



Implementation of Legal Principles and Theories in the Reform of the Indonesia Copyright law related to equity ownership of lecturers works

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Received: December 19, 2022; reviews: 2; accepted: January 11, 2023

Abstract

The Copyright Law stipulates different arrangements regarding copyright ownership between PTN lecturers (Article 35) and PTS lecturers (Article 36). The difference is basically that, in PTN, the ownership of the copyright is with the institution, while in PTS it is with the lecturer. The existence of different arrangements in the HC Law regarding ownership of book copyrights between PTN and PTS lecturers seems to discriminate against PTN lecturers compared to PTS lecturers. The problem that will be studied is the implementation of the alter ego principle and the principle of legal certainty in the HC Law regarding the regulation of copyright ownership of books produced by PTN and PTS lecturers, and how legal theories can be used to provide fairer protection to PTN and PTN lecturers. PTS regarding copyright ownership of books in the ICT era. This research uses normative and empirical juridical research approaches. The normative juridical approach method is used by examining copyright ownership arrangements for books by PTN and PTS lecturers in the HC Law based on legal principles and theory. An empirical approach is taken in relation to the acquisition of primary legal materials in the form of field data related to copyright ownership practices

and policies for the commercial management of copyrighted books produced by PTN lecturers in Indonesia and a comparison of their regulations in several countries as well as guidelines for the international organization WIPO. The specification of the research was carried out in an analytical descriptive manner with the main objective to make a description of copyright regulation in Indonesia regarding the ownership of books by PTN and PTS lecturers in terms of the application of legal principles and theories that can support the renewal of copyright laws related to fair ownership of books by PTN and PTS lecturers. The results of the study show that, First, Article 35 paragraph (1) and Article 36 of the HC Law which stipulate that there are differences in arrangements regarding the ownership of book copyrights produced by PTN and PTS lecturers are inappropriate and contradictory to the alter ego principle and the principle of legal certainty. Apart from not giving appreciation to the existence and intellectuality of PTN lecturers, this provision also contradicts Article 1 point 2 and number 4 UUHC, and is horizontally inconsistent with Article 13 paragraph (1) of the Patent Law. Second, legal theories that can be used to provide fairer protection to PTN and PTS lecturers regarding copyright ownership of books in this era are the theory of the welfare state, the theory of development law, the theory of rewards, the theory of risk, the theory of growth drivers. economic growth (economic stimulus growth), and the theory of economic analysis of law (economic analysis of law).

Keywords

alter ego principle, legal certainty principle, books, lecturers, copyright.

Introduction

The rapid development of information and communication technology (ICT) has influenced and changed various patterns of human life, one of which is by forming an Information Society via the internet.¹ In the information society, the existence of ICT plays a very important role in people's lives, because the fulfillment of various needs is done through the internet which is accessed by a computer or through other electronic media, in an electronic transaction.² Technological progress is something that cannot be avoided in life in this world, because it will go according to the progress of science. The advancement of this technology makes it easier for people to communicate at close and long distances with various parties in the hemisphere in real time. The facilities used include television, radio, telegram, facsimile, and the internet through computer networks.³

Rapidly, this technology changes people's way of life, where the boundaries of space and time are no longer a big obstacle (borderless). Even the phenomenal presence of the internet further reinforces the opinion that information and

¹ Muhamad Amirulloh, *Hukum Teknologi Informasi dan Komunikasi (TIK) Sebagai Hukum Positif di Indonesia dalam Perkembangan Masyarakat Global*, Bandung; Unpad Press, 2016, hlm. 1

² *Ibid*, hlm. 3

³ Mieke Komar Kantaatmadja dkk, *Cyberlaw: Suatu Pengantar*, Bandung: Elips, 2002, hlm. 28

communication technology has become the mainstream of world culture today.⁴ The presence of the internet has had a significant impact on the development of science and technology today. This technology is able to bring people to a better quality of life.

The Covid-19 pandemic (Corona virus disease-19) has had a huge impact on various areas of human life, from the culture of shopping to learning activities. It was not half-hearted until Indonesian President Joko Widodo instructed that people should do work, study and worship from home (work from home - WFH), to prevent the spread and worse impact of the corona virus. In online shopping activities (e-commerce activities) there has been a very significant increase in transactions, especially for health products. Online learning then hit all levels of society, not only schoolchildren and students, but also forced parents to get to know more or less until they were directly involved in online learning.⁵

Students at all levels of education are taught online (online), or better known as online learning. Workers, both private and public, are used to operating technology for working from home, and the majority have used web/teleconference applications to hold virtual meetings which are even work presentations can be done without being present in the office. Solutiontelemedicine is also present, where patients can consult with doctors, ask for prescriptions, and buy medicines through virtual applications so that without having to leave the house, medicines according to the doctor's prescription will come to their homes through online shipping services.⁶ This condition is certainly felt by the world of education, especially among Higher Education.

The role of Higher Education in Indonesia so far is known as the Tridharma Higher Education, namely as an educational and teaching institution, as a research institution, and also as an institution that carries out community service.⁷ Higher education as a center of excellence is the main source of producing copyright works in the fields of science, art, literature which are continuously and continuously capable of producing these copyrighted works. One form of copyrighted work produced by university lecturers is a book, which is a protected copyright object.⁸

⁴ Jimly Asshidiqie, *Hukum Tata Negara dan Pilar – Pilar Demokrasi*, Jakarta: Konpress, 2005, hlm. 234

⁵ Muhamad Amirulloh, "Zoon Politicon Menjadi Zoom Politicon?", *Rechtsvinding Online*, 6 Mei 2020, ISSN 2089-9009, diakses dari [Jurnal RechtsVinding \(bphn.go.id\)](https://jurnal.RechtsVinding(bphn.go.id)).

⁶ Di kalangan peneliti dan dosen di perguruan tinggi, pemahaman mengenai konsep perlindungan Hak Cipta, Hak Terkait dan Desain Industri merupakan hal yang sangat penting. Hal ini mengingat perguruan tinggi sebagai institusi terdepan untuk berkembangnya ilmu pengetahuan sehingga memiliki potensi terbesar dalam proses penciptaan dan inovasi. Dina Widyaputri Kariodimedjo, *Perlindungan Hak Cipta, Hak Terkait dan Desain Industri*, *Jurnal Mimbar Hukum*, Volume 22 Nomor 2, Juni 2010, hlm. 265-282. <https://jurnal.uqm.ac.id>.

⁷ Pasal 20 ayat (2) Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional. Lihat juga Pasal 1 Angka 9 Undang-Undang Nomor 12 Tahun 2012 tentang Pendidikan Tinggi.

⁸ Industri 4.0 yang sudah menjadi tren ini menggabungkan antara teknologi otomatisasi dengan teknologi cyber, termasuk pada tren otomatisasi dan pertukaran data yang mencakup sistem cyber-fisik, internet of things, komputasi awan dan komputasi kognitif. Tren ini telah mengubah berbagai bidang kehidupan manusia, termasuk ekonomi, dunia kerja, bahkan gaya hidup manusia itu sendiri. Secara singkat, revolusi industri 4.0 telah menanamkan teknologi cerdas yang dapat terhubung dengan berbagai bidang kehidupan manusia. Dampak negatifnya, revolusi industri 4.0 dalam beberapa waktu mendatang akan menghapus sekitar 35% jenis pekerjaan, bahkan diperkirakan pada tahun 2030 jenis pekerjaan yang akan hilang akan bertambah menjadi 75%. Hal tersebut disebabkan pekerjaan yang semula diperankan oleh tenaga manusia, setahap demi setahap akan

Copyright itself is one of the fields of Intellectual Property (hereinafter written KI). In copyright law, books are clearly and explicitly stated as a form of copyrighted work that is protected under Article 40 paragraph (1) letter a of Law Number 28 of 2014 concerning Copyright (hereinafter written UU HC). As for the context of creations in the form of literary works), the details are slightly different, especially in the context of the right to publish. A creator of literary works forever has the copyright for the written work in the form of a script. However, when the manuscript is then submitted to the book publisher to be printed and published in book form, the book publisher is usually given the right to reproduce (copyright) the book which is in the hands of the book publisher.⁹

The definition of copyright according to the World Intellectual Property Organization (WIPO), namely copyright is a legal form of right given to creators for the literary and artistic work. Copyright is a legal term that describes the rights granted to creators for their works in the arts, literature and science. Copyright provides protection for creators in the personal and intellectual relations of their creations and also to make use of their creations. This means that copyright protection has the dimension of Moral Rights arising from the creator's personal and intellectual relationship with his work and the dimension of Economic Rights related to the use or exploitation of his work.¹⁰

The existence of scientific books is undeniably a major need for the community, especially students and lecturers in the learning process.¹¹ The birth of a book to a format that can be used by the public is not simple. This process involves a lot of capital and human resources, including writers, publishers, distributors and distributors, all of whom work together to make the book a reality. Not to mention the issue of copyright piracy which has long emerged in Indonesian society.¹² Therefore it is not excessive if human intellectual creations are given adequate legal protection.¹³

Books as a form of IP that have actually contributed to improving the quality of human resources in producing scientific work, whether written in the form of a printed book or in the form of a digital book (e-book) in the form of files (pdf, doc,

digantikan dengan teknologi digitalisasi program, dalam Dewi Arsita, Apa Kabar Perekonomian Umat di Era Revolusi Industri 4.0, <https://www.iain-surakarta.ac.id>.

⁹ Agus Sardjono, Hak Cipta Bukan Hanya Copyright, Jurnal Hukum dan Pembangunan Tahun ke-40 No. 2 April - Juni 2010, hlm. 260

¹⁰ Jened, R., dikutip dari Irawati, Lailatussafa'ah Indrasrani, Implikasi Perubahan Status Penerima Lisensi terhadap Perjanjian Lisensi Hak Cipta Pada Organisasi KSBSI, Jurnal Wal Reform, Volume 14, Nomor 2, Tahun 2018, Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro, hlm. 163

¹¹ Denny Kusmawan, Perlindungan Hak Cipta Atas Buku, Jurnal Perspektif, Volume XIX No. 2 Tahun 2014, Edisi Mei, hlm. 138

¹² Oksidelfa Yanto, "Konvensi Bern dan Perlindungan Hak Cipta", Jurnal Satya Kencana Dan Dinamika Masalah Hukum dan Keadilan", Vol. 6 No. 1, Maret 2016, diakses dari [Jurnal jdihh.go.id/files/414/341-551-1-SM.pdf](http://jurnal.jdihh.go.id/files/414/341-551-1-SM.pdf).

¹³ Siapapun tidak dapat menggunakan hasil/kreasi intelektual di bidang teknologi, seni dan ilmu pengetahuan, dan sebagainya dan tanda dagang komersial tanpa persetujuan dari pemiliknya (Pencipta/Autor) atau Pemegang Hak (Holders). Pengklasifikasian kepemilikan suatu karya cipta dengan kedudukan Pencipta atau pemegang hak ini semata-mata dalam rangka memberikan perlindungan Hak Moral (Moral Rights) bagi Pencipta (Authors). Dikutip dari Suyud Margono, Prinsip Deklaratif Pendaftaran Hak Cipta : Kontradiksi Kaedah Pendaftaran Ciptaan dengan Asas Kepemilikan Publikasi Pertama Kali, Jurnal Rechtsvinding, Media Pembinaan Hukum Nasional, volume 1 Nomor 2, Agustus 2012, hlm. 238

txt, and so on) and can be downloaded and read through electronic devices. E-Books as defined by the Oxford English Dictionary, namely electronic versions of printed books that can be read on a personal computer or handheld device designed specifically for this purpose.¹⁴

In addition to increasing the number of books, lecturers and students often use software. Each form of the book has its advantages and weaknesses, where one of the advantages of printed books circulating in major bookstores is to have and list International *Serial Book Number* (hereinafter referred to as the ISBN).¹⁵ Printed books are no longer considered the only means of publication, electronic books or e-books are then born as a solution to the increasingly widespread use of gadgets among the millennial generation. Changing books from print to e-books makes it easier for readers to store them, besides that with e-books we can save 1 tree that is 5 years old, so e-books are very environmentally friendly.¹⁶

Empirically, it cannot be denied that one of the main factors supporting the nation's progress is innovation based on quality research, including in producing quality books. The results of research in book form are expected to elevate the dignity of higher education, because one of the determinants of university rankings is research. The hope is that every tertiary institution can have IP that can be purchased by industry players.¹⁷

In his inauguration, the Professor in the Field of Indonesian Literature Learning at the Faculty of Languages and Arts, Yogyakarta State University said that the world of writing in higher education was not encouraging. The contribution of scientific publications by Indonesian university lecturers is only 0.0125% of the publications of world scientists. This means that the publications of Indonesian PTN and PTS lecturers are approximately 1/80% of the publications of world scientists. Indonesia, which has 45 PTNs and 1,400 PTS with 1,850,000 lecturers, if each lecturer writes one book in one year, 1,850,000 book titles will be published in one year. Likewise, if every lecturer writes two articles once a year in the mass media, 3,700,000 titles will be published.¹⁸

A survey conducted at a university in Yogyakarta in one year only published 279 scientific journals and 150 articles in the mass media. This means that in one month only 23 journals and 13 articles in the mass media are written by 1,000 lecturers. Even though the university has provided funds of Rp. 1.2 billion, one of which is used to finance a publishing university. The survey results show that most lecturers are not yet able to write in the media. The variable of the lecturer's weak ability to write is partly due to the low activity of accessing information. In addition,

¹⁴ Selengkapnya dinyatakan bahwa, "A book that is displayed on a computer screen or on an electronic device that is held in the hand, instead of being printed on paper." Diakses dari [e-book noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com](https://www.oxfordlearnersdictionaries.com) pada 2 Oktober 2021 jam 20.30 wib.

¹⁵ Buku yang memiliki ISBN, buku cetak masih terpercaya untuk menjadi acuan akademisi sebagai referensi dalam menyusun karya ilmiahnya.

¹⁶ <https://www.kompasiana.com/yheryana/552fa2146ea834d9058b4574/hemat-pohon-dengan-pemanfaatan-teknologi-informasi?page=all>.

¹⁷ R.A. Mutholib, "Workshop Valuasi dan Komersialisasi Hasil Penelitian dan Drafting Paten Bagi Dosen", Wakil Rektor Bidang Akademik, Universitas Jambi, <http://www.unja.ac.id>.

¹⁸ Suroso, Penulisan Buku Ajar PTN, Yogyakarta: UNY, 2020, diunduh dari www.duniadosen.com.

the weak ability of lecturers to write is also caused by the low purchasing power of the community buy books. People's purchasing power is low causing books published at high costs to be unpurchased to the detriment of publishers and authors.¹⁹

Lecturer ²⁰as one of the creators of KI, they are required to produce intellectual works, including in the form of books, especially textbooks related to the field of science or courses they are fostering or teaching. Therefore, higher education institutions must continue to develop and disseminate science, technology and art as well as IP-producing sources through various research and innovation activities carried out in the midst of a pandemic. In addition, university participation in KI is a form of real commitment in contributing and being an important part of the development of the National Innovation System (SINas) in Indonesia.²¹ Higher education as one of the institutional elements of science and technology ²² serves to prepare human resources for the Implementation of Science and Technology ²³, and is responsible for improving the ability of higher education tridharma. In carrying out the responsibility to improve the tridharma capabilities of tertiary institutions, universities also have the function of protecting intellectual works, especially in the form of books produced by lecturers, which also have economic potential. This is considering that the books produced by lecturers become capital in carrying out the tridharma activities of higher education, namely education, research, and community service. Thus, the lecturer's book can be said as a form of innovation²⁴ which plays a strategic role in the national system of science and technology.

Higher education institutions in Indonesia are divided into state universities (hereinafter written as PTN) and private universities (hereinafter written as PTS).²⁵, where each has a different nature of relationship with the academic community, besides also having different management policies/regulations. This difference also occurs in copyright settings related provisions for copyright ownership between PTN lecturers based on Article 35 of the HC Law and PTS lecturers whose arrangements are contained in Article 36 of the HC Law. The difference in essence is that, in PTN, the ownership of the copyright is with the institution, while in PTS, the ownership of the copyright is with the lecturer.

¹⁹ Ibid.

²⁰ Pasal 1 Angka 2 Undang-Undang Nomor 14 Tahun 2005 tentang Guru dan Dosen mendefinisikan Dosen sebagai pendidik profesional dan ilmuwan dengan tugas utama mentransformasikan, mengembangkan, dan menyebarkan ilmu pengetahuan, teknologi, dan seni melalui pendidikan, penelitian, dan pengabdian kepada masyarakat. Lihat juga Pasal 1 Angka 14 Undang-Undang Nomor 12 Tahun 2012 tentang Pendidikan Tinggi.

²¹ Klinik Haki, *Perlunya Hak Kekayaan Intelektual (HKI) di PTN*, Bandung: Universitas Pasundan, 2015, diunduh dari www.klinikhaki.unpas.ac.id.

²² Pasal 42 Undang-Undang Nomor 11 Tahun 2019 tentang Sistem Nasional Ilmu Pengetahuan dan Teknologi

²³ Pasal 45 ayat (1) Undang-Undang Nomor 11 Tahun 2019 tentang Sistem Nasional Ilmu Pengetahuan dan Teknologi

²⁴ Pasal 1 Angka 13 Undang-Undang Nomor 11 Tahun 2019 tentang Sistem Nasional Ilmu Pengetahuan dan Teknologi mendefinisikan Inovasi sebagai hasil pemikiran, Penelitian, Pengembangan, Pengkajian, dan/atau Penerapan, yang mengandung unsur kebaruan dan telah diterapkan serta memberikan kemanfaatan ekonomi dan/atau sosial.

²⁵ Pasal 1 Angka 8 Undang-Undang Nomor 12 Tahun 2012 tentang Pendidikan Tinggi mendefinisikan Perguruan Tinggi Swasta yang selanjutnya disingkat PTS adalah Perguruan Tinggi yang didirikan dan/atau diselenggarakan oleh masyarakat.

Article 35 paragraph (1) of the HC Law stipulates that "Unless otherwise agreed, the holder of the copyright to a creation made by the creator in an official relationship, who is considered the creator is a government agency". This provision does not mention at all lecturers or ASN from government agencies so that it can eliminate the role and position of PTN lecturers who have worked hard to devote their intellectual abilities to produce copyrighted books. Another problem that arises from the regulation of Article 35 paragraph (1) of the HC Law is the problem of legal uncertainty regarding the legal subject of copyright owners. Editorially, these provisions will be reviewed due to ambiguous, biased, multiple interpretations or unclear perceptions or understandings regarding the use of phrases or terms for mentioning legal subjects, whether the legal subject referred to in this provision is "Copyright Holder" or "Creator". This provision has the potential to further weaken copyright protection for lecturers at PTN producing books in Indonesia. Copyright automatically contains economic rights for the creator in addition to the moral rights attached to copyright. The creator is free and has the right to enjoy the economic value of the economic benefits of his creation, and if other people want to enjoy this economic value, there must be clear rules of the game as defined in the HC Law.²⁶

In accordance with the basic principles of copyright, the thing that is protected by copyright itself is the idea of the creator that has been tangible and original, and the exclusive rights that belong to the creator that are tangible and original, and the exclusive rights that belong to the creator arise automatically on when a creator realizes the idea in a tangible form, no other person may exercise that right except with the permission of the creator. In other words, exclusive rights imply a "limited monopoly" on the form of embodiment of the idea of the creator of the idea itself.²⁷

Article 36 of the HC Law states that, "Unless otherwise agreed, the Author and Copyright Holder for Works made in a work relationship or based on an order, namely the party making the Work. The provisions of this article are addressed to PTS lecturer, are more giving proper appreciation to the lecturer as the party who made the creation. However, this provision has not been linked in detail to the conditions and circumstances of PTS' involvement of resources (funds, infrastructure, time) in the process of creating the book.

²⁶ Eddy Damian. Dikutip dari Ahmad Fajri Wibowo, *Perlindungan Hak Cipta terhadap Penggandaan Permainan Video*, Jurnal Hukum dan Pembangunan Vol. 51, No. 2 (2021): 342-355, hlm. 247

²⁷ Indah Sari, *Kedudukan Hak Cipta dalam Mewujudkan Hak Ekonomi Sebagai Upaya Perlindungan terhadap Intellectual Property Rights*, Jurnal M-Progress, Fakultas Ekonomi – Universitas Dirgantara Marsekal Suryadarma, hlm. 78

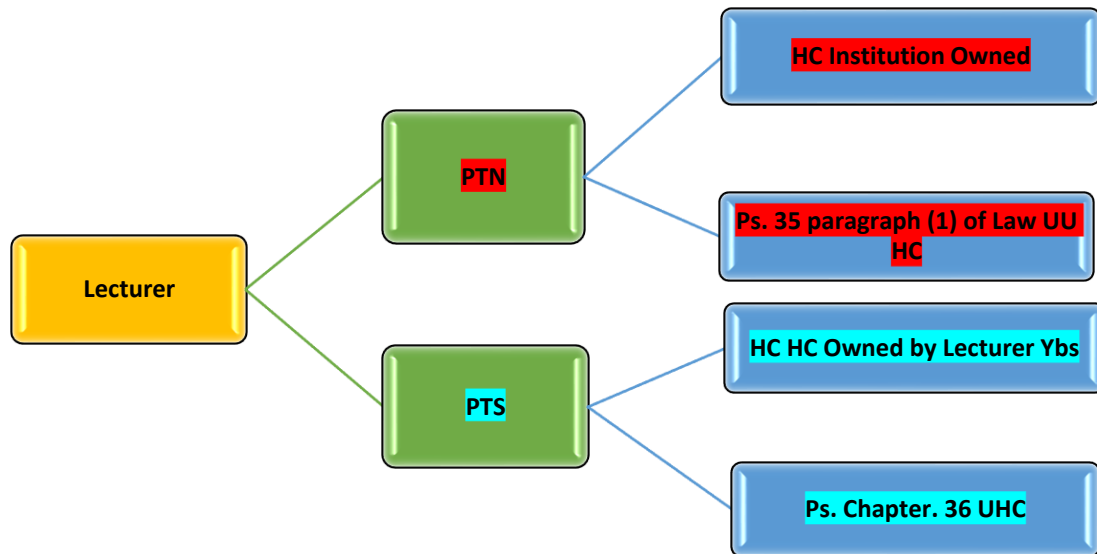


Chart 1. Differences in HC Ownership of Books by PTN & PTS Lecturers

The difference in regulation in the HC Law regarding ownership of book copyrights between PTN and PTS lecturers is very interesting to study because it seems to discriminate against PTN lecturers compared to PTS lecturers. Based on the description of the background, this research intends to examine the problems as follows:

1. How are the different arrangements regarding ownership of book copyrights produced by PTN and PTS lecturers in the HC Law related to the alter ego principle and the principle of legal certainty?
2. How can legal theories be used to provide fairer protection to PTN and PTS lecturers regarding copyright ownership of books in the ICT era?

Research Methods

This research uses normative and empirical juridical research approaches. The normative juridical approach method is used by examining copyright ownership arrangements for books by PTN and PTS lecturers in the HC Law based on legal principles and theory. An empirical approach is carried out in relation to the acquisition of primary legal materials in the form of field data related to copyright ownership practices and policies for the commercial management of copyrighted works of books produced by PTN lecturers in Indonesia and a comparison of their regulations in several countries as well as guidelines for the international organization WIPO.

The specification of the research was carried out in an analytical descriptive manner with the main objective to make a description of copyright regulations in Indonesia regarding the ownership of books by PTN and PTS lecturers in terms of the application of legal principles and theories that can support the renewal of copyright laws related to fair ownership of books by PTN and PTS lecturers.

Results and Discussion

Implementation of the Alter Ego Principle and the Principle of Legal Certainty in Different Arrangements Concerning Ownership of Book Copyrights Produced by PTN and PTS Lecturers in the HC Law

Alter ego principle

The principle of alter ego is based on the rapidly growing flow of natural law stating that a work of art is the highest embodiment of the creator (alter ego) and the creator has a natural right to exploit his creation. This concept developed rapidly after the French revolution in 1789, this concept laid the basis for the recognition not only of the economic rights of creators but also of moral rights.²⁸ In essence, the alter ego principle places the inventor as a party with a high position and ownership of an invention he creates cannot be contested, but in general the alter ego principle emphasizes high respect for the creator with his creation and is attached to the creator himself.²⁹ Eddy Damian expressed his opinion that intellectual property rights (IPR) that arise from a person's intellectual abilities are nothing other than a form of manifestation of an alter ego (personality reflection) or an embodiment of the quality of taste, intention, and reasoning power. The more diverse and high quality IPR created by an creator, will provide added value to the dignity and material or economic benefits of an creator who gave birth to these creations and can also educate the life of the nation in general.³⁰

The alter ego principle recognizes that the creator (inventor) and his work are one unit. There will be no work/invention/patent without an inventor. Thus inventors have natural rights over the products produced by their mental labour. A work is a result intelektual from the creator as a manifestation of his expertise and has an element of personal reflection (Alter Ego) of the creator.³¹

Based on the principle of alter ego, PTN lecturers as parties who are actually and in fact are the parties who produce copyrighted books, which with their own personal intellectual abilities are poured out and produce copyrighted books. Thus, the PTN lecturers should be given protection and appreciation. The intended protection and appreciation is the acknowledgment of ownership of the PTN lecturer over book copyrights, so that the PTN lecturer has exclusive rights to the copyrighted works of books, which with these exclusive rights will be protected by economic rights as well as moral rights. Personal reflection (alter ego) of PTN

²⁸ M. Djumhana dan R, Djubaedillah, *Kekayaan Intelektual (Sejarah, Teori dan Praktik) di Indonesia*, Bandung: Citra Aditya Bakti, 1993, hlm. 38.

²⁹ Muhamad Amirulloh dan Helitha Novianty Muchtar, *Buku Ajar Hukum Kekayaan Intelektual*, Unpad Press, Bandung, 2016, hlm.58. Lihat juga: Ramadhani, M., Amirulloh, M., & Faisal, P., "Perlindungan Terhadap Inventor Terkait Unsur Kebaruan Paten Yang Hapus Akibat Tidak Membayar Biaya Tahunan", *Jurnal Cakrawala Hukum*, 12 (1), 2021, hlm. 51-59

³⁰ Ranti Fauza Mayana, *Perlindungan Desain Industri di Indonesia Dalam Era Perdagangan Bebas*, PT Gramedia Widia Sarana Indonesia, Jakarta, 2004, hlm. 77.

³¹ Mahadiena Fatmashara, Muhamad Amirulloh, Laina Rafianti, "Perlindungan Hukum Hak Cipta Terhadap Logo Instansi Pemerintah Dihubungkan Dengan Prinsip Alter Ego", *Jurnal Poros Hukum Padjadjaran*, Volume 2, Nomor 1, November 2020, Hlm. 95-114.

lecturers in producing books is poured by creating a separate perspective on objects or phenomena, strengthening the opinions of other parties, and/or refuting or criticizing the opinions of other authors.

Based on this description, the regulation of Article 35 paragraph (1) of the HC Law which grants copyright ownership to government agencies is inappropriate because it is not in line with the alter ego principle which in fact grants and upholds the rights of PTN lecturers to own copyrights for their book works. This is especially in the case of PTN lecturers independently producing copyrighted works of books, by not using existing facilities and/or infrastructure/provided by the university, nor using funds (eg research grants) from PTN or other government agencies. The personal reflection ability (alter ego) of PTN lecturers in producing books can also be seen when the name of a particular lecturer is mentioned or distinguished as the author or creator of a book that has the same title, for example a book entitled "Intellectual Property Law".

The phrase "...Copyright holders of Works created by Authors in an official relationship..." contained in Article 35 paragraph (1) of the HC Law is actually correct and in line with the alter ego principle, if what is meant is that a Government Agency actually "only" has a position as a Copyright Holder. However, this perception is grounded by the next phrase of Article 35 paragraph (1) of the HC Law which confirms that "...those deemed to be creators are government agencies". A clear and unequivocal mention that a Government Agency is a party that is considered the Author of a Work produced in an official relationship, makes PTN lecturers not have the position of creators of books. Even though only lecturers as individuals who are natural legal subjects have it personal intellectual ability so that it is appropriate and entitled to be said as the Creator, as regulated in Article 1 point 2 of the HC Law which states that, "A creator is a person or several people who individually or jointly produce a creation that is unique and personal."

The phrase "Unless otherwise agreed" which is at the beginning of Article 35 paragraph (1) of the HC Law also does not provide better conditions which provide opportunities for PTN lecturers to own copyrights to their books. This is understandable considering that Article 35 paragraph (1) of the HC Law seems to provide a standard stigma (template) for copyright ownership in PTNs by automatically assigning such ownership to the PTN agency. With this formulation of norms, the HC Law encourages copyright ownership by government agencies, in this case state universities, not by lecturers who actually produce books as a reflection/reflection of their personal thoughts (alter ego). The bargaining position of PTN lecturers as "workers/employees" of PTNs is generally not as strong as that of PTNs as the government agency where they work. Even if the lecturer asks for an agreement to be made that stipulates the opposite of the provisions of Article 35 paragraph (1) of the HC Law, the PTN where he works may not agree to it so that the PTN lecturer has no other choice and chooses to "surrender" or "lose" the negotiation.

The contractual relationship of the parties is essentially inseparable in relation to issues of justice. The contract as a forum that brings together the interests of one party with another party requires a fair form of exchange of interests. Justice is a question that is often heard, but the proper understanding is very complicated and even abstract, especially when associated with various complex interests. According to Aristotle, justice means doing good, or in other words, justice is the main virtue so that justice consists in treating equals equally and equals unequally, in proportion to their inequality (for the same things are treated equally, and those who are not equal too treated unequally, proportionally".³² In this regard, it is necessary to look at and harmonize horizontal law with the regulation of patent ownership in official relations in Article 13 paragraph (1) of Law Number 13 of 2016 concerning Patents (hereinafter written the Patent Law). The said provision states that, "Patent holders of inventions produced by inventors in official relations with government agencies are the said government agencies and investors, unless otherwise agreed." Patent inventions have a process similar to the creator with patents, which both have the same starting point and depend on human intellectual abilities, in this case PTN lecturers. Based on this point of view and understanding, contracts represented in the phrase "unless otherwise agreed" should only be used if the existence of PTN lecturers is to be ruled out as copyright owners. In other words, PTN lecturers should have been stipulated in the HC Law as the first and foremost party to own the copyright for the books they produce, not on the contrary, their existence has been eliminated. The existence of PTN lecturers who produce books is not appropriate if it is based on the existence of contracts as referred to in Article 35 paragraph (1) of the HC Law.

Under these conditions, the ownership of copyrights by PTN lecturers for the books they produce is impossible to materialize. PTN lecturers will only have a better chance of owning copyrights to the books they produce if the PTN where they work really has a good understanding of the alter ego principle in Intellectual Property Law and implements it in the PTN's internal policies.

In practice, state universities interpret the provisions of Article 35 of the HC Law in various ways. Padjadjaran University as a PTN has its own policy regarding IP ownership. This policy is contained in Chancellor Regulation Number 27 of 2020 concerning Utilization of Intellectual Property at Padjadjaran University. In Article 5 paragraph (2) of the Chancellor's Regulation it is stated that, "Every research result that has the potential to have intellectual property rights whose funds are either wholly or partly financed by Unpad and/or use Unpad facilities are joint property with Unpad." This is then reinforced in Article 7 paragraph (1) letter b which states that, "Unpad has the right to claim joint ownership of Intellectual Property from works, inventions, designs and other things that have conditions that are produced and developed by academics, educational staff, and Unpad post-

³² Agus Yudho Hernoko, *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*, Prenadamedia, Jakarta, 2014, hlm. 48.

doctoral partners, who use facilities, materials, funds or other resources owned and/or obtained through Unpad". Article 7 paragraph (3) of the Chancellor's Regulation No. 27 of 2020 also states the following:

"Unpad is obliged to protect the rights of creators, inventors, innovators or designers by:

1. grant the right to share economic benefits from the commercial utilization of intellectual property;
2. give recognition as a creator, inventor, innovator or designer;
3. provide input for the development of intellectual property."

Based on these provisions, it can be said that Unpad as a PTN has its own policies that are different from those regulated Pasal 35 UU HC, Article 35 UU HC, namely Unpad will only claim ownership of the copyrights produced by the lecturer, only if the lecturer in producing IP uses the infrastructure owned by Unpad, uses funds from Unpad, uses materials from Unpad, or other resources owned by Unpad. Thus, Unpad based on Chancellor Regulation Number 27 of 2020 concerning Utilization of Intellectual Property in Padjadjaran University does not generalize or generalize copyright ownership of IP produced by its lecturers, but looks at it contextually whether there is use of funds, infrastructure, materials and other resources owned by Unpad by the lecturer.

Bogor Agricultural University (hereinafter written IPB) based on Chancellor Decree Number 209/K13/PG/2004 Concerning Guidelines for Management of Intellectual Property (IP) and Intellectual Property Rights (HKI) Within the Bogor Agricultural Institute, regulates the ownership of IP/IPR in Article 5 which states as follows:

1. KI/HKI resulting from higher education tridharma activities which are fully funded by IPB automatically become the property of IPB.
2. IPR/IPR resulting from tridharma activities carried out by the Academic Community using the facilities and sources of funds partially or wholly originating from parties outside IPB will become the property of IPB, unless it has been stipulated in the agreement of both parties with reference to the applicable provisions.

The Bandung Institute of Technology (hereinafter written ITB) has a policy regarding IP ownership that is somewhat different from Unpad and IPB. ITB has unilaterally claimed ownership of the KI produced by all of its lecturers regardless of whether the KI used ITB funds and/or infrastructure or not. In Article 5 paragraph (1) ITB Chancellor Regulation Number 070/PER/H.A/HK/2017 Concerning Intellectual Property Bandung Institute of Technology State Universities Legal Entities, it is stated as follows:

"Bandung Institute of Technology has the right to claim full ownership of Intellectual Property from works, inventions, designs and other things that have the following conditions:

1. generated by parties working for and/or on behalf of ITB, including but not limited to Academy Civitas, Employees, Prospective Academy staff in

- training period, ITB Post-doctoral partners.
2. produced and developed by the Academic Community, employees, Prospective Academy staff in the training period or Post-doctoral partners, who use facilities, materials, funds, or other resources owned and/or obtained through ITB.
 3. produced by order or using the ITB name for any purpose.”

The use of KI by PTN is an important thing and is expected to grow research activities in PTN. With protection for PTN research results, it is hoped that PTN academics can be encouraged to conduct research, especially if the research provides economic benefits. In several countries, KI has been utilized optimally by state universities to foster interest in researchers producing inventions that are innovative and beneficial to society.

The World Intellectual Property Organization (World Intellectual Property Organization – WIPO), states that universities and research institutions have a fundamental role in socio-economic development. Innovation and scientific development are the basis for economic, technological and social mobility and economic growth. Universities and research institutes are the main arenas in which scientific development and innovation take place and intellectual property (IP) systems are the main mechanism by which universities and society at large can benefit from innovation.³³

WIPO has also made a Standard Guide to Intellectual Property Policy for Universities and Research Institutions (WIPO Intellectual Property Policy Template for Universities and Research Institutions), the last of which was made and revised in Version 29 January 2019. In Article 2 concerning Definitions, it is stated that works Scientific works are all copyrighted works that are the output of Academic Staff Members, Students or Guests, including research, creative works and other outputs in their areas of expertise. This does not include Lecture Materials [Option: and computer software and databases].³⁴ Based on this understanding, the book created by the lecturer is the intended scientific work. Lecturers are included in the meaning of Staff Members, namely everyone who is bound by a work contract with the Institution including academic, research, technical, administrative and additional staff, whether full time or part time or temporary.³⁵

Specific provisions related to lecturer ownership of the KI (including copyrights) they produce, are contained in Article 5 of the WIPO Standard Guidelines regarding IP policies for Universities, and Research and Development Institutions (WIPO Intellectual Property Policy Template for Universities and Research Institutions), which basically states that the KI produced by lecturers by not using institutional resources is still owned by the lecturer, with special

³³ WIPO, [Intellectual property policies for universities \(wipo.int\)](https://www.wipo.int)

³⁴ Article 2, Definition: **Scholarly Works**. All copyright works which are the outputs of academic Staff Members, Students or Visitors, including Research, creative and other outputs in area(s) of his/her expertise. It does not include Course Materials [**Option:** and computer software and databases].

³⁵ Article 2, Definition: **Staff Member**. Any person who is under a contract of employment with the Institution including academic, research, technical, administrative and adjunct staff, whether full-time or part-time or on a temporary basis.

provisions that scientific work includes books remain in the possession of the lecturer concerned, except for materials or lecture material.³⁶

One of the tasks of the tri dharma of higher education is the obligation to make scientific work, including in the form of written works.³⁷ Universities will only have KI produced by their staff members (including lecturers), if the work is created using institutional resources and is within the scope of their duties.³⁸ Based on this, WIPO stipulates in its guidelines that lecturers who produce books, by not using institutional resources, still own the copyright to the book:

Principle of Legal Certainty

According to Gustav Radbruch, there are 2 (two) kinds of understanding of legal certainty, namely legal certainty due to law, and legal certainty in or from law. Laws that succeed in guaranteeing a lot of legal certainty in society are useful laws. Legal certainty because the law provides 2 (two) other legal tasks, namely guaranteeing legal justice and the law must remain useful; while legal certainty in law is achieved, if the law is as much as the law. In this law there are no conflicting provisions (the law is based on a logical and practical system). Laws are made based on real legal conditions (*rechtswerkelijkheid*) and these laws do not contain terms that can be interpreted differently.³⁹

The meaning of legal certainty is put forward by Gustav Radbruch, as follows: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning that it is based on reality. *Third*, that facts must be formulated in a clear way so as to avoid mistakes in meaning, besides being easy to implement. Fourth, positive law should not be easily changed.⁴⁰ Based on the four meanings of legal certainty put forward by Gustav Radbruch, the regulation on copyright ownership of books produced by PTN lecturers in Article 35 paragraph (1) of the HC Law does not fully reflect legal certainty. This is because even though there have been regulations in the form of legislation (namely the HC Law), there are 2 (two) things that have not fulfilled the element of legal certainty, namely firstly the substance of the regulation has not been based on facts or reality, and secondly it has not been formulated in a way that clear so that it still causes confusion in meaning, and is difficult to implement.

³⁶ Pasal 5.1.2. selengkapnya menyatakan bahwa, "Staff Members will own/co-own the IP they have created when such IP:

a. is outside the course and scope of their employment and without Substantial Use³⁶ of the Institution's resources;
b. vests in Scholarly Works (see Article 5.5);
c. [Option: Other IPRs, as required by national law, or for which the Institution cannot or does not wish to claim ownership and the Institution has communicated such in writing]."

³⁷ Khoirul Hidayah, Tingkat Pemahaman Mahasiswa tentang Perlindungan Hak Cipta Atas Karya Tulis (Studi terhadap Mahasiswa UIN Maulana Malik Ibrahim Malang), *de Jure, Jurnal Syariah dan Hukum*, Volume 5, Nomor 1, Juni 2013, hlm. 53

³⁸ Pasal 5.1.1. selengkapnya menyatakan bahwa, "Institution ownership. The Institution owns all IP created by a Staff Member:

a. in the course and scope of his/her employment; or
b. making Substantial Use of the Institution's resources.

³⁹ CST. Kansil et. al., *Kamus Istilah Aneka Hukum*, Jakarta, 2009, hlm. 385.

⁴⁰ Gustav Radbruch, *Einfuehrung In Die Rechtswissenschaft*, Koehler Verlag, Stuttgart, 1961, hlm. 36.

First, facts or facts in relation to copyright ownership of books by PTN lecturers as stipulated in Article 35 paragraph (1) of the HC Law have not been properly formulated considering several things. First, lecturers in creating books take different methods or processes. There are lecturers who produce books based on their own wishes and abilities without any interference, funding, or infrastructure from the university where they work or from other related Ministries and/or Institutions. In this reality or fact, more emphasis should be placed on the existence and protection of the lecturer who is the party who actually (in fact) produces the intellectual work in the form of the book independently, so that the creator and copyright owner of the book should only be the PTN lecturer.

In other facts, there are also lecturers who produce books that are compiled based on the results of their research activities which are funded and/or use infrastructure from the tertiary institution where they work or from other related Ministries and/or Institutions. Even in this condition, copyright ownership of books produced by PTN lecturers does not necessarily become the exclusive right of the PTN agency, considering that PTN lecturers are natural law subjects (*natuurlijke persoon*) who are able to make and create books based on reflections of their personal thoughts. (*alter egos*). The provisions of Article 35 paragraph (1) of the HC Law seem to negate the existence and role of PTN lecturers as parties who naturally have intellectual abilities, clearly very much contrary to the *alter ego* principle, as previously stated. Naturally, the undeniable fact or fact is that only humans (in this case lecturers) actually have the intellectual ability to produce books, not a PTN agency as a subject based on law (*rechts person*). Thus, even if the PTN as an agency wants positioned as a legal subject supporters of rights and obligations, it should be enough as a Copyright Apprentice, or Related Rights Owner, or even can be jointly owned by lecturers and PTN.

As the Copyright Holder for books by lecturers, PTN institutions can still have exclusive rights to books by the lecturer. Likewise if his position as the owner of the related rights. Particularly in the case of PTN agencies and lecturers as joint copyright owners, in addition to the interests of PTN agencies being fulfilled and maintained, this can also be done based on examples or horizontal harmonization with the patent ownership provisions in Article 13 paragraph (1) of the Patent Law. The said provision states that, "Patent holders of inventions produced by inventors in official relations with government agencies are the said government agencies and inventors, unless otherwise agreed." In the same way that inventions can only be produced by humans as natural legal subjects, whose intellectual abilities produce inventions, books as an intellectual work can only be created based on the thoughts and intellect of lecturers as human natural legal subjects. Thus, PTN lecturers must be the first and foremost party in ownership of the copyright for their work.

The regulations regarding copyright ownership of books by lecturers that currently exist in the HC Law do not accommodate the diversity of conditions and contexts in the creation of books by PTN lecturers as previously described. This fact

raises an idea of the need for more detailed or clear arrangements regarding what types of copyrighted works can be owned by government agencies and which ones can be owned by PTN lecturers themselves.

Second, the formulation is not clear, causing confusion in meaning and difficult to implement. The formulation of the norms of Article 35 paragraph (1) of the HC Law is not clear in terms of the legal subject in question, whether what is meant is "author" or "copyright intern". This can be seen from the sound of the norm formulation as follows, "... Copyright Holder on Works made by the Author in a service relationship, considered to be the Creator namely government agencies. The unclear formulation of norms regarding the subject of copyright law can clearly lead to misunderstandings. If the legal subject in question is "Copyright Holder", then the phrase "...which is considered as the Author.." must be omitted or deleted so that it is clearer that the intent is to emphasize the legal subject "Copyright Holder". On the other hand, if the intended legal subject is "Author", then the phrase "...Copyright Holder.." must be abolished. In the first intention, the government agency (PTN) must first have a contract/agreement with PTN lecturers who legally surrender their copyright ownership. This is understandable based on the understanding of the Copyright Holder as contained in Article 1 Number 4 of the HC Law which states that, "Copyright holders are the Creator as the owner of the Copyright, the party who legally receives these rights from the Author, or other parties who receive further rights from the party who has legally accept that right". Meanwhile, the second intention is clearly very contrary to the alter ego principle, because it completely eliminates the existence and does not even respect PTN lecturers who with their personal intellectual abilities produce copyrighted works of books, as can be understood based on the meaning of the Author in Article 1 point 2 of the HC Law.

Gustav Radbruch also stated that legal certainty in law is achieved when there are as many laws as there are laws in which there are no conflicting provisions (laws based on a logical and practical system). Provisions regarding copyright ownership of books produced by PTN lecturers which base their arrangement on Article 35 paragraph (1) of the HC Law, are also not in line with the principle of legal certainty considering that based on the previous description, there are conflicting provisions referred to, not only contradictions in Article 35 paragraph (1) The HC Law itself is related to the phrases "Copyright Holder" and "Author", there are also conflicts with other provisions, such as Article 1 Number 2 of the HC Law, Article 1 Number 4 of the HC Law, and are inconsistent or not in harmony with the provisions of Article 13 paragraph (1) of the Patent Law.



Chart 2. Legal Principles of HC Law Reform Regarding HC Lecturer Ownership of Books

Legal Theories to Provide Fairer Protection to PTN and PTS Lecturers Regarding Ownership of Copyrights to Books in the ICT Era

1. Welfare State Theory

The Unitary State of the Republic of Indonesia, as mandated in the 1945 Constitution (hereinafter written the 1945 Constitution) is designed as a welfare state. This is contained in the provisions of the opening of the 1945 Constitution which states that, "The government protects the whole nation and all of its bloodshed, promotes general welfare and educates the life of the nation". Protection of IP, including copyrights on books, is in line with this, bearing in mind that IP can improve general welfare and educate the nation's life.⁴¹ Based on the formulation of the 4th paragraph of the Preamble of the 1945 Constitution, Sunaryati Hartono concluded that, "Our nation's Founders aspired for the Republic of Indonesia to become a democratic rule of law (*rechtstaat*), whose law is obliged to strive for the general welfare and intelligence of the nation, increasing as become the goal of understanding the Welfare State (*welvaartsstaat*)."⁴² In this regard, the renewal of the HC Law in Indonesia which includes arrangements regarding the fair ownership of books by PTN and PTS lecturers, in addition to guaranteeing legal certainty and protection regarding copyright ownership for PTN lecturers, will also be able to improve welfare through the realization of justice for lecturers. PTN. This prosperity is realized by the existence of legal certainty in the HC Law that PTN lecturers are creators and have copyrights to their book works, with the right to transfer them to other parties, including the PTN institution.

⁴¹ Muhamad Amirulloh dan Helitha Novianty Muchtar, *Buku Ajar Hukum Kekayaan Intelektual*, op.cit., hlm. 8

⁴² Sunaryati Hartono, "Mencari Filsafah Hukum Indonesia yang Melatarbelakangi Pembukaan Undang-Undang Dasar 1945", dalam : Sri Rahayu Oktoberina dan Niken Savitri (ed.), *Butir-Butir Pemikiran dalam Hukum, Memperingati 70 Tahun Prof. Dr. B. Arief Sidharta, S.H.*, Bandung: Refika Aditama, 2008, hlm. 151.

The preamble to the 1945 Constitution of the Republic of Indonesia which is the basic law for the formation of positive law contains four main ideas, which experts agree on as the ideals of Indonesian law, namely: first, the ideals of protection contained in the phrase "The state protects all Indonesian people, and all of Indonesia's bloodshed based on unity"; second, the ideals of social justice, contained in the phrase "The state has the right to realize social justice for all Indonesian people"; third, the ideal of expediency contained in the phrase "a state that is sovereign by the people, based on democracy and deliberative representatives"; and fourth, a love of general justice, contained in the phrase "The state is based on Belief in the One and Only God". The ideal of protection contains the meaning of the legal ideal that guarantees the protection of the entire Indonesian nation, in accordance with the principle of cumulative justice put forward by Thomas Aquinas in Franz L Neumann, namely the law provides protection for all citizens regardless of their social, ethnic, cultural, political, religious and economic status. . This is in accordance with what was stated by Jeremy Bentham, that the main function of law is to provide livelihoods, encourage equality, and maintain security for all people. In this regard, the intended protection is manifested in the existence of clear and firm regulations regarding copyright ownership by PTN lecturers for their book works as the party who actually creates based on his own intellectual thoughts as a reflection of himself (alter ego). In the event that government agency resources (PTN) are used in the creation of the book, then the copyright can also be owned by the institution based on an agreement with the lecturer, both as the Copyright Holder and in the framework of joint ownership with PTN lecturers. The existence of these provisions will guarantee protection to the parties, both lecturers and institutions, as intended by the ideals of such protection.

The ideals of social justice reflect laws that guarantee justice in social life, namely realizing social justice for all people, which prioritizes fair treatment for all Indonesian people regardless of race, class and religion. This kind of justice by Aristotle and Thomas Aquinas is distributive justice, namely the distribution of goods and honor to each member of society according to their position in society.⁴³ In relation to this article, PTN lecturers as parties who create copyrighted works of books based on their intellect and uniqueness, with independent resources, should be the parties who become creators and have copyrights to these works, while PTN institutions are based on an agreement (agreement) with lecturers. can be the party holding the copyright and has the right to commercialize the work.

The ideal of expediency which is the ideal of law in the state is the ideal of the use of law in the state. There are four basic principles of the ideal of expediency, namely the law is in favor of the needs of the people, the law must guarantee the welfare of the people, the law must be made by the people through representatives in parliament, and the law functions to control state power on the basis of the rule of law. The main principle is democracy, which Socrates said is the determination

⁴³ Theo Huijbers, *Filsafat Hukum*, Kanisius Press, Yogyakarta, 1997, Cetakan V, hlm. 6.

of good and bad, entitled and not entitled should not be left to the authorities alone, but also sought objective measures from the people.⁴⁴ In relation to this research, the renewal of the copyright law will be a means of realizing the pros and cons of ownership of copyrighted books produced by PTN lecturers based on the objective measurements of these lecturers who desire substantive justice, and who are able to truly realize equality of position and function. between lecturers and PTN institutions where they work.

As a manifestation of human rights, Intellectual Property is protected in the Indonesian state constitution, namely Article 28 C paragraph (1) of the 1945 Constitution, the 4th amendment, namely:

"Everyone has the right to develop himself through meeting his basic needs, has the right to get education and to benefit from science and technology, art and culture in order to improve his quality of life and for the welfare of mankind."

The renewal of the HC Law which regulates copyright ownership by PTN lecturers who produce books, is a concrete manifestation of granting the right to self-development for the academic community, as well as efforts to provide benefits for the academic community from the copyrighted works they produce, so that the academic community will be able to improve quality his life and will ultimately provide welfare for humanity through the books produced by the PTN lecturer.

Article 28 D paragraph (1) of the 1945 Constitution is the basis for amendments to the HC Law which protect lecturers' ownership of their copyrighted works. The article states that, "Every person has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law". This provision is the philosophical basis for granting ownership of book copyrights to the lecturers who created them, as well as the basis for amendments to the HC Law in this regard. Both PTN and PTS lecturers are parties whose copyrights to their books must be recognized, so there must also be a guarantee of fair protection in the HC Law.

2. Development Law Theory

Mochtar Kusumaatmadja put forward a theory known as the Development Law Theory, as follows:⁴⁵

"Law is a means of renewing society based on that assumption the existence of order or order in development efforts or renewal is something that is desired or even considered (absolutely) necessary. Another assumption contained in the conception of law as a means of development is that law in the sense of rules or legal regulations can function as a tool (regulator) or means of development in the sense channeling the direction of human activity in the direction desired by development or renewal. Both of these functions are expected to be carried out by

⁴⁴ Wolfgang Friedman, *Legal Theory*, ed. Cunan, Harvard University Press, Boston., Masattchusetts, USA, 2000, hlm. 211.

⁴⁵ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan*, Pusat Studi Wawasan Nusantara, Hukum & Pembangunan-PT. Alumni, Bandung, 2002, hlm. 88.

law in addition to its traditional function, namely to guarantee certainty and order.”

In this case, the renewal or development of copyright law which gives ownership of copyrights to works of books to PTN lecturers, will create order or regularity in the world of higher education, as well as directing the behavior of PTN institutions in protecting and respecting the copyrighted works of their lecturers, as well as prevent copyright infringement of the intellectual work of the academic community. Likewise for PTN lecturers, they will be directed to respect PTN institutions that have contributed their resources in the process of creating books, by practicing joint ownership and/or as Copyright Holders.

3. IP Protection Theory Robert M. Sherwood

Robert M. Sherwood's theory is known as the basic theory of IP protection. There are several thoughts conveyed, first is the theory of reward (reward theory), which has a very deep meaning, namely recognition of the intellectual work that has been produced by the inventor/creator/designer so that he must be given an award as a balance for his creative efforts in finding/creating intellectual work.⁴⁶ Reward theory is an acknowledgment of the intellectual work that has been produced by someone so that he is given an award for his creative efforts in finding or creating intellectual works. Intellectual Property Rights legal protection is an ownership system as a form of reward or personality expression or incentive for creators, inventors or designers for their sacrifices in producing intellectual creations that have significant financial implications.⁴⁷

Ilham Akhsanu Ridlo⁴⁸ states that human resources are seen as important company assets, because humans are dynamic resources and are always needed in the process of producing goods and services. As great as possible and/or as big as possible the reputation of a company, the roles and functions of employees are still very important and in some ways very strategic and decisive, no matter how many employees and the level or position of employees in the organizational structure of a company.⁴⁹ Based on this, PTN lecturers are very important assets for PTN institutions, so that they should be given adequate protection and appreciation for their existence, creativity, and intellectual work through the HC Law and PTN's internal mechanisms.

The digital era allows the creation of an creator to be easily imitated and/or violated by other parties, so it is necessary to revise a clear, definite, and fair legal umbrella for creators, especially PTN lecturers in relation to books by PTN lecturers which are commercialized, especially in the educational environment. tall. In this

⁴⁶ Ibid.

⁴⁷ Rahmi Janed Parinduri Nasution, *Interface Hukum Kekayaan Intelektual dan Hukum Persaingan Penyalahgunaan HKI*, PT. RajaGrafindo Persada, Jakarta, 2013, hlm. 37 dalam Ismail Ramadan, *Trademark Xash Low : Penyelesaian Sengketa Merek di Pengadilan Terkait Iktkad Tidak Baik Dalam Pendaftaran Merek* Deepublish, Sleman, 2020, hlm. 13.

⁴⁸ Ilham Akhsanu Ridlo, "Turn Over Karyawan "Kajian Literatur", Serial Paper Manajemen PH Movement Publication, Public Health Movement, Surabaya 2012, hlm. 1.

⁴⁹ Muhamad Amirulloh, dkk, *Perlindungan Hukum Bagi Karyawan Inventor Paten Di Indonesia*, CV. Kenia Media, Bandung, 2020, hlm. 45.

regard, the theory of risk (risk theory) as put forward by Robert M. Sherwood is very relevant to be used as an analytical knife in this article.

Theory of Economic Analysis Against Law

In line with the theory of economic growth stimulus (economic growth stimulus theory) put forward by Roert M. Sherwood, Richard A. Posner introduced the theory of economic analysis of law (economic analysis of law). This theory provides a new view of law regarding patterns of human behavior that were originally only seen as "right and wrong", changed to "risks and benefits".⁵⁰ This new view from Postner uses economics as a tool of legal analysis.⁵¹ This theory views that the purpose of law besides certainty and justice is also for benefit.⁵² The choice of the principle of efficiency is based on its ease of understanding, because it does not require technical formulations in economics or formulas in the form of numbers. What is the focus of attention is regarding the possibility of inefficiency in the formation, application and enforcement of laws and regulations.⁵³

Based on this efficiency theory, the reform of the HC Law which grants copyright ownership to PTN academics and not to the institution will be more efficient at suppressing or minimizing the potential for disputes to arise between academics with the agency. Likewise, it will be more efficient to provide encouragement and a conducive climate for the academic community to produce further works, bearing in mind that there is very adequate protection and appreciation for them given by institutions and society.

Conclusion

Based on the description of the analysis of problem identification, it can be concluded as follows

1. Article 35 paragraph (1) and Article 36 of the HC Law which stipulate that there are differences in arrangements regarding the ownership of copyrights for books produced by PTN and PTS lecturers are inappropriate and contradictory to the alter ego principle and the principle of legal certainty. Apart from not giving appreciation to the existence and intellectuality of PTN lecturers, this provision also contradicts Article 1 point 2 and number 4 UUHC, and is horizontally inconsistent with Article 13 paragraph (1) of the Patent Law.
2. Legal theories that can be used to provide fairer protection to PTN and PTS lecturers regarding copyright ownership of books in this era are the welfare state theory, development law theory, reward theory, risk theory, economic growth driving theory (economic stimulus growth), and the theory of economic analysis of law (economic analysis of law).

⁵⁰ Romli Atmasasmita dan Kodrat Wibowo, *Analisis Ekonomi Mikro tentang Hukum Pidana Indonesia*, Jakarta: Kencana, 2016, hlm. 4-5.

⁵¹ Ibid, hlm. 4.

⁵² Ibid, hlm. 6.

⁵³ Ifdhal Kasim, "Mempertimbangkan 'Critical Legal Studies' Dalam Kajian Hukum di Indonesia", *Wacana Jurnal Ilmu Social Transformatif*, Edisi 6, Tahun II, Jakarta, 2000, hlm 23.

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