the existence of agreements within the framework of private law. The essence of an agreement is fundamentally defined in Article 1313 of the Civil Code (BW), which states that "an agreement is an act where one or more individuals bind themselves to one or more others." According to Badruzaman, this definition of an agreement is, in principle, incomplete as it merely portrays a unilateral act (Badruzaman, 2015). Agreements form the foundation of engagements among parties, referred to as parties since they involve more than one party and may take the form of written or unwritten agreements. This is why Article 16, paragraph (2), letter e of the UUHC (Copyright Law) specifies that one method of transferring copyright is through a written agreement. The assertion that copyright transfer can be accomplished through a written agreement is not without underlying rationale. This is confirmed in Article 80, paragraph (1) of the UUHC, which states, Unless otherwise agreed, copyright holders or related rights owners have the right to grant licenses to third parties based on a written agreement to carry out acts as referred to in Article 9, paragraph (1), Article 23, paragraph (2), Article 24, paragraph (2), and Article 25, paragraph (2).

Based on Article 16, paragraph (2), letter e, and Article 80, paragraph (1) of the UUHC, it is comprehensible that one of the methods for transferring copyright is through a written agreement, which, in this context, takes the form of a license. Article 16, paragraph (2) of the UUHC governs the procedures for copyright transfer, which may occur through inheritance, gift, endowment, will, and other legally sanctioned methods. However, the focus of this discussion is the transfer of copyright pertaining to academic articles intended for publication in scholarly journals. Consequently, copyright transfer cannot be executed through inheritance, gift, will, endowment, or other methods allowed by legal regulations.

The next question pertains to the transfer of copyright for academic articles using a transfer statement; can this be equated with the written agreement described in Article 16, paragraph (2), letter e? In a previous section, the position of copyright was expounded upon as a non-material object that is attached to the right of ownership, implying that it is not the creation itself that is being transferred, but rather the copyright itself as an intangible entity. The license agreement, in this context, is a consequence of the regulation for transferring copyright through a written agreement. The transfer of copyright is primarily focused on the economic benefits derived from announcements, distribution, and other activities, which, in



principle, can only be conducted by the creator. Additionally, the presence of the will theory and the utility theory within the theory of rights is a factor allowing copyright transfer. The will theory stipulates that every copyright owner is free to do as they please, whereas the utility theory tends to restrict the will theory, emphasizing actions beneficial to the owner (Mertokusumo, 2013).

In essence, the transfer of copyright, whether in its entirety or in part through a written agreement, reflects the existence of exclusive rights granted to authors over their creations. This exclusive right is conferred upon authors with the intention of providing protection to copyright holders in general, and creators in particular. The basis for this protection of copyright is grounded in the natural law theory, which asserts that humans are endowed with a unique capacity for thought by a higher power. It is this process of intellectual creation that results in benefits for the individual. Human intellectual endeavor, as such, is distinctive and specific to each individual. Consequently, copyright becomes a form of property right, and to utilize it for the benefit of others, the permission of the copyright owner, in this case, the author, is essential.

In principle, a license agreement seeks to ensure fairness between the parties involved, the licensor, and the licensee. It takes the form of a written agreement to enable the parties to establish the license agreement as a legal commitment when it adheres to the conditions stipulated in Article 1320 of the Civil Code, which requires agreement, legal capacity, a specific subject matter, and a lawful cause. Of these four elements outlined in Article 1320, this discussion emphasizes agreement as the primary perspective for evaluating the legality of a copyright transfer statement.

In the practical realm of publishing academic articles in a journal, an agreement naturally emerges between the author and the journal manager. This agreement is the outcome of an understanding reached by the involved parties. Thus, agreement serves as the primary lens for assessing the legal validity of a copyright transfer statement. In general terms, a transfer statement can be defined as a written declaration by an individual acknowledging a certain situation or circumstance, with its implications binding only the party issuing it.

In the context of publishing scientific articles or academic publications, a copyright transfer statement forms the basis for the author's transfer of copyright to the journal manager. The contents of this statement include a declaration of the article's originality and that it has not been previously published in any other journal. The primary focus is on the transfer concerning the economic benefits derived from announcements, distribution, and other activities, essentially the exclusive rights held by the author, representing the economic rights as stated in Article 9, paragraph (1) of the UUHC. The copyright transfer statement is a declaration that the author needs to produce and deliver to the journal manager, making the journal manager the copyright holder. Understanding the existence of this transfer statement, we need to apply the theories of offer and acceptance within the context of agreements.

The offer theory teaches that an agreement is deemed to occur when the party receiving the offer expresses acceptance of the offer (Salim, 2005). Meanwhile, the acceptance theory teaches that an agreement is formed when the party making the offer directly receives a response from the party receiving the offer (Salim, 2005). Both of these theories are part of the broader body of theory that can be used to analyze when an agreement is established. From both theories, it is evident that an agreement is considered to exist when a tangible act is undertaken by the party receiving the offer in response to an offer. The question that follows is: What is being offered by the party making the offer? Who is the offering party, and who is the party accepting the offer?

In this context, what is being offered is a medium for publishing scholarly articles, a journal. For a scholarly article to be published by the journal, the author must compose the article in accordance with the requirements provided by the journal manager. In this legal event, the offering party is the journal manager, who offers their journal as a medium for publishing scholarly articles under certain conditions. The receiving party of this offer is the author, who subsequently adjusts their writing to meet the conditions set by the journal manager. The author's acceptance of the offer is achieved by submitting their scholarly



article to the journal after making the necessary adjustments as stipulated by the journal manager. The copyright transfer statement is requested by the journal manager once the article has been evaluated and deemed suitable for publication in the journal.

The completion and submission of the copyright transfer statement represent the author's acceptance of relinquishing their copyright, in this case, their economic rights, to the journal manager. This copyright transfer statement can be regarded as the foundation of an agreement between the author and the journal manager because one of the parties can be considered as binding themselves to the other. As mentioned earlier, this corresponds with Article 1313 of the Civil Code. However, the doctrine of legal experts interprets that what is referred to as an agreement entails a shared intent expressed in a mutual statement resulting from a conversation. In other words, an agreement should be regarded as a legally desired and binding act for both parties.

The copyright transfer statement can be analogized as a unilateral legal act that only binds the party who makes it. This is reinforced by Article 1875 of the Civil Code, which states that "a private document acknowledged as true by the person against whom it is produced or is legally deemed to have been acknowledged by him produces full evidence like an authentic instrument for those who have signed it." Referring to this article, the copyright transfer statement can be viewed as a private document that can serve as the basis for the formation of an agreement.

Next, is the copyright transfer statement equivalent to the license granted by the author to the journal manager as defined in the UUHC (Copyright Law)? It has been explained that the statement represents a unilateral intent (from the author) containing a declaration to transfer copyright to the journal manager. If we analyze the linguistic phrasing used, a "license" has terminology that implies granting permission from one party to another. Therefore, it can be linguistically understood that control over an exclusive right, in this case, the economic exploitation of the work, still remains with the author. On the other hand, when we scrutinize the phrase "copyright transfer statement," linguistically, this implies a transfer or surrender of the author's copyright to the journal manager. Consequently, it appears that the author loses their exclusive rights concerning the economic utilization of their creation.

CONCLUSION

The existence of a copyright transfer statement as the basis for the formation of an agreement can be justified; however, it cannot yet be considered as the written agreement referred to in the Copyright Law. The written agreement referred to in the uuhc pertains to licensing agreements or permission agreements, which linguistically represent the author's intent to grant permission to the journal manager for the economic exploitation as defined in article 9 paragraph (1) of the Copyright Law. If we conduct a linguistic analysis of the copyright transfer statement, it can be understood as a transfer or surrender to the journal manager. Therefore, it is advisable for journal managers to use the terminology of a permission agreement rather than a copyright transfer statement.

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