

A COMPARATIVE STUDY BETWEEN INDONESIA AND THE UNITED STATES OF AMERICA ON THE REGULATION AND APPLICATION OF FAIR USE PRINCIPLE IN RELATION TO SONG PARODIES

Julian Martin¹ and Irna Nurhayati²

ABSTRACT

The purpose of this legal research is to analyze the issue of how song parody should appropriately be regulated under the Law Number 28 of 2014 concerning Copyright in Indonesia, by comparing the said regulation to the Copyright Act of 1976 of the United States of America for guidance. The urgency of studying the present issue is due to ill provisions detailing on how song parody should be regulated under the Law Number 28 of 2014 concerning Copyright in Indonesia. Consequently, Indonesian copyright legal practitioners is faced with a confusion of settling legal dispute on song parody under the Indonesian copyright legal regime. Thus, in comparing the Law Number 28 of 2014 concerning Copyright with the Copyright Act of 1976 of the United States of America, this legal research will analyze its connection with the Fair Use principle. The Fair Use principle will be examined on its role as a legal defense in justifying the existence of song parody, both within Indonesia and the United States of America.

In conducting this legal research, the author employs a normative legal research method through utilizing secondary data. The said secondary data consists of primary, secondary and tertiary legal source. The data *in casu* is obtained by way of documentary study and interview with an academic in the relevant field. Subsequently, all of the data obtained is analyzed by way of a qualitative method. The said qualitative method is done by way of a comparative analysis approach.

This legal research yields two findings with respect to the present issue. Firstly, the Law Number 28 of 2014 concerning Copyright in Indonesia, in comparison to the Copyright Act 1976 of the United States of America, does not provide clear and comprehensive regulation of fair use principle. Secondly, this legal research presents a framework for Indonesian judges to settle a legal dispute on the application of fair use principle towards song parodies. The said framework is created by looking towards principal legal values from the Copyright Act 1976 of the United States of America, as interpreted by benchmark judicial decisions.

Key words: Fair Use, Copyright, Intellectual Property, United States of America, Song Parodies.

¹ Student of the Faculty of Law Universitas Gadjah Mada (S1 IUP 2014).

² Lecturer at the Department of Business Law, Faculty of Law Universitas Gadjah Mada.

STUDI KOMPARATIF ANTARA INDONESIA DAN AMERIKA SERIKAT MENGENAI PENGATURAN AND APLIKASI PRINSIP FAIR USE TERKAIT DENGAN PARODI LAGU

Julian Martin¹ dan Irna Nurhayati²

INTISARI

Penelitian hukum ini bertujuan untuk menganalisis pengaturan parodi lagu ditinjau dari Undang-Undang Nomor 28 tahun 2014 mengenai Hak Cipta di Indonesia. Peraturan tersebut dibandingkan dengan Copyright Act of 1976 of the United States of America sebagai pedoman. Dasar permulaan penelitian hukum ini dimulai karena adanya cacat hukum pada pasal yang mengatur tentang parodi lagu dalam Undang-Undang Nomor 28 tahun 2014 mengenai Hak Cipta. Dengan demikian, praktisi hukum hak cipta di Indonesia mengalami kesulitan dalam menyelesaikan sengketa hukum parodi lagu dengan menggunakan rezim hukum hak cipta di Indonesia. Copyright Act of 1976 of the United States of America dapat digunakan sebagai pedoman dan bahan perbandingan. Secara khusus, penelitian hukum ini mengalisa pengaturan prinsip Fair Use yang termaktub dalam aturan-aturan sebelumnya, dalam Amerika Serikat dan Indonesia.

Dalam penelian hukum ini, penulis memanfaatkan metode penelitian hukum normatif dengan menggunakan data sekunder. Data sekunder tersebut, dibagi menjadi sumber hukum primer, sumber hukum sekunder, dan sumber hukum tersier. Data diperoleh menggunakan studi dokumentasi dan wawancara dengan akademisi yang ahli dalam bidang terkait. Selanjutnya, semua data yang telah diperoleh dianalisis dengan cara metode kualitatif. Metode kualitatif tersebut diterapkan dengan menggunakan pendekatan analisis perbandingan.

Penelitian hukum ini menghasilkan dua kesimpulan dalam permasalahan parodi lagu. Pertama, jika dibandingkan dengan Copyright Act 1976 of the United States of America, Undang-Undang Nomor 28 tahun 2014 mengenai Hak Cipta di Indonesia tidak memberikan pengaturan yang jelas dan komprehensif mengenai prinsip Fair Use. Kedua, penelitian hukum ini memberikan suatu pedoman untuk para hakim di Indonesia dalam menyelesaikan sengketa hukum terkait prinsip Fair Use terhadap parodi lagu. Kerangka tersebut, diwujudkan dengan cara berpedoman kepada nilai-nilai hukum dalam Copyright Act 1976 of the United States of America, sebagaimana ditafsirkan oleh putusan-putusan pengadilan terkemuka di Amerika Serikat.

Kata Kunci: Fair Use, Hak Cipta, Kekayaan Intelektual, Amerika Serikat, Parodi Lagu

¹ Mahasiswa Fakultas Hukum Universitas Gadjah Mada (S1 IUP 2014).

² Dosen Departemen Hukum Dagang, Fakultas Hukum Universitas Gadjah Mada.