

Chapter III: Group Work

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CHAPTER III

1. Group A

Participants

Moderator: Mr. Dion P. Sihotang

Indonesian resource person: Prof. Eddy Damian,
Universitas Padjajaran

International resource person: Ms. Petya Totcharova,
UNESCO

ACCU: Ms. Sasaki Mariko

1. Mr. Wiriady, PMPB team of IKAPI of DKI Jaya
2. Mr. Ali Samad, secretary of IKAPI of South Sulawesi
3. Mr. Azhari Marzuqie, Nsi, secretary of IKAPI of North Sumatra Branch
4. Mr. Doni Sheyoputra, HAKI (Intellectual Property Right) consultant
5. Ms. Dra. Adwityani S. Subagio, chief of NGO, lecturer at some universities
6. Dr. Apsanti Djokosujatno, translator/lecturer of University of Indonesia, Faculty of Society and Culture, French
7. Drs. Tasman, secretariat of vice president
8. Mr. Erdion Nurrahman, PT. Pustaka Binaman Pressindo
9. Mr. HR Hari, PMPB team of IKAPI DKI Jaya
10. Mr. Jusman Sihombing, SH, Komisi Nasional Indonesia (Indonesian National Commission) for UNESCO
11. Ms. Nita Indrawati, S.E., IKAPI of West Sumatra
12. Mr. Syaekani Al Karim, IKAPI of Riau

Questions and Answers

Q. How is the status of collection or anthology that is reproduced by an editor when it is revised by other collectors?

A. Anthology is considered as works both in international law and in practice. It is provided in article 12 paragraph 1 in Indonesian Copyright Law No. 19/2002. The person who arranges anthology is considered as a writer of derivative works. Therefore, the rights and the element of the works should be respected. It means that the right of the writer will be exercised without prejudice. (Ms Petya Totcharova)

Q. Is the development of theories, fictions, and other works considered a legal exploitation? Do they have a copyright?

A. Development of work is actually an adaptation work. The writer of the derivative works also needs concentration. Writing an adaptation from an original source should not be prejudiced. However, when the writer makes the adaptation into a play they need

an agreement from the first writer. (Ms Petya Totcharova)

Q. Does the result of derivative works get a copyright?

A. Yes. Adapted work is a derivative work based on the original one. There are two copyrights; one is for the first writer and the other is for the writer of the derivative works. Therefore, he has the copyright from the derivative works. (Ms Petya Totcharova)

Q. Is written idea protected by copyright law?

A. No. Idea is not protected by law. What is protected is the expression of the idea. Theory is not protected by copyright law. It means that, idea of structuralism can be developed. You can freely develop any idea or theory as long as you do not copy them from other theories. (Ms Petya Totcharova)

Q. Is folklore, such as legends and myths, protected by copyright law?

A. Based on the international standard, folklore is not protected by copyright. The principal of copyright is to protect living authors and after fifty years of their death. After that period, the works become public domain. Another logical reason is that we do not really know who created the folklore because it was written centuries ago. Therefore, according to the strict principle of copyright law, folklore is not protected by copyright. Nevertheless, there are legal norms in developing countries that try to protect this cultural expression because they are very important for the protection of the country's asset or culture. There is now international discussion on the issue of protection upon the traditional heritage. It has been on six to seven years but has not come to a conclusion yet. Nevertheless, there are many laws consisting of protection on a country's asset. We can directly go to article 10 of UU Hak Cipta No. 19 year 2002, which talks about copyright of the unknown writer. The government will take care of this, whether it is a product of culture or a handicraft, such as batik. (Ms Petya Totcharova)

A. Indonesia as a developing country protects the works of an unknown writer. There is an umbrella agreement of WTO, namely the agreement of establishing a trade organization, inside which there is an annex of agreement. It is stipulated that there is a possibility for a country to protect its international heritage, such as traditional plants that contain medical quality to be sold to developed countries with high price. Developing countries can make use of

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this agreement. It may be annexed in the Indonesian copyright handbook. (Prof. Eddy Damian)

Q. Who has the copyright of old manuscripts that were taken away by other countries because of colonialism?

A. The answer is the same as the previous one.

Q. How is the status of public domain books?

A. First of all, let us clarify what is meant by public domain. Works are protected for a period of time. In Indonesia, a writer is protected for 50 years after his/her death. Neighboring right is protected for 20 and in some countries for 25 years. After that period, the works become public domain. Works in public domain can be freely exploited. An example is books written by Charles Dickens, who was dead a hundred years ago. His works have become public domain. It means that any publisher in Indonesia or in any other countries can publish the books without having to ask for permission from anybody. Since the book may be published by any publisher, there may be more than one publisher publishing the book. However, when the book is translated, there will be a level of different rights; and that is to what we have to pay attention. (Ms Petya Totcharova)

Q. Who has the copyright of the repro photograph? Example: Tempo magazine puts a photograph of a person in one of its edition. Then, Yudhistira Publisher quotes it for their book by explaining that it is taken from Tempo magazine. However, the person in the photograph prosecutes the publisher for not asking his permission.

A. There are two issues on this case. First, it is about who owns the copyright over the photo. Normally a copyright of a photo belongs to those who take the picture. However, we have to pay attention to another element. Photo may also belong to those who ask someone to take a picture; and this case is stipulated in article 8. Another element is about a photo that is taken based on an agreement, such as in a newspaper. In this case, the owner of the photo is the newspaper agent. The right may belong to the photographer or the newspaper agent.

As to the subject in the photo, it is stipulated in Article 20, where copyright holder is not allowed to publicize the photograph without the permission of the subject. (Ms Petya Totcharova)

Q. Can formula (in chemical, mathematic, geometry, etc.) be considered as a work?

A. Formula cannot be considered as a work. (Ms Petya Totcharova)

Q. How about the unpublished work, such as dissertations, papers, etc? Can it be considered as a work?

A. Unpublished work is considered a work. Copyright comes automatically after the work is created. (Ms Petya Totcharova)

Comment: In the education institution, thesis is written by students. Who owns the copyright? The one who creates the work owns the creation. Unless there is an agreement saying that university owns the creation. I suggest the university to make an agreement with the students stipulating that the students transfer the rights to the university. The agreement states that result of the research belongs to the university. Based on the article 3 (in Explanation), an agreement must be made in written form. There should not be an involvement of a notary. (Prof. Eddy Damian)

Q. What is the difference between Intellectual Property Right and Copyright?

A. Copyright is a part of Intellectual Property Right. Intellectual Property Right comprises of two big branches; First, there is Industrial Property Right. The second one is Copyright for works of art. (Ms Petya Totcharova)

Q. Who has the copyright of the developed traditional dance?

A. Traditional dance that was created by an unknown choreographer belongs to the government. Indonesian people who want to make an adaptation from traditional dance do not have to ask for permission from the government. Meanwhile, if a foreigner wants to make an adaptation, he or she has to ask for permission. The choreographer or the person who makes the adaptation will be the creator. However, it should be stated that he or she is only the creator of the adapted dance. (Ms Petya Totcharova)

Q. How far is it a piece of music composition still be considered as original or not violating the copyright? It is quite often a tune in a piece of music has a similarity with a tune in another one.

A. There is no precise answer for that question. No one can say how many pieces are taken from somebody else's work. Can a similarity in tune be considered a plagiarism? If there is a conflict, it can be solved in the court. (Ms Petya Totcharova)

A. The recent copyright law uses a qualitative parameter. However, the old one used a quantitative parameter. What is taken from a song is considered a substantive part. Even though it is only taken less

than 10%, it can be considered a plagiarism. An example is *Bengawan Solo*, a song created by Gesang. If at the end of the song, people put a tune of dangdut, it can be considered as an infringement. Because the parameter used is qualitative, it is not a difficult case. We already have the law for it. (Prof. Eddy Damian)

Q. In the Asian Copyright Handbook, it is explained that translation has a copyright. How is its implementation in Indonesia? Do translators receive royalty?

A. Back to Article number 12, it depends on the agreement. It depends on the publisher if they wish to give the right to the translator. There are two possibilities, the translator may receive the remuneration in full or based on the sold books. This case depends on every country and on the agreement made with the author. (Ms Petya Totcharova)

Comment: The case we have in Indonesia is that the translation work is not bound by a contract. There should be one. (Mr. Mula Harahap)

Q. What would be the case if a translator does not have permission from the proprietor or the original publisher? Could it be considered a piracy? Is the translator involved in the piracy action? Can he or she be brought to the court?

A. Translator has nothing to do with the reproduction. He or she only gets commission. The translator does not know whether it is legal or illegal, so he or she cannot be sanctioned. (Ms Petya Totcharova)

A. If a local publisher does not ask for permission from the proprietor, and ask a translator to translate the book, the translator can be sanctioned for his or her involvement in the piracy act. It is advisable that a translator be aware if the book he or she translates is legal or illegal. (Prof. Eddy Damian)

Q. Who owns the copyright of a written material for a seminar; the writer or the seminar organizer? What would happen if they are reproduced or commercialized?

A. Normally the right belongs to the author of the material, unless there is an agreement with the organizer or the employer. In article 8, one who presents the material owns the copyright. (Ms Petya Totcharova)

Comment: When ACCU wants to reproduce, distribute, or put Ms Petya's article in the website, ACCU must ask for her permission. (Ms. Sasaki Mariko)

Comment: In this case, ACCU has a contract with me. (Ms Petya Totcharova)

Comment: In my experience, many of my students ask for permission to photocopy the explanation or the transparency sheet. However, I give them no permission. If I do give, they will be lazy. At the same time, I teach them about copyright because a speech or a lecture is a form of a copyrighted work. (Mr. Eddy Damian)

Q. Does editor have a right upon the books he/she edited?

A. No. (Ms Petya Totcharova)

Q. Who has the copyright of logo or symbol of a company or institution in a competition, the creator, or the competition organizer?

A. Again, it refers to Article no. 8 about photo or conference paper. It belongs to the creator unless there is an agreement. (Ms Petya Totcharova)

Q. Who owns the copyright of a logo for the district government? Is it the creator or the district government? The creator asks for royalty.

A. It depends on the agreement between the district government and the creator of the logo. Was the submission of the logo based on a contract or not? If there was one, the creator would have reserved the right to receive commission or royalty. If there was not one, we would have to gather some witnesses that the logo was not submitted free. It is advisable that we make a written agreement. (Prof. Eddy Damian)

Comment: In the case of Rupiah note, it is caused by negligence to an agreement. (Mr. Mula Harahap)

Comment: Another example is that it is still unknown who owns the copyright of the logo of University of Padjadjaran. (Prof. Eddy Damian)

Q. I am a painting collector. Am I infringing the painters' copyright if I exhibit them in an exhibition?

A. This refers to Article no. 23 about the owner of copyright. If there is no agreement between the owner and the collector, the collector is allowed to publicize the painting without the owner's consent or to put the picture of the painting in catalog without breaching Article number 20. (Ms Petya Totcharova)

Q. Who has the copyright of old manuscripts that were taken away by other countries because of colonialism?

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A. This is not merely a copyright issue. We know that many historical objects have been moved from one country to another for some reasons. For example, there is a manuscript in a library in England, and because it has been there for a very long time, it now has become a public domain. Moreover, we cannot apply our law to a manuscript in other countries. It is called common heritage that belongs to everybody. (Ms Petya Totcharova)

Q. How is the protection for forbidden books? Many books in developing countries have been published but then are withdrawn and forbidden by the government.

A. It is a matter of censorship by the government. When the government forbids the publication of a book, it has nothing to do with copyright issue. The problem is when there is a publisher wanting to publish a book that is once forbidden by the government, the publisher shall have the right from the author or from the previous publisher. (Ms Petya Totcharova)

Q. Do we agree that infringement for social purposes is allowed or do we strictly disagree and refuse copyright infringement for any purposes?

A. No. Social purpose cannot be the justification for copyright infringement. There might be a less severe condition for public or educational purpose. (Ms Petya Totcharova)

Comment: What is meant by copyright is clearly stipulated in Article no. 21 clause 1. According to the acting law, copyright is an exclusive right of a creator. According to Article no. 14, when a copyright that is an exclusive right, such as national emblem is duplicated, it is not a form of an infringement. Another example, when a mass media publishes a piece of news, it then becomes a public domain. Copyright as stipulated in Article no. 14, is limited for public need. Copyright is not individualistic in nature; it should be in balance with its obligations. (Prof. Eddy Damian)

Q. Is it morally justifiable to copy textbooks for limited use because they are expensive?

A. Photocopy is a reproduction of the work. It can be a form of infringement. However, it could also be not an infringement depending on the purpose. If I copy for my private use, it is not an infringement. If we copy all part and sell it, it is an infringement. (Ms Petya Totcharova)

Q. What happens if every student copies the whole book?

A. The law allows that. In developed countries, universities compensate the author by making a contract between the author and the university. The licensing scheme for giving compensation to the writer is still under discussion. (Ms Petya Totcharova)

Comment: Fair dealing is allowed as long as it is for private purposes, not commercial ones. Licensing scheme in Indonesia is still inapplicable. (Prof. Eddy Damian, S.H.)

Q. Is making a quotation protected by copyright law?

A. Quotation can be done without permission as long as we put the name of the author. (Ms Petya Totcharova)

Q. How long is the period of copyright protection?

A. We have talked about it in the public domain book. The copyright protection is 50 years after the death of the writer, including for performance and phonogram (in Article 29). (Ms Petya Totcharova)

Q. What are the preliminary evidences we submit to the police to lodge complaint?

A. Rules are different based on different judicial system and different law of procedure. In my opinion, you have to provide with preliminary evidences, such as a copy from the legal product equipped with related information. I cannot elaborate my answer about what other evidences to submit. (Ms Petya Totcharova)

Q. How do we control piracy committed by publishers by way of printing more editions than what was agreed in the contract?

A. When the publisher and the author sign a contract, it means there will be a bound agreement that regulates publication, number of copies to print, marketing matter, and others. The publisher should abide by the contract by fulfilling the obligation accordingly. If the publisher breaches the contract, it can be sanctioned. However, it is not a form of piracy. How the author controls his/her works should be stipulated in the contract. In practice, the publisher only gives a sales report to the author. Nevertheless, it is difficult for the author to control the number of copies printed by the publisher. However, if the author feels that the publisher has breached the agreement, he/she has the right to lodge a plea to the court. (Ms Petya Totcharova)

Comment: Publishers may have their own printing machines, so that it is difficult for the authors to

control or check the sales report. (Mr. Dion P. Sihotang)

Comment: In the United States, if an author feels suspicious about a publisher, he/she has the right to ask an auditor to audit the publisher under his/her own expense. (Mr. Mula Harahap)

Q. How do we protect the characters in a comic, such as *Doraemon* and *Donald Duck*, that is adapted into an icon.

A. A character is normally protected as part of the work. A character becomes popular because the author uses it as an icon to improve the value of the work. In this case, the copyright holders are not solely dependant on the copyright, but they use the brand of their work in which the icon can use to make more profit. Besides, an icon would be protected by the brand name. (Ms Petya Totcharova)

Q. Do we have an international convention on regulating scanning or digitizing a printed media?

A. There is no international convention that specifically regulates scanning and digitization. Normally, there should be permission from the author because it is considered as reproduction of a work. (Ms Petya Totcharova)

Q What is the appropriate Islamic view on piracy?

A. Islamic view on piracy is 'haram (against Islamic law)'. (floor)

Q. In accordance with music or song, is live performance protected; and what can we do to protect them?

A. In accordance with live performance right, there are two issues. First, performer either live or recorded is protected, and this could be seen in Copyright Law Article No. 7. The song writer whose song is included in the show will receive compensation from the organizer. (Ms Petya Totcharova)

Q. Does anyone have the right to publish a compilation of law and put his name as the writer?

A. People who compile the laws have worked in such a way and specifically arranged the work. Their work is considered original and is protected. (Ms Petya Totcharova)

A. Law itself is not protected. However, the case will be different when we compile the law in a specific manner. This work is then considered as original creation of the compiler. The compiler is said to be the creator of the book, not of the law.

Typographical arrangement, such as cover design, layout design, and size is protected by law. If someone copycat the design, the compiler has the right to sue. (Prof. Eddy Damian)

A. The arranger has the right as an author and the publisher has the right to publish. (Dra. Adwityani S. Subagio)

Current Issues on Copyright in Indonesia and Comments and Suggestions to the Handbook

Mr. HR Hari

As a member of PMPB team (a task force in Ikapi of DKI to fight against the book pirates), he directly faced the book pirates and the police officers as well. However, he had no idea about the copyright certificate. The police officers in District Police Station always asked about the registration of the book copyright every time he caught book pirates. They asked whether the book had been registered to the copyright commission. He came up with a question if books in Indonesia should be registered to obtain copyrights.

Ms. Dra. Adwityani S. Subagio

She works in Department of Art. She said many books on art were very expensive. She found it difficult to afford the books so the library only provided one book to lend and two books for reference. Most of her students copied the books. That was certainly against the copyright law but many lecturers and librarians did not have enough knowledge about that. We, she insisted, had to understand the situation without breaking the rules. As far as she knew, Indonesia had ratified three international conventions. One of them is Berne Convention. She asked what would happen if we break the rule of those ratified conventions. She elaborated whether we needed to moderate the book or strictly implement it.

Mr. Wiriady

He expected for the good socialization of the book so that the government and the police officers could handle infringement cases well. Police officers, according to him, should have been equipped first with knowledge of copyright before handling the case. He hoped that the handbook would be distributed to every element of the society.

Prof. Eddy Damian

He wished to share his experience on applying the copyright law in Indonesia.

According to him, Indonesian Copyright Law No 19 year 2002, and those previous laws (1912, 1982, 1987, 1997, to 2002) do not oblige the creator to register their creation. Copyright belongs automatically to the creator since the first time the

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creator creates, duplicates, and publicizes his/her creation. The creator does not have to register his/her creation. However, creator may register his/her creation for the declarative principal, not the constitutive principles. The registration of a creation will be helpful when there is a problem upon the creation.

He continued by showing one good example. It was about the picture of Palembang Sultanate on the note of Rp. 10.000, which was the first winner of competition held by South Sumatra Province. As the first winner, the painter was paid, but lost his potential royalty. Because he was bound to an agreement, he did not have the right of his creation. On the other hand, the local government as the organizer of the competition had it. If the painter registers his painting to the copyright commission, the registration will not create copyright for him. It will only be a declaration. He concluded his explanation by saying that it was unnecessary to register our creation.

Prof. Eddy Damian went ahead to Ms. Dra Adwityani S Subagio's question. He explained that, in the copyright law, there was so-called fair use in Australian term or fair dealing in American term. Under certain conditions, fair use is permissible and does not breach the law, such as for education, research, and for defense on court. He added that people needed to ask for permission before using one's creation, and the creator had an exclusive right. However, if it was intended for a fair use, people might not ask for permission as long as it was not for sale. Copyright has two characteristics: economic right and moral right. Economic right is the right to commercialize the creation.

Mr. Ali Samad

He invited the participants to talk about the local works because there are many cases of copyright infringement in the local area. *I La Galigo*, for example, is the collective works of South Sulawesi people. They collected the manuscript painstakingly. Once it collected 6,000 pages, the foreigners took it abroad. There was nobody who understood the language except the experts. However, we needed to go to Netherlands to read them. The translation caused some reductions in the meaning. We needed 5 to 10 years to publish one edition and needed 50 years to publish the whole one. *I La Galigo* is comprised of twelve editions. Unfortunately, some foreigners brought them abroad to be performed in many countries, such as Singapore, Europe, America, and Vietnam. Robert Wilson and friends commercialized it around Europe and Japan. To whom should we give the economical values since *I La Galigo* inspired the performance?

Mr. Doni Sheyoputra

He said to the floor that it was ironic talking about copyright while we do copyright infringement every day. For example, we type on computer using infringed software of Microsoft. The experience in PPM: we get an article that can be downloaded and distributed. How is the copyright for this material? We also frequently hold seminars. We think that the material from the resource person belongs to the seminar organizer. Who actually owns the copyright?

Mr. Azhari Marzuqie, Nsi.

He really appreciated the publication of this copyright handbook. He hoped the book would broaden the societies' understanding on copyright. He suggested that the discussion be effective and focussed in order that the book would reach all occupations. He expected there would be some revisions to make the book more suitable for Indonesian society. An example was the point of works exploitation on page 39. Works exploitation must be done with contract. Contract can be both oral and written. Wouldn't it be better to delete the point of oral contract for Indonesian handbook? He hoped that the handbook would be very effective to make Indonesian society appreciate copyright and feel ashamed to do book infringement.

Mr. Doni Sheyoputra

He insisted the result of the draft revision be readable for everyone. This book utilizes some terminologies that are not suitable for Indonesian law.

Film and cinematography is the biggest problem faced by the police officers. When we report film piracy to the police, they will always ask for the examples of the original version. Film, in any way, is not as simple as books. Film producers would need more times before launching its original VCD/DVD to its audiences. They would expect film audiences to watch the film in the cinema before they launch the VCD/DVD versions. Unfortunately, the police officers do not understand the situation. Therefore, he hoped the book would pay attention to the special characteristics of each work.

Ms Dra. Adwityani S. Subagio

Since the book would be disseminated to all layers of societies, she hoped that the book be furnished with short definitions and descriptions. Types of works as the subject of the copyright law should also be included into this book. The third to be included according to her was folklore. It may trigger confusing matter as the situation was different from that of Japan. In Indonesia, there is so-called term of story telling.

Copyright does not protect ideas, she elaborated. Once, she wrote her idea into a proposal complete with a schedule. She gave her proposal to someone only to receive no reply. Shockingly, some times later, the person used her idea without her

knowledge. She pleaded the protection for such a case.

Ms. Nita Indrawati, S.E.

The translation in the book must be in simple and clear way. She once organized a folklore writing competition. They published the stories in the form of a book. Her question was who owns the copyright. Another example was a local teacher who submitted a work to National Education Department. After years of no reply, the department published the book. However, they did not mention the name of the author. Her question was where the prosecution should be lodged in. In media, we often quote news from one to another media. How is the regulation of this case?

Mr. Jusman Sihombing, S.H.

He suggested changing the title of the “Asian Copyright Handbook” into “Seluk Beluk Hak Cipta di Asia”. The term ‘handbook’ insisted deeper exploration about Asian copyright problem. He also wanted to invite all participants to be strict on infringement. He asked for the consensus if infringement is legalized for social purposes. Alternatively, he insisted on being strict about the refusal of such excuses.

Dr. Apsanti Djokosujatno

According to her, copyright exploitation had to be clear since there were many types of exploitation, such as summary, ideas development, etc. Could we regard them as exploitation?

Mr. Syaekani Al Karim

He insisted on being very careful in writing the handbook. There are many strange incidents in Indonesia, such as the case of song “*Laksamana Raja di Laut (Admiral at Sea)*”.

Once he has written a story adapted from a script. In the beginning, he made two paragraphs, and then he elaborated them into ten. When it had become a book, he asked, who owned the copyright. He was also questioning who owned the copyright of the scripts written by Raja Ali Haji, which is now kept in Leiden? In cases when people want to develop such a script, who will own the copyright.

Drs. Tasman, Secretariat of Vice President

In his opinion, most of Indonesian people have not understood copyright law. He hoped the handbook would be distributed to all layers of societies after being rewritten using simple and good language.

Mr. Mula Harahap suggested putting Indonesian Copyright Law No. 19/2002. Another suggestion was to adapt the Indonesian law terminologies into the handbook.

Prof. Eddy Damian suggested adapting correct Indonesian law terminologies. There must be group

of competent people to make the revision. We also need to write typical Indonesian situation and problems in the handbook. Additional information about international convention on copyright, such as WIPO, would also be very useful.

Mr. Azhari Marzuqie, Nsi suggested changing the illustration

Ms Sasaki Mariko gave her feedback to the participants’ suggestions. She agreed that the translation should correspond to the Indonesian law terminologies. Therefore, it should be revised by experts on this field. However, she disagreed with the participants’ suggestions to revise the text written by the original writer because it would infringe the moral right of the author. The Indonesian version will have its own Questions & Answers. The questions and answers would enrich the book with Indonesian characteristics and problems. This way, this book would become an Indonesian handbook. She also agreed to add the law and other texts about copyright in the book, as an appendix. She also allowed Ikapi to change the illustration. The title would still be Asian Copyright Handbook added by a subtitle, such as “Indonesian Perspective”.

Suggestions for the Promotion of Copyright Awareness

Mr. Azhari Marzuqie, Nsi stated that he was ready to print and distribute the handbooks through his company.

Dra. Adwityani S. Subagio’s NGO consists of teachers. They would be able to teach their students since early age. This is informal because we cannot wait for the curriculum from the government.

Mr. Azhari Marzuqie Nsi suggested socializing the copyright awareness through television. Pictures would be easier to understand and memorize.

Dr. Apsanti Djokosujatno suggested showing public figures to give an example to the society through television.

Drs. Tasman suggested involving every elements of society, such as the government, Ikapi, ASIRI, etc. to socialize the copyright awareness and the Asian Copyright Handbook.

Mr. HR Hari suggested the promotion of the copyright awareness through electronic media, NGOs, education institutions, libraries, police officers, public prosecutors, judges, lawyers, bookstores, advertisements, etc.

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Mr. Doni Sheyoputra suggested using law enforcement and take repressive action by establishing an institution like BNN (Badan Narkotika Nasional – National Narcotics Institution). This institution consists of police officers who would be responsible directly to the president. A talk show on the radio would also be a good publication.

Mr HR. Hari suggested that Ikapi should have a good relationship with the media.

Mr Doni Sheyoputra suggested involving Asosiasi Televisi Swasta Indonesia (Indonesia Private Television Association) and journalists to cover news about copyright and its law enforcement.

Ms Petya Totcharova suggested involving journalists to promote copyright awareness in their working community. Hold meeting or seminar to discuss the consequences of the copyright infringement that weaken the national economic condition.

3. Group B

Participants

Moderator: Mr Herman Sudrajat, Ikapi
 Indonesian resource person: Mr. Ahmad Tossan,
 National Directorate of Intellectual Property Rights
 International resource persons: Mr. Tanaka Kentaro,
 Agency for Cultural Affairs, Japan
 Ms Dairaku Mitsue, Professor of Hokuriku
 University, Japan

1. Mr. Aris Buntarman, IKAPI officer.
2. Mr. Dadi Pakar, editor, lecturer.
3. Mr. Arifin, from Polytechnic of University of Indonesia, coordinator of publishing.
4. Mr. Sobirin, vice president of IKAPI Jogjakarta.
5. Mr. Bambang Trimansyah, writer, editor, lecturer.
6. Mr. Sumadi, lecturer, human resource trainer.
7. Mr. Masri Maris, translator of Asian Handbook Copyright of Indonesian version.
8. Mr. Uray Husna, chairperson of IKAPI West Kalimantan, lecturer.
9. Mr. Amzulian Rifai, lecturer, writer.
10. Mr. Ragil, IPR researcher.
11. Mr. Parulian Aritonang, lecturer, IPR observer.
12. Mr. Agus, IPR lecturer.
13. Ms Irma, IPR lawyer.
14. Ms Violetta, instructor, IPR consultant.
15. Dr. Tin Tun Oo, observer from Myanmar
16. Dr. Hnin New Aye, observer from Myanmar
17. Ms Vu thi Quinh Lien, observer from Vietnam,
18. Mr. Sida Sudiarto, writer, editor, translator, founder of Garda Budaya Indonesia foundation.
19. Mr Husni, Serambi publisher in Jakarta

Questions and Answers

Q. What is industrial design? Is industrial design a part of copyright? How is it to protect design graphics?

A. Industrial design is not a part of copyright because copyright protects products of art, science, or literary work. Industrial design is regulated under separate law, which is Law No. 31 year 2002 on Industrial Design. Graphic design is protected under copyright law. The protection is automatically obtained but industrial right should be registered in order to obtain the protection. Hence, graphic design work is automatically protected under copyright law. (Mr Ahmad Tossan)

Q. Is a translation protected by copyright?

A. Translation is a separate work from the original version and is protected by copyright law. If someone wanted to make copies of the work, he/

she had to ask permission from the translator. Nevertheless, in order to translate one's work, the translator should have permission from the original author and the publisher. (Mr Ahmad Tossan)

Q. How long is the transfer of right that one author have?

A. The transfer of right depends on the contract. If the contract does not mention about it, then according to copyright law, the copyright is valid for a lifetime of the author plus 50 years after his/her death. After that, the work becomes public domain. However, the contract cannot be longer than what the copyright law has regulated. (Mr Ahmad Tossan)

Q. Who is the owner of essays and articles in newspapers and magazines?

A. The author of the work such as essays and articles in newspapers and magazines is the author/writer himself. If the writer is anonymous, the copyright is owned by the publisher. (Mr Ahmad Tossan)

Comment: There is a common opinion that an article after 24 hours published in newspapers and magazines becomes public domain. (Mr Bambang Trimansyah)

Comment: It could possibly happen in the case of current news and reporting, but not on features. (Mr Ahmad Tossan)

Q. Who will be the copyright owner of the Indonesian version of Asian copyright Handbook?

A. Mr Tanaka shared his opinion about this question that was closely related to the seminar and workshop. He said that the author of the original Handbook is Mr Hozumi, but after being translated to the Indonesian version, there is a translation copyright of the Handbook.

Comment: Ms Lien shared her experience in Vietnam. In the Vietnamese Handbook, the copyright owner is the publisher. However, the original copyright owner with the illustrator and ACCU are still mentioned. In the foreword, it is also mentioned that this Handbook is contributed by all seminar and workshop participants.

Q. What is the rule of quotation payment?

A. People do not need to pay when they make half quotation as long as they mention the source. The main point is that quotation is prohibited unless the source is mentioned. (Mr Ahmad Tossan)

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A. In Japan, if people want to quote, they do not need to have any permission and royalty payment. There is a standard in quotation work. There should be a clear difference between quotations; there should be a relation between the original works; indicating the source is important and last, there should be no infringement of moral right. (Ms. Dairaku Mitsue)

Q. What is the tolerated percentage of quotation that we can obtain from a book?

A. Importance of quotation limitation is not from the quantity but from the qualitative side. Even small percentage could be considered as copyright infringement. (Mr Ahmad Tossan)

Q. What can you do if you find out that your work has been violated?

A. Piracy is one of criminal case but it happens often that the police have difficulty to identify which the pirated work is, because the work is not registered. (Mr Ahmad Tossan)

A. The person whose copyright has been violated can bring this case to the court for the losses that he/she obtained from the copyright infringement. (Ms. Dairaku Mitsue)

Q. Has Indonesia ever ratified the law with regard to copyright?

A. Indonesia has ratified the copyright laws such as:
WTO TRIPs through President Decree number 7 year 1994.
Berne Convention through President Decree number 19 year 1987
WIPO Treaty through President Decree number 19 year 1997.
(Mr Ahmad Tossan)

Q. How can you settle the problem if there are two or more identical books published by different publishers? This happens often in the case of Islamic books. It is as if the books belong to public domain but the fact is that there is only one publisher having the copyright.

A. The copyright of the book belongs to the author and that the first publisher has the license. The publisher that has the right to the book is the publisher that has the copyright/license. (Mr Aris Buntarman)

Q. How is it to calculate royalty in number of Asian countries?

A. The amount of royalty to be received by an author depends on the contract. (Mr Ahmad Tossan)

A. It depends on the contract or the negotiation, but usually it is 10% in Japan (Ms. Dairaku Mitsue)

Q. How is it with music arranger since they are not the original composer?

A. Music arranger gets the license from the author to arrange the music. If someone wants to make use of the music, he/she should have permission from the original composer and from the music arranger.

Q. Should rental comics/books place pay for royalty?

A. If there's any use of the work then the user has to pay the royalty to the author.

Q. Is there any sanction to the country that has been assigned agreements or treaties related to copyright when they violate the agreement?

A. If you become a member of the treaty, you have to follow the rule and if you do not do the obligation then there is a rule that regulate that matter. It might be economic sanction and 2nd the country will get moral sanction.

Q. What is the difference between neighboring right and related right?

A. Neighboring right is the right to protect individual or organization that distributes information to the public, such as broadcaster, artist (performer), and recording producer. They are not the creator but they distribute that work, they do not have copyright. We need this conveyor for the development. They have contributions to the creator. That is why they are called as neighboring right. Related right owner, they would rather bring it and invest it. (Ms. Dairaku Mitsue)

Unanswered Questions in Group B

1. How can we protect local content such as Batik, folklore, etc.?
2. What is the time comparison of copyright registration between Indonesia and other countries?
3. How important is copyright certificate in Asia?
4. How does the Director General of IPR assess whether a work can be granted by the state?
5. What is the procedure for publishers in using photography, pictures, and illustrations of other publishers?
6. Is it now the proper time for Indonesia to implement copyright law strictly? Because it will close opportunity for common people to obtain

- goods at cheap prices.
7. What are the steps in establishing collective management?
 8. What are the efforts of press media in Indonesia to raise people's awareness on copyright protection?

Comments and Suggestions to the Handbook

Mr. Amzulian Rivai said that it would be better to adapt the handbook to Indonesian context and to simplify the book so that common people could easily understand it. Therefore, it was not only to translate it from the original version, but also to include Indonesian legal aspects. In relation to copyright awareness, the government should improve the law enforcement.

Mr. Masri Maris thought that the Handbook was more about Japanese law and context. He was very eager to know whether Ikapi or the committee could modify the Indonesian version of Asian Copyright Handbook. He wondered if it was possible to change it from the original version or we were allowed only to adopt it from the original version.

As a response to the previous speakers, Ms Tanaka Kentaro said that the Handbook was useful as basic knowledge/information about copyright issue and to share with other countries' experience related with copyright issue. That was the reason we were not allowed to change it totally because it was not the aim of this seminar and workshop. There would be some attachments to the Indonesian version of Copyright Handbook through the questions, comments, suggestions which would be produced in this seminar and workshop.

Mr. Parulian Aritonang agreed with the topic that local content was important because it was closely related with local matters of copyright. He added that if the book only contained the theory of law, there were already three books published in relation to Intellectual Property Rights.

Mr. Aris Buntarman said that the Handbook was only as basic knowledge but that could not act as a guideline of copyright in Indonesia. In Indonesia, the Copyright Law No. 19 year 2002 has been a guideline on copyright. He proposed that the Law be attached at the Indonesian version of the Handbook.

Mr. Dadi Pakar suggested that the Indonesian version of Asian Copyright Handbook contain copyright cases in Indonesia. One prominent case was many translated books were published without license. The publisher, anyway, had tried to obtain the license for

a long time but it never received any response from the owner of the license.

Mr Arifin had a question whether the committee was allowed to change the illustration of the original Handbook. This was important, he added, because the illustration should have been adapted to local context. And if the illustrations were interesting, people would be more eager to read the Handbook.

Suggestions for the Promotion of Copyright Awareness

The book should be distributed to law enforcers such as judges, police, prosecutors, lawyers. The book is also urgently needed to be distributed to local government officers, publishers, and libraries. This book should be distributed to schools and universities. What is important is that relevant parties should get this book by making a good distribution because through the basic knowledge in this book people can come up with the awareness of copyright.

The book should be distributed to people that break the law by doing infringement but they do not do that on purpose because they do not know that the thing they do is against the law. Therefore, this book can be a resource information that piracy is breaking the law.

Launch some talk shows, discussions in other regions of Indonesia to socialize this book.

We can build networking from participants of the seminar a sort of cooperation to promote this book to society, because the participants are closely related with the society itself.

Distribute this book to the music and film community at certain events such as JIFFEST, music or film festival, book fair, etc. through this way people can get the book and obtain the information of copyright inside which is useful to promote the awareness of copyright.

Apply a sort of campaign about this book, publication through posters, stickers, T-shirts, etc.

Make cooperation with related field such as Directorate of IPR, National Educational department, law institutions, etc to promote the distribution of the book.

Create a website where people can get access to this book so that they can get the information via the internet.

Make use of seminar participants (network) to promote and socialize this book.

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Socialization through various media such as TV, radio, magazine, newspaper, internet, etc. to promote this book.

It is better if we start first with the Indonesian version of the Handbook, but later we can make separated book that especially discusses about copyright issues in Indonesia in order to promote the copyright awareness.

To promote copyright awareness, the important thing is the implementation of the law. There should be a strict law enhancement.

People nowadays are not eager to read so in order to promote the awareness of copyright through this Handbook we have to think first how we can enhance the reading culture.

Piracy is a criminal case, but many people still do piracy or buy pirated goods. We have to think a way to make these people feel guilty or feel ashamed to use piracy goods or making piracy.

3. Group C

Participants

Moderator: Mr. Awod Said

Indonesian resource person: Mr. Eddy Wardoyo

International resource person: Ms. Caroline Morgan

ACCU: Ms. Takimoto Megumi

1. Anis Baswedan, Penerbit Akbar Media
2. Arie Zaind, Pengurus Karya Cipta Indonesia
3. Asril Daas, Ikapi Jawa Barat
4. Cides Sudiyarto, Yayasan Garda Budaya Indonesia
5. Dr. Mestika Zed, Dosen/Peneliti/Penulis Buku
6. Dr. Sumardi, MSc, Penulis/Dosen
7. Gatot Wahyudi, SH, Ketua Ikapi Jawa Tengah
8. Heru Tri Subiyanto, Ketua Ikapi Perw. Bali
9. Jimmy Paat, Pusat Grafika Indonesia
10. Muslikh, SH, Depdiknas
11. Prof. Dr. Arifzan Razak, Drg., MSc., Ikapi Jawa Timur
12. Sjamsuddin, A.Ma, Pustakawan
13. Wien Muldian, Perpustakaan Pendidikan Nasional
14. Yustiaman Barus S.Sn, Pusgrafin dan Poltek UI

Questions and Answers

Q. Who can patent the painting that has been repeatedly reproduced?

A. If classified for works category, the painting is protected under the law for the lifetime of the author and 50 years after the author's death. After that, it becomes public domain. In Australia, many artists use the part of Aborigine's creation for its original idea, and they are still able to register their original creation.

Case study: When I bought a painting work, the copyright belongs to me. However, the moral right belongs to the artist. If I change the original ID on the painting, I infringe the moral right of the artist.

Q. Regarding copyright, how is the treatment on local culture such as painting and statue in Bali.

A. If the work is registered, it is possible that the creation be protected under the law; otherwise, other handicrafters will possibly imitate.

Q. Can translator/editor have copyrights?

A. The copyright normally belongs to the publisher because it employs the translator or editor. However, if the author works freely, she/he should ask permission to the owner. This also applies to the condition of a song arranger

Q. What is the provision on copied copyrighted works regarding moral and economic rights?

A. Copied copyrighted work is stipulated in Intellectual Property Regulation. If there is no exception, it is called infringements.

Q. If we use transparency material from a book, is it an infringement?

A. It is an infringement; universities in Australia use the license system. The system counts per page for its license. If we take from book then it is not an infringement, but if it is copied and transferred to plastic transparency, then it is an infringement.

Q School or university textbook is often pirated and commercialized. What is your opinion?

A Referring to article 15 on piracy product, the penalty is 7-year imprisonment or 5 billion rupiahs fine. For the distribution of piracy product, the fine is 5-year imprisonment or 500 million rupiahs fine. However, it needs evidence on the one who has relation right between right owner and police and geographical condition that raises obstacle in solving the case. Right now, piracy of school or university textbook is not only about copyright but also law enforcement.

Q. Can a printing company be prosecuted for pirated product if they do not know the source of the writing?

A. The printing house must know the originality of each copy submitted. While the police must prove the truth based on the report and investigate the availability of the regulation. In Indonesia, there is regulation on constructive knowledge against conspiracy.

Q. Can a different research with different subject but with the same methods and structure be considered as plagiarism?

A. The convention stipulates that works that is made by human and involving creativity will have protection, but if it is only using ideas it does not violate the product. The answer is "it depends".

Case study: In 1997, Pertamina (state-run oil company) opened a bidding of catalyst changing for oil channel in Balongan. A bidder submitted proposal on how to change the catalyst. In 2002, Pertamina opened the same bidding, and one who won the previous bidding finally lost. The expert witness said that the formula is not a matter of copyright because the methodology is not protected by copyright.

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Q. After receiving the translation right and paying the copyright fee, can we change the cover design of the book for other purposes?

A. It depends on the content of the covenant if there is a clause on the cover or a separate covenant. The law regulates common things not particular ones. If we want to use different design, we have to look carefully on the covenant. If we want to change the color of cover or want to make it similar with the original then it needs permission from the copyright holder.

Q. For teaching purpose, is making copies with USB legal? (Same question: is changing writing to digital format, while the author's name being mentioned, an infringement of copyright?)

A. Making digital copy but get no license is an infringement. Even though putting the name in the author, it is still a copyright infringement. If it is for educational purposes, we have to examine the three steps in Berne Convention. A Copy in big number is seen as breaking the concept of common use and violating remunerations right of the author, but has copyright exception for educational purpose.

Q. In the world of book, there is a custom of changing a cover of a book to have a name of new author, but the content remains the same. Is it an infringement?

A. There is automatically a copyright even without registration as long as it meets the originality and is in physical form.

Q. How much is the standard price of copyright for one book title?

A. The standard is the same in Australia: (1) the exemplar to be printed, (2) originality, (3) offering from another party, and (4) pirated possibility. However, it is the same with developing country like Indonesia including translation work. Article 16 of Copyright Law provides chance for the government to deregulate permit.

Case study: In Australia, the author writes an application letter in sad expression to the publisher in order to get low fee in managing copyright.

Q. Is there any kind of special treatment or exception for developing countries, like Indonesia to implement international copyright protection law?

A. It depends on the country's regulation.

Q. How long is a particular work still protected after the author died?

A. 50 years. After that, it becomes public domain.

Q. Due to the expensive cost of education in Indonesia nowadays, is it possible for each education to pay compensation for reproduction of books for library use?

Case study: In Australia, the law allows schools to make a copy a book up to 10% of the whole content. The compensation cost of A\$ 8 borne by the government. Universities in Australia are independent organizations that manage the license fee from the students. There are two ways in managing the fee; first, the license fee is included in the registration fee. Second, the students pay the entire photocopy fee per semester. By this way, the students receive what they need in low cost, while the publishers do not lose its licensing fee.

Q. We have to acknowledge that the price of imported books is very high. What is your solution to get low price without abide the copyright law?

A. Contact directly with foreign publisher for reducing the price.

Case Study: In Australia, agent writes a letter to publishers to get lower price when they order the books.

Q. Can we make copies of pictures/tables from textbooks for studying purpose without author's permission?

A. You need permission to copy the table/graphic/picture if they are not common tables or graphics but created with hard work.

Q. Can Indonesia sue Malaysian publisher(s) for piracy?

A. It is possible. Malaysia has signed international covenant like WTO or TRIPs hence Indonesia can sue Malaysia or vice versa. However, besides evidence, the one who sue has to submit the case to Malaysian police.

Q. How can we encourage people to appreciate and not violate copyright?

A. It can be started by publishing the copyright handbook.

Q. To what extent is the role of copyright on national culture?

A. Copyright represents the neighboring rights for local identity. Basic concept comes from western country related to individual rights and market

purpose. When it comes to global market, it could protect nation's identity.

Q. What about the implementation of local culture compared with the copyright?

A. It is a philosophical question. Copyright balance the access for creation when it uses for paid or non-paid purposes.

Unanswered Questions in Group C

1. With regards to computer, why do we use copyright rather than patent?
2. What kind of procedure should we follow to register copyright?
3. What is the treatment on photocopying for educational purposes in terms of copyright?
4. For higher education, can we make 10-20 copies of some part of a scientific journal/article?
5. Could IKAPI make itself available to handle complaints on copyright?
6. When did Japan sign an international treaty on copyright protection on the first time? And how did it solve the problems that arise during the transition period?

Following are Questions not discussed, but have been answered by Ms. Morgan and sent to the Organiser after the Workshop.

Q. Referring to Ms. Morgan's article (page 7), what about the piracy of ideas (written)? I remember seeing a movie called "Working Girls". The manager forwarded the written proposal of her subordinate employee to the CEO without her consent and said it was hers. When the employee filed a legal suit to the manager, the court decided that the employee WON. What is your opinion, as in copyright handbook, that ideas are not protected, moreover the copyright of an employee.

A. Copyright does not subsist in ideas – copyright protects the original expression of ideas. Generally, where an employee creates a copyright work during the course of their employment, the employer will retain copyright in the work.

Q. In this digital era, is Rome Convention still relevant?

A. Yes: as the Berne Convention contains fundamental principles of copyright law for literary and artistic works, so the Rome Convention does for performers, producers of phonograms and broadcasters. Later treaties build on the bedrock created in these foundational treaties.

Q. It seems that so far there is no rule about software copying. In fact, the price is too high for Indonesians to buy the original one. Would it be possible to give special price for developing and underdeveloped countries?

A. Software is a copyright work, and therefore the usual copyright provisions apply to software.

Q. What is the punishment for someone who quote other people's work without mentioning the name of the author? Does the punishment work?

A. In Australia, if you use a person's work, you are required to positively attribute that person as the author. This right to be attributed is a moral right. The remedies for infringement of moral rights include: injunctions, damages for loss resulting from the infringement; a declaration that the author's moral right has been infringed; an order for a public apology.

The punishment does work and has been applied most famously in a case relating to an indigenous artist's design being used in carpets manufactured in Vietnam and sold in Australia. The defendant was ordered to give all of the carpets to the author and to pay damages.

Q. Is it possible to get the right to republish a foreign textbook (Indonesian version, not the translated one) so that it would be more affordable?

A. You would need to negotiate with the publisher/author of the work as the right to translate is exclusive to the copyright owner.

There is provision under international treaties to recognize the difficulties less developed countries may have in applying copyright measures of more developed countries.

Q. Is it possible to submit the moral right to publisher? (example: author submits manuscript by using other people's names).

A. It is possible to 'waive' moral rights in Australia but not to assign them to another party. Consequently, the author could waive the moral rights in respect of actions by the publisher. There is a prohibition on false attribution – so you could not ascribe authorship to someone who did not author a work.

Q. What will happen to a country that doesn't want to sign any international treaty on copyright protection?

A. Other countries are not obliged to protect works of copyright owners from that country in their territory. Further, incentives to market copyright

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works in that territory are diminished. Additionally, incentives for local authors and publishers to create new copyright works is diminished.

Q. Could you please elaborate what can be considered as neighboring rights in book publishing?

A. Lending rights which provide compensation to authors whose works are held in the collections of libraries to compensate authors for this use of their works are sometimes protected as neighbouring rights.

Q. How about translating or transforming book for charity purpose, e.g. making a book into Braille edition (for the blind)? Can we do it without asking permission from the copyright owner?

A. These uses are controlled by the copyright owner, unless there is a legislative provision permitting this activity. In Australia, there is a statutory licence which permits accredited organizations to undertake this kind of copying without seeking permission subject to a commercial availability test and to payment of equitable remuneration.

However, many copyright owners are happy to permit these types of copies to be made for very low fees.

Q. Is it legal to record a music program on TV and change it to MP3 file for private or public use?

A. Not without the permission of the copyright owner. In some countries statutory licences permitting format shifting exist.

Q. Is it legal to use a certain work (e.g. short story) for other product such as language textbook, etc?

A. Not generally – you would need to obtain permission from the copyright owner.

Q. What is the copyright status of writings produced by NGOs and funded by donor agencies? What is the common practice in other countries?

A. These are copyright works, and the ownership of the copyright in each particular work would depend on the contractual agreements between the NGO and the donor agency, and also on the employment status of the authors.

Comments and Suggestions to the Indonesian Version of the Handbook

Content

1. Add materials on musical work
2. Add history of copyright in Indonesia
3. Add point on textbook and scientific books in the handbook

Additional Information

1. Change the title, it is not suitable for Indonesian context
2. Simpler language and content
3. Exception for religion books because they use for missionary purpose

Suggestions for the Promotion of Copyright Awareness

Content

1. Produce sticker/bookmarks on copyrights as an effort to raise awareness among the society.
2. Develop good relationship in related field to raise the society's awareness (like police officers, prosecutors, judges, teachers, students etc.)

Enforcement

1. Mechanism of copyrights registration and complaints
2. IKAPI should punish its members who violates copyright

Targets of awareness raising

1. Train teachers and writers to promote intellectual property rights.
2. Socialize copyright through formal and non-formal education
3. Socialize through mass media
4. Socialize through traditional institution
5. IKAPI is responsible to socialize awareness raising among stakeholders in education institutions and publishers.