

Tinjauan yuridis putusan Mahkamah Agung dalam kasus pembatalan hak cipta cap Kaki Tiga = Supreme court judicial review in the copyright cancellation of cap kaki tiga case

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Abstrak

[ABSTRAK

Hak cipta adalah hak istimewa yang diberikan kepada pencipta atau penerima hak cipta untuk mengumumkan atau memperbanyak ciptaannya, sehingga dalam hal ini baik pencipta maupun pemegang hak cipta dapat memperbanyak ciptaannya dan dia juga berhak untuk melarang pihak lain untuk menerbitkan hasil ciptaannya ataupun memberikan persetujuan pada pihak lain untuk mengumumkan atau memperbanyak hasil ciptaannya tersebut. Di Indonesia, pengaturan tentang Hak Kekayaan Intelektual sudah lama dikenal dan dimiliki sebagai hukum positif sejak zaman Hindia Belanda dengan berlakunya Auteurswet 1912. Negara Indonesia pernah memiliki Undang-undang yang mengatur tentang Hak Kekayaan Intelektual khususnya di bidang hak cipta, akan tetapi mengalami beberapa pergantian. Beberapa Undang-Undang yang dimiliki oleh Indonesia yaitu Undang-undang No. 6 Tahun 1982 Tentang Hak Cipta sebagaimana telah diubah dengan Undang-undang No.7 Tahun 1987 dan kemudian diubah dengan Undang-Undang No.12 Tahun 1997 yang selanjutnya dicabut dan diganti dengan Undang-Undang No.19 Tahun 2002 Tentang Hak Cipta. Mengenai sifat dari hak cipta dapat kita lihat pasal 3 Undang ? undang hak cipta yang dianggap sebagai benda bergerak yang dapat beralih atau dialihkan (transferable) seluruhnya atau sebagian dengan cara- cara tertentu yaitu : Pewarisan, Hibah, Wasiat, Dijadikan milik Negara, dan Perjanjian yang dilakukan dengan akta, dengan ketentuan bahwa perjanjian itu hanya mengenai wewenang yang disebut dalam akta. Lisensi merupakan salah satu contoh dari beralihnya hak cipta kepada orang lain. Lisensi bisa juga berupa suatu bentuk perjanjian dimana pemegang Hak Kekayaan Intelektual mengizinkan pihak lain untuk menggunakan hak eksklusifnya dalam jangka waktu tertentu dengan imbalan pembayaran royalti. Karena lisensi merupakan suatu bentuk perjanjian, maka bagi perjanjian Lisensi berlaku Ketentuan Umum dalam Hukum Perjanjian yang diatur dalam Buku ke III KUHPERdata. Dalam hal ini ada beberapa persamaan mengenai kendala atau masalah dalam perjanjian lisensi hak cipta yang biasa terjadi dalam perjanjian lisensi. Salah satunya adalah sengketa yang disebabkan karena mantan penerima lisensi memproduksi barang atau jasa dengan menggunakan merek lain, namun kualitasnya sama persis dengan kualitas merek yang pernah dilisensikannya. Tinjauan yuridis putusan mahkamah agung dalam kasus pembatalan hak cipta cap kaki tiga menjadi fokus dalam penulisan tesis ini dengan

uraian pembahasan mengenai dasar hukum hak cipta dan jenis jenis ciptaan yang dilindungi, fungsi hak cipta, konsep lisensi dalam hak cipta, kendala dalam lisensi hak cipta dan analisis kasus pembatalan hak cipta cap kaki tiga.

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ABSTRACT

Copyright is a privilege granted to the creator or copyright recipients to publish or reproduce his creations, in this case, both the authors and copyright holders has the right to reproduce his creation and also to exclude others from publishing the results of his creations or giving permission to other parties to publish or reproduce the creations. In Indonesia, regulation of intellectual property rights has long been known and owned as a positive law since the day of the Dutch East Indies with the implementation of Auteurswet 1912. Indonesia once had legislation governing intellectual property rights, especially in the field of copyright, but experienced some changes. Some of the Act, which is owned by Indonesian Law No. 6 of 1982 on Copyright, as amended by Law No. 7 of 1987 and subsequently amended by Law No. 12 of 1997, which subsequently repealed and replaced by Law No. 19 of 2002 about Copyright. Regarding the nature of copyright, we can see article 3 of the Copyright Laws that are regarded as moving objects and can be transferred (transferable) in whole or in part in certain ways, which is : Inheritance, Grant, Probate, cite belongs to the State, and the agreement made by deed, provided that the agreement is only the authority named in the deed. License is one example of the shift of the copyright to another person. Licenses can also be a form of agreement which the holders of intellectual property rights permit others to use the exclusive right within a specified period in return for royalty payments. Because licensing is a form of agreement, the license agreement applicable to the General Provisions set out in the Legal Agreements in Book III of Indonesian Civil Code. In this case there are several similarities concerning obstacles or problems in copyright licensing agreements that are common in the license agreement. One of the case is the dispute that caused by the former licensee to produce goods or services using other brands, but the quality is exactly the same as the quality of the previous brands that were licensed. The focus in this thesis is the Judicially review of the Supreme Court's Decision in the case of Copyright Cancellation of Cap Kaki Tiga with an explanation on basic descriptions of copyright law and the types of creatures that are protected, the function of copyright, licensing concept in copyright, licensing constraints in copyright and analysis of copyright cancellation of Cap Kaki Tiga; Copyright is a privilege granted to the creator or copyright recipients to publish or reproduce his creations, in this case, both the authors and copyright holders has the right to reproduce his creation and also to exclude others from publishing the results of his creations or giving permission to other parties to publish or reproduce the creations. In Indonesia, regulation of intellectual property rights has long been known and owned as a positive law since the day of the Dutch East

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