

## Legal Reform of Copyright in the Digital Economy Era within the Paradigm of Pancasila Justice

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### Abstract

*Copyright law reform in the digital economy era is an urgent need to maintain the consistency of Indonesia's state ideology, particularly in the face of globalization and the dominance of purely economic interests. The main problem in this study is the lack of alignment between business actors and government institutions regarding copyright, as well as the weak implementation of Pancasila values in copyright regulations. This study aims to analyze how the principles of social justice of Pancasila can be applied in copyright law reform amidst the development of the digital economy. The method used is a juridical-normative approach with a qualitative analysis of laws and regulations, related policies, and expert views through literature studies. The results of the study indicate that the dominant economic orientation in copyright regulation tends to ignore the values of humanity and social justice. Furthermore, the lack of synergy between the government and business actors leads to weak legal effectiveness. Therefore, it is necessary to reformulate policies that support Pancasila values, as well as strengthen human resource capacity so that copyright law can become a fair and ethical instrument in the digital era.*

**Keywords** : Copyright, Legal Reform, Digital Economy, Social Justice, Pancasila

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## 1. Introduction

Historically, the legal framework for Intellectual Property Rights (IPR) in Indonesia has existed since the 1840s, when the Dutch colonial administration introduced the first laws to regulate intellectual creations. The Copyright Act was enacted in 1912, preceded by the Trademark Act of 1885 and the Patent Act of 1910. At that time, the Netherlands East Indies had already joined the Paris Convention for the Protection of Industrial Property in 1888 and the Berne Convention for the Protection of Literary and Artistic Works in 1914. During the Japanese occupation (1942–1945), these regulations remained in force. After Indonesia gained independence in 1945, remnants of Dutch colonial legal instruments were retained primarily to avoid legal vacuum (Kusumaatmadja, 2000).

Legal reform in Indonesia gained momentum during the political transition of the late 1990s. This reform was driven by increasing demands for justice, transparency, and a democratic legal culture. However, substantial challenges emerged from within the legal system itself, including widespread corruption, a lack of transparency, and a judicial process that often fell short of delivering equitable outcomes (Butt & Lindsey, 2008). The character of law in a nation profoundly influences its legal-political policy and is shaped by ideological choices between individualistic liberalism (which emphasizes individual freedom and market capitalism) and collectivist communitarianism (which emphasizes common good and social welfare). Indonesia, through Pancasila and the 1945 Constitution (Undang-Undang Dasar 1945), firmly rejects both extremes and instead adopts a philosophy of unity in diversity (Bhinneka Tunggal Ika), rooted in communal values and deliberative consensus (Asshiddiqie, 2006).

Although Indonesia still adopts some elements of Dutch law, it has developed a unique national legal identity since independence, including the formation of institutions such as the National Police (Polri) which separated from the colonial Pamong Praja system and established P3RI (Persatuan Pegawai Polisi Republik Indonesia). Legal transformations in Indonesia reflect the broader socio-political dynamics and the state's efforts to meet evolving societal needs, especially with regard to intellectual property (IP) rights and copyright protection (Rosadi, 2017).

In the digital era, the concept of copyright law reform becomes even more urgent. According to the Kamus Besar Bahasa Indonesia, reform (reformasi) refers to a drastic change aimed at improving a particular field be it economic, legal, or political. However, legal reform is not automatically guaranteed by political reform, as legal and political interests often diverge (Suteki, 2015). A key driver of legal development is the ability of the law to respond to contemporary challenges, including those posed by digital technologies.

The term digital economy first appeared in Don Tapscott's book *The Digital Economy: Rethinking Promise and Peril in the Age of Networked Intelligence* (1995), where he describes an era in which intelligent machines and people are interconnected via digital technology. The digital economy refers to the use of modern technology, particularly Information and Communication Technology (ICT), to transform economic activities, including trade, production, services, and distribution (Bukht & Heeks, 2017). It encompasses various domains such as e-commerce, s-commerce, fintech, and industrial digitization. Digital platforms provide opportunities for global market access, financial inclusion, digital skills development, and equitable information access.

Despite the existence of the Copyright Law (Law No. 28 of 2014), the implementation of copyright protection in the digital era remains inadequate and, in many respects, unjust. Enforcement mechanisms are often weak, and the rights of creators are frequently neglected. Violations are common, especially when copyrighted works are recorded, copied, or distributed via digital platforms without proper authorization often driven by profit motives (Putra, 2020). Artificial Intelligence (AI) and machine learning technologies have further complicated the legal terrain, as they enable reproduction and distribution of creative content at unprecedented scales.

Legal scholar M. Isnaeni categorizes legal protection into two forms: internal protection, which is embedded in contractual clauses agreed upon by the parties; and

external protection, which is provided by the state through regulations to protect weaker parties. While the principle of Human Rights (HAM) protection is universal in theory, in practice it is often subject to national interpretations and legal cultures. Thus, copyright enforcement must be localized within the Indonesian socio-political context while aligning with global legal norms (Isnaeni, 2014).

The increasing number of copyright infringement cases in Indonesia underscores the urgency of comprehensive legal reform. Although the 2014 Copyright Law explicitly repealed the 2002 Copyright Law, its practical application remains insufficient, particularly in addressing digital economy challenges. Indonesia's current regulatory framework lacks sufficient readiness to anticipate technological advances, and fails to respond adequately to the legal complexities posed by AI and other emerging digital innovations (Sihombing, 2021).

The concept of moral rights, which originated in 19th-century France, plays a crucial role in copyright discourse. These rights, such as the right of integrity, prevent any alteration or distortion of a work that may damage the creator's honor or reputation. For instance, modifying the lyrics of a song in a way that changes its meaning would constitute a violation of the author's moral rights (Ginsburg, 2002). Strengthening the legal instruments that protect these rights is crucial, particularly in the face of technological change and widespread digital content reproduction.

Ultimately, the reform of copyright law in the digital economy era must be aligned with the values enshrined in Pancasila justice, humanity, unity, democracy, and social welfare. Copyright reform should not merely be a reaction to technological progress but must also reflect the national philosophical foundation, ensuring that both creators and the public derive just and balanced legal protection.

## 2. Method

This study adopts a qualitative approach based on doctrinal legal research, commonly referred to as the normative juridical method. The primary focus of this approach is to examine legal norms through systematic interpretation of statutory provisions, legal theories, and conceptual frameworks relevant to the issue of copyright reform in the digital economy era within the context of Pancasila justice. The research seeks to identify and analyze legal problems and provide a concise yet substantive response to the core questions raised.

The data collection was conducted through library research (library-based research), involving a comprehensive review of primary and secondary legal materials. Primary sources include statutory regulations, such as Law No. 28 of 2014 on Copyright and other related legislation, both national and international. Secondary sources consist of legal commentaries, textbooks, journal articles, scholarly interpretations, and relevant academic discourses that support the legal reasoning presented.

This research can be categorized under the problem-identification model, which aims not merely to describe legal norms, but also to critically assess the extent to which current copyright regulations align with technological advancements and fundamental legal principles embedded in the Indonesian constitutional framework, especially the Pancasila philosophy. This type of research is instrumental in identifying legal gaps, inconsistencies, or ambiguities that may exist in the regulation or enforcement of copyright law, particularly in relation to the challenges of the digital era and the emergence of artificial intelligence (AI).

To ensure analytical depth and credibility, the study draws on a diverse range of legal sources, including:

- a. National and international laws and regulations,
- b. Scholarly legal textbooks and treatises on intellectual property rights,
- c. Peer-reviewed articles from national and international law journals,
- d. Online legal databases and reputable internet sources that provide up-to-date developments in copyright law, digital economy frameworks, and human rights protection.

The research concludes with a synthesis of findings, offering a summary of key issues, proposed legal reforms, and strategic recommendations for strengthening copyright

protection in the digital age. These findings are presented in the form of conclusions, legal analysis, and policy suggestions, aimed at contributing to academic discourse and informing policy-makers on the direction of future legal development in Indonesia.

### 3. Results and Discussion

Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia stipulates that the national economy shall be organized based on economic democracy with principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and maintaining a balance in the advancement and unity of the national economy. One of the obligations of the Indonesian government in realizing these constitutional mandates is to provide adequate legal protection for copyright, particularly considering that copyright constitutes an economic right and a form of intellectual creation by Indonesian citizens that contributes to national economic development.

Teguh Prasetyo (2015) posits that the theory of dignified justice should not narrowly interpret Indonesia's legal system solely through the lens of positive law, i.e., the notion that where there is society, there must be law (*ubi societas, ibi ius*). Instead, he argues for a broader framework that acknowledges the Pancasila legal system as an authentic and original legal construct rooted in the civilization and values of the Indonesian people. Justice, in this context, becomes a fundamental component in shaping a legal system that reflects the lived realities of society. However, the general public often lacks sufficient understanding of evolving legal norms and regulatory changes. Hence, the government, as the custodian of power, and other relevant institutions must act transparently and with integrity in the implementation and enforcement of these laws.

Legal compliance among citizens is an essential aspect of law enforcement. It must also be recognized that societal conceptions of justice are rarely homogeneous. Justice exists along a continuum, oscillating between two philosophical poles *neminem laedere* (to harm no one) and *sum cuique tribuere* (to give each person his due). While the former may be appropriate in neutral, procedural domains, the latter becomes essential in contexts involving deeper, moral, or spiritual dimensions. As such, genuine justice can only be realized through a legal system that allows individuals to live in peace and attain both material and spiritual welfare (Prasetyo, 2015). This analysis suggests that the Indonesian government must formulate laws that reflect these dual dimensions of justice and meet the expectations of the people in the digital age.

In practice, Indonesia continues to face significant challenges related to copyright enforcement, particularly in the context of the digital economy. Conflicts frequently arise between copyright holders and users, largely due to a widespread lack of understanding regarding the legal boundaries of protected works. Four major forms of conflict can be identified:

1. Piracy and Unauthorized Use: A culture of piracy remains pervasive among Indonesian consumers, who frequently engage in unauthorized use of copyrighted works such as films, music, and software. The proliferation of counterfeit VCDs and DVDs is one of the clearest examples. This rampant piracy has serious economic consequences, particularly for the music and entertainment industries, and undermines Indonesia's ability to compete in global markets. The advancement of information and communication technologies (ICT) has inadvertently enabled the illegal duplication and distribution of creative content, despite the existence of national legislation such as Law No. 19 of 2002, as amended by Law No. 28 of 2014. While copyright registration is not mandatory under Indonesian law, it is highly recommended as a means of reinforcing legal protection. The law recognizes copyright protection from the moment a work is first published, but the burden of enforcement often falls on creators themselves, who must be proactive in defending their rights.
2. Unauthorized Use Without Permission: Many users exploit copyrighted materials for commercial purposes without obtaining the necessary licenses or paying royalties.

This includes the online sharing of protected content without consent from the rights holder, further undermining the incentive for creative production.

3. **Lack of Public Understanding Regarding Fair Use:** The concept of fair use or limited exemptions for educational, critical, or non-commercial purposes is not well understood among the general public. As a result, there is frequent misuse of copyrighted content beyond what is legally permissible.
4. **Disputes Between Rights Holders and Consumers:** These disputes are often exacerbated by limited awareness of the regulations governing copyright and trademark protection. This not only affects the rights of consumers but also stifles fair business competition and innovation, both of which are essential to economic development.

Furthermore, Article 41 of Law No. 28 of 2014 outlines specific categories of works that are not protected by copyright, including:

- a) Works that have not been fixed in a tangible form;
- b) Ideas, procedures, systems, methods, concepts, principles, discoveries, or data even if they have been expressed or described within a work;
- c) Tools, objects, or products created solely to solve technical problems or whose form is designed purely for functional needs.

This provision highlights the distinction between the expression of an idea, which can be copyrighted, and the idea itself, which cannot. It is essential for both creators and users to understand these boundaries to avoid legal conflicts and promote a fair digital ecosystem.

In conclusion, the Indonesian legal system must evolve to address the complexities posed by the digital economy. Strengthening public legal awareness, improving copyright enforcement mechanisms, and harmonizing national laws with international standards are critical steps. More importantly, the development of copyright law should be guided by the foundational values of Pancasila, ensuring that justice is not merely a legal abstraction but a lived reality for both creators and society at large.

As clarified in the elucidation of Article 41, particularly point (c), the term “functional necessity” refers to human needs for a tool, object, or product that, based on its form, serves a specific purpose or function. However, many communities living in remote regions across Indonesia may not fully comprehend the meaning and implications of Article 41 and its explanation. The wording appears somewhat ambiguous, particularly regarding the intent of the phrase “specific function.” This lack of clarity poses challenges in the digital economy era, especially when combined with the increasing use of foreign terminology and advanced technological devices.

It is imperative for the Indonesian government to reassess and refine the phrasing of legislation, particularly in its presentation and accessibility to the public. This is especially relevant given that Indonesia does not frequently produce cutting-edge digital technologies compared to other countries. Additionally, the government must urgently develop a concept for equitable legal protection of copyright to address the growing global technological landscape. This includes implementing periodic oversight in coordination with regional governmental bodies to assess potential legal barriers, especially regarding copyright issues in the digital economy.

Otto Hasibuan states that copyright exists but is intangible. It has form but no physical substance. Books, songs, paintings, and similar works are tangible and can be seen, read, or heard these are creative works, but not copyrights themselves. Copyright is the legal right that arises after a work takes a defined form. Bernard Nainggolan emphasizes that copyright protection ventures into complex, yet intellectually stimulating territory. Since copyright is abstract and immaterial, understanding its high economic value can be challenging. This might explain why in many developing countries, including Indonesia, it is difficult to cultivate public respect for intellectual property rights, particularly copyright. Despite the existence of laws that should guide both creators and users, the low level of public engagement remains a problem.

Technological developments have also transformed the concept of property. Today, legal systems generally recognize three categories of property: (1) Personal property, including intangible assets; (2) Tangible property, such as land and buildings; and (3) Intellectual property, which includes creations of the mind such as copyrights, patents, trademarks, trade secrets, integrated circuit layouts, and plant varieties. The fundamental purpose of copyright ownership is to provide legal protection to Indonesian citizens as creators. Legal certainty for creators leads directly to justice.

Pancasila, the foundational ideology of the Republic of Indonesia, comprises five principles. The fourth and fifth principles are especially relevant:

a) Fourth Principle:

*“Democracy guided by the inner wisdom of deliberations among representatives”.*

This emphasizes the spirit of consensus and deliberation, not merely majority rule, but the quality and weight of ideas. Deliberation and consensus must serve the collective good, not just the majority’s interest, and reflect a spirit of togetherness, upholding equal rights and responsibilities as citizens.

b) Fifth Principle:

*“Social justice for all the people of Indonesia”.*

Indonesia’s legal system can be described as a prismatic legal system, a concept that blends communal and individualistic values. Prismatic values adapt legal norms to the sociocultural and economic stages of society. This unique model sets Indonesian law apart from other systems and reinforces the concept of Pancasila Law. It guides the government in fulfilling both the rights and obligations of citizens, especially regarding copyright and its use in the digital economy, which now aligns with international legal frameworks.

Article 1 Paragraphs (1) and (2) of the Minister of Law and Human Rights Regulation No. 42 of 2016 on Electronic Intellectual Property Applications states:

a) Paragraph (1): Intellectual Property refers to rights arising from intellectual efforts that produce products or processes beneficial to humanity.

b) Paragraph (2): An Electronic Intellectual Property Application is a submission made through an IP information system.

Although the regulation is normatively clear, through to its final article (Article 11), it does not outline the legal consequences of not submitting an application. For example, there is no elaboration on the benefits for applicants of utilizing the electronic IP system.

Hulman Panjaitan argues that copyright only protects ideas that have taken a physical and original form. The law does not protect abstract ideas or unmanifested concepts. Thus, a song composed with arbitrary melody and lyrics is not considered an original creation under the law. Understanding the requirement for creative works to be unique, personal, and original is a shared responsibility in the pursuit of legal justice. Unfortunately, public participation in forming copyright legislation remains minimal. The growing number of copyright issues in the digital economy indicates the lack of comprehensive, integrated clauses in current copyright laws.

John Locke theorized that everyone has a right to the product of their own labor. His three main principles include:

1. Creators deserve ownership rights because of their effort and creativity.
2. Working on existing assets may grant rights depending on employment contracts.
3. Collective ownership claims are subject to the same conditions as individual claims and aim to reconcile individual creator rights with broader societal interests.

John Rawls offers a vision of justice rooted in fairness, emphasizing:

- a) Equal rights and opportunities to the broadest possible freedoms for all;
- b) The necessity of fulfilling basic human rights and preventing rights violations;
- c) The redress of socioeconomic disparities to ensure reciprocal benefits for all, both privileged and underprivileged groups;

- d) Measuring justice not by individual outcomes, but through pure procedural justice.

The four indicators formulated by John Rawls must be demonstrated in the process and mechanisms of copyright dispute resolution, whether through Arbitration and Alternative Dispute Resolution (ADR) or through Commercial Courts. These indicators serve as the foundation for ensuring justice and legal protection for creators. It is essential to assess whether these four indicators are fulfilled, particularly in relation to the establishment of a specialized judicial institution dedicated to resolving copyright disputes in a manner that is swift, simple, and cost-effective.

#### 4. Conclusions and Suggestions

Based on the discussion and analysis presented, it can be concluded that the reform of copyright law in Indonesia remains far from the collective expectations aligned with the spirit of social justice and the ideology of Pancasila. The reforms that have been implemented tend to focus primarily on economic interests, neglecting the cultural, social, and justice-based dimensions that should be an integral part of intellectual property protection, particularly copyright. Furthermore, the interests of government institutions related to copyright stakeholders have yet to be consolidated into a unified vision and comprehensive policy direction. This lack of coherence has resulted in disharmony in the implementation of regulations and the legal protection of creators. Moreover, the principles and values embedded in Pancasila have not been fully internalized or used as a normative foundation in the formulation of copyright-related regulations, especially in responding to the rapidly evolving digital economy.

To address these challenges, several strategic recommendations must be considered. First, a collaborative analysis involving copyright-related business actors and the government is needed to formulate a legal framework that is simple, mutually understandable, and implementable even at the regional level. Second, coordination and synergy between relevant government institutions and business stakeholders must be strengthened through open dialogue and joint forums to resolve ongoing issues related to copyright. Third, the formulation of copyright regulations in the digital economy era must thoroughly incorporate and apply the values of Pancasila. This approach is essential to ensure that Indonesia's state ideology remains the foundational reference point for all legal developments and serves as a safeguard against the ideological erosion that may result from globalization and the accelerating pace of change.

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