



Faculty of Law Universitas Islam Indonesia





PROCEEDING

Law and Development in the Era of Pandemic

Faculty of Law Universitas Islam Indonesia

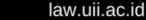


International Student Colloquium 2020









Law and Development in the Era of Pandemic

Published in July 2021

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Foreword

Assalamualaikum, wr., wb.,

In the age of pandemic Covid-19 had impacts toward the humans. In relation with the humans has correlation with the development of law, and thus the committee held the 2020 International Students Colloquium with the topic of "Law and Development During Pandemic Era: Alleviating the Disadvantages to the Law that Affected by Covid-19". The objective of the conference is to acknowledge the participants regarding how the settlement should be the problem and disadvantage that caused by the pandemic; to engage the participants to think critically to the polemic issue of law during pandemic; and as a venue for lecturer, student, and community in respond to poor resolution from each country.

The conference was successfully held on November 28, 2020 along with around 289 participants consist of students and community. As the concept of the conference comprised between the session for students to make a presentation of the issue they took, and the main session presented by lecturer. There were 13 students submitted their papers from varies institution background. We glad to receive that they have a unique idea to discuss.

As the output of the conference, the committee proudly to publish the dissemination issue had discussed in the conference by collecting the student's paper in this proceeding. For this reason, this proceeding may inform the readers about the legal issue, particular, in Indonesia, South Korea, and Malaysia.

Wassalamualaikum wr. wb.

Editor in Chief,

Dodik Setiawan Nur Heriyanto, S.H., M.H., L.LM., Ph.D.

Cyber law in Indonesia and Its Relation to Indonesian Copyrights Law

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Abstract

Ever Since the Covid-19 pandemic, many country policies have been implemented based on the World Health Organization (WHO). It is hoped the policy itself will help reduce the spread of Covid-19 while looking for a vaccine that can cure the disease. However, these policies have an impact on everyone's activity patterns. The circumstances in which we have to reduce social contact require that we rely on technology such as the internet. The uncertainty of the internet's position in its dimension makes us pay more attention to internet usage and try to be careful in using the internet. The existence of crimes that occur on the internet makes us have to protect the technology we use to access the internet both from outside. One aspect that is very vulnerable to the abuse of the internet is copyright. On the internet, we can easily quote or copy other people's work and claim that it is our work. In this article, we will discuss where the internet's real position is and what should be regulated on the internet? What is copyright, and how is it protected, and how does it relate to the laws governing the internet? This paper's research method is a normative legal research method where the author will explain the theories of the experts and see the existing laws and regulations. With this writing, it is hoped that people can see the importance of copyright protection on the internet.

Keywords: Covid-19, Internet, Cyber law, Copyrights law

1. INTRODUCTION

Corona Virus Disease, better known as Covid-19, is a new disease caused by the corona virus (SARS-CoV-2). The first known case of this disease first appeared in the capital city of Hubei province, Wuhan, China, at the end of 2019, to be precise, on December 31. The World Health Organization (WHO) has received notification that in China, there is a disease-causing acute respiratory infection that affects the lungs of patients similar to pneumonia. Referring to the official WHO reports on November 13, 2020, it was noted that since the Chinese government's first report to WHO, there were 53.7 million cases of Covid-19 and 1.3 million deaths worldwide. America ranks first with the most cases, approximately around 11.8 million cases, followed by India with 9 million cases, Brazil with 5.98 million cases, and so on. Until now, countries are working to produce vaccines that can cure Covid-19 and make efforts to prevent the spread of Covid-19. To prevent the spread of Covid-19, WHO urges countries to carry out social distancing, self-quarantine, isolation, adopt a healthy lifestyle, and several other efforts.

In Indonesia, the first case of Covid-19 was found on March 2, 2020. Since the confirmation of the first case of Covid-19, the spread of Covid-19 in Indonesia is relatively fast. Indonesia is in the first position with the most cases in Southeast Asia and is in the twenty-first position in the world with 488 cases. Furthermore, not long after the confirmation of the first case of Covid-19 in Indonesia, the Indonesian government immediately emphasized an appeal to Indonesian citizens to implement recommendations from WHO such as social distancing, which led to activities based on the Work from Home (WFH) policy. Starting from government institutions, companies both state and private, universities, to schools are implementing WFH. WFH itself is an activity that minimizes social contact without direct meeting.

2. PROBLEM FORMULATION

Since the beginning of the digital era, every individual has begun to rely heavily on computers and communication technology every day. This dependence is reinforced by the rapid development of the internet every day. For example, commercial companies' promotional activities require the internet as a medium of communication to disseminate their products, Offices until teachers and students at school have started using the internet to support their activities. In the current pandemic that we are currently facing, WFH's policy has increased the use of the internet in the community more than usual.

The high-speed development of the internet will be dangerous if it is not balanced with legal protection for people who use the internet. The lack of regulation on the Internet in Indonesia is very worrying considering the many cases of abuse that can be done through the internet, such as cybercrime, loss of privacy, misappropriation of intellectual property, especially in copyright protection, and other misuses. Therefore, the problems that will be discussed in this paper are: *First*, what is the internet, cyberspace, cybersecurity, and areas should be included in the law regarding cyberspace? *Second*, Cyberlaw in Indonesia and its relation to Indonesian copyrights law.

¹ WHO *Weekly epidemiological update – 17 November 2020*, Accessed on 18th November 2020. https://www.who.int/publications/m/item/weekly-epidemiological-update---17-november-2020

3. ANALYSYS

a. Internet, Cyberspace, Cybersecurity, and its relation to law and the development in the era of pandemic

A straightforward definition of the internet would be a communications system connecting computers or gadgets in the different geological areas around the world by utilizing an assortment of media transmission joins without any boundaries. Internet is a communication network, between one device to another device without any barriers. In its development internet divine into three-phase.²

- 1) *The first phase*, the internet as a defense coalition, Advanced Research Projects Agency (ARPA), was formed in 1958 under the U.S Department of Defense research agency. ARPA, with the, helped of a small number of university research with a primary purpose to develop internet as a defense tool at the time of war and aiming to surpass soviet technology.
- 2) *In the second phase*, the internet is becoming a research coalition after the withdrawal of ARPA. An increasing number of universities have done internet research. Many independent agencies such as the National Science Foundation (NSF) fund universities to research the internet for scientific purposes.
- 3) *In the third phase*, the internet continues to be developed as a corporate coalition. In 1994, the internet gates were opened to the non-academic public, and internet existence was announced to the public. Its aim was not only to do research but also for commerce. Corporations were eager to expand the network's technological capabilities and control the data that can be traveled across the electronic grid.

There is a parcel of perplexity between the utilization of the terms, the internet, and cyberspace. Numerous individuals think that the words mean space, whereas others think they were two different things inside the technology. The truth of the matter between the internet and cyberspace is that it is something within the center. The terms mean two things, but the perplexity emerges because they are closely interrelated. After all, they are regularly erroneously used interchangeably.

Cyberspace comes from the word "cybernetics," which has the meaning of "involving, using, or relating to computers, especially the internet." There are no specific cyberspace definition purposes by an expert. However, several things can be underlined based on the term of cyberspace itself; ⁴

- 1) *First*, cyberspace cannot be said as a physical space. Indeed, although it has a few components that can make the internet included in physical space, such as have a volume and mass, found in physical space that can be indicated in three spatial dimensions;
- 2) Second, cyberspace is not the only thing that can be included on the internet, but it moreover incorporates a computer, in any case, it is connected to the internet or not, and network regardless it may be a portion of the internet or not; and

² Nivien Saleh, 2010, *Third World Citizens and the Information Technology Revolution*, Palgrave Macmillan, United States.

³ Sigita Rackevičienė & Liudmila Mockienė, 'Cyber Law Terminology as a New Lexical Field in Legal Discourse' *Int J Semiot Law 33*. https://doi.org/10.1007/s11196-020-09690-0

⁴ National Research Council, 2014. *At the Nexus of Cybersecurity and Public Policy: Some Basic Concepts and Issues*. Washington, DC: The National Academies Press. https://doi.org/10.17226/18749.

3) *Third*, there is a part of the intangibles included on the internet, such as information, software, and *cyberspace* elements.

As referenced, the term cyberspace appeared regarding managing physical spaces. Regardless, with the beginning of the internet, the term has been associated with virtual space made inside the internet. In this manner, cyberspace is just a representative and non-literal space inside the extent of the internet. It well may be said that anything finished through the internet occurs inside the limits of cyberspace. Regardless of whether sending an email, site or playing a redirection, these things exist inside the internet.

Given our reliance on cyberspace in general, it is essential in modern society that we lived in nowadays we used technologies as our tools to communicate with each other every day. Especially in the Pandemic era that we are against right now, governments, state and private companies, schools, universities, and others have no choice but to rely on computers and the internet to realize WFH policies. This reliance eventually raises cybersecurity issues. Cybersecurity is critical because even in physical space there are always persons would do us harm, such as violation of our privacy since we rely on cyberspace for most of our activities in this era, steal our idea, and copy our works to get profit. No matter how well constructed the internet security, there are always vulnerabilities attached to the internet. If it does not have any vulnerabilities, even just a split fraction, there would be no hacker exist. Thus, cybersecurity is critical to prevent and reduce the negative impact of using the internet as our media for any activities in this Covid-19 pandemic era. To protect our action from people who intend to do us harm since the internet as a part of cyberspace is a borderless space.

b. Areas of the Internet that Should be Regulated by the Government for the Protection of Internet Users.

Two kinds of protection can protect our activities done by the internet, internal protection and external protection. Internal protection is focusing on protecting data by using encryption to protect the data, secure the data, and/or make transportation of data safe or protected. Meanwhile, the internet's external protection is by providing appropriate regulation to protect the individual rights of people who used the internet, commonly known as cyber-law. On external protection of the internet, there are at least three areas that must be covered by cyber law in order to provide proper protection for people who used the internet, namely:⁵

- 1) *Technical standardization*, Technical standardization should be regulating the surrounding of the internet itself. The regulation must give a clear definition of the internet, terminology of the internet, or the internet frame to limit what is regulated inside the regulation.
- 2) Strategic standardization, Strategic standardization should be involved in how the internet regulations are established by considering any possibilities about internet growth under future policy and its implementation.
- 3) The domain name, Governing Domain Name should explain and govern the

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⁵ Nivien Saleh, 2010, *Third World Citizens and the Information Technology Revolution*, Palgrave Macmillan, United States.

consequence of using the domain name. For example, the responsibility that will be bear regarding the domain name or how they buy the domain name, and any other possible regulation that needed to be regulated under the regulation.

The three areas mentioned imply that to give protection to our activities on the internet, it needed a complete regulation on cyber law. Defining the internet on its regulation and its limitation will make it easier to supervise activities categorized as harmful if we consider drafting the regulation on cyberlaw. There is a possibility where the regulation made can even give predict unexpected situation to internet users in the pandemic era because it is considering future policy and internet developments.

c. The Concept of Copyrights and Its Infringements in Indonesia

Based on Article 1 verse section1 Law No. 28 of 2014 (Copyrights Law), copyrights are the exclusive right given to the author that automatically arise based on declaratory principle after an invention is embodied in tangible form. Furthermore, Article 4 of copyright law mentions that the exclusive right comprises moral rights and economic rights to the author. In Article 5, it states what is meant by moral rights, which we can conclude that the creator has the right of attribution or the right to get recognition as credit for his work and the integrity rights of the creator to defend their rights in case of copyright infringement of their work that harms the creator. ⁶ Copyright infringements may take the shape of fetch, citing, recording, replicating, or reporting a few or all of the other individual creations without the creator's authorization or precluded by law. From this, we can conclude that copyright law aims to protect the creator's works. The creation must be proven its genuineness and originality. It can be done in the form of expression of the creation where it can be seen, studied, and listened to.

d. Cyberlaw in Indonesia and Its Relation to Indonesian Copyrights Law

Three areas of law become the pillars of Cyber Law Indonesia, namely, Telecommunication Law, Media Law, and Law of Informatics⁷. Cyberlaw of Indonesia is regulated under Law No. 11 of 2008 which was amended with Law No. 19 of 2016 or mostly known as ITE Law. It was said that the convergence made ITE Law of three areas of law Telecommunication Law, Media Law, and Law of Informatics. Media Law and Law of Informatics should regulate intellectual property rights such as copyrights and industrial property rights and regulate telecommunication law and press law. However, in reality, ITE Law does not regulate what is said as its pillars of Cyberlaw. Instead, ITE Law content is focusing on defamation, interception, hate speech, and gamble. Thus, it can be concluded that the regulations under ITE Law are unaccountable because it cannot fulfill it is on pillars. Furthermore, ITE Law also did not fulfill the three areas of the internet that should be regulated, namely; Technical standardization; Strategic standardization; and governing the domain name of the internet as a part of cyberspace, which must be protected under cyber law.

 $^{^6}$ M. Hawin and Budi Agus Riswandi, 2018, *Isu-Isu Penting Hak Kekayaan Intelektual di Indonesia*, Gadjah Mada University Press, Yogyakarta.

⁷ Machmuddin D D, B Pratama, 2017, 'Some of Indonesian Cyber Law Problems', *Journal of Physics: Conference Series*, Vol. 801.

One of the challenges that we face in the pandemic era is protecting copyrights on the internet because copyright holders' rights are vulnerable in these internet-based activities. Since its beginning, technology has made numerous complex issues in copyright protection. Upload, download, File sharing, and other activities have become an everyday reality on the internet. The complexity of copyright protection on the internet is affected not by the proliferation of copyright infringements on the internet but by the trouble in giving legitimate courses of action for adjusted copyright protection.⁸ Thus, even before the pandemic era, copyright protection on the internet had become a problem, especially now that internet usage is increasing due to policies that make us as much as possible to do activities at home without making social contact. This rise and strengthens the urgencies of more specific regulation regarding copyright protection on the internet. One of the reasons copyright protection on the internet has become an issue because Copyright Law does not explicitly explain copyright infringements on the internet. As it were, copyright law gives protection against copyright holders for copyright infringement in information technology-based facilities. ⁹ Technology-based facilities themselves are too broad to be interpreted. It can be a computer, TV, phone, radio, and other technology.

If we compare how copyright protection on the internet is regulated in America and Europe, Indonesia is still far behind. In America, in the second chapter of the Digital Millennium Copyright Act (DMCA), entitled Limitation of Liability to Online Copyright Infringement (OCILLA), some regulations limit intermediaries' liability when users commit copyright infringement on the internet. In Europe, Internet intermediary responsibility arrangements are regulated in the Electronic Commerce Directive (ECD). The ECD contents are almost the same as the ITE Law; they both contain fraud and defamation. In the ECD, there are also regulations related to intellectual property rights on the internet, unlike the ITE Law that does not address intellectual property rights.

4. CONCLUSION

Even though the terms of the internet of cyberspace are different, the internet and cyberspace are interrelated. The internet is a part of cyberspace connected to the internet position as a virtual space, and cyberspace is a symbolic and figurative space inside the scope of the internet. Given our reliance on cyberspace in general, it is essential to protect internet users internally and externally. Internal protection can be done by encryption, and external protection can be done by making cyber law.

Copyrights are exclusive rights such as moral rights and economic rights given to the author, and it is protected by the law for the creation that the author made from the copyright infringements. However, the enactment of ITE Law has failed to protect

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 $^{^8}$ Budi Agus Riswandi, 2016,
 $Doktrin\ Perlindungan\ Hak\ Cipta\ di\ Era\ Digital,\ FH\ UII\ Press,\ Yogyakarta.$

⁹ Ika Khairunnisa Simanjuntak, 2018, 'Legal Protection of Internet Intermediary to Copyright Infringement by Users (Comparative Study on Indonesia, USA and European Union)', *International Journal of Research & Review*, Vol. 5; Issue 4.

¹⁰ Ika Khairunnisa Simanjuntak, 2018, 'Legal Protection of Internet Intermediary to Copyright Infringement by Users (Comparative Study on Indonesia, USA and European Union)', *International Journal of Research & Review*, Vol. 5; Issue 4.

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copyrights since copyrights as a part of intellectual property rights should be protected under media law and the law of informatics. ITE Law, as Indonesian cyberlaw, should have included the protection of intellectual property rights. Furthermore, in copyright law, copyright protection on the internet is still ambiguous since the law does not explicitly mention how it will be protected on the internet. Neither ITE Law nor copyright law gives a definition and limitation or scope of the internet itself.

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