

The Urgency for Implementing Cryptomnesia on Indonesian Copyright Law

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Abstract

Plagiarism Enforcement in Indonesia can be said to have not been quite effective because the plagiarism level is still quite high. In 2013 alone it was found that there were at least 808 cases of plagiarism in Indonesia. This needs to be studied more deeply, as was done by the authors in this article. With the subject matter of why this can happen, and whether the arrangement in Indonesia itself is quite effective. The results of the study show that the problem that is a weakness of the Plagiarism enforcement system in Indonesia is that it does not regulate Cryptomnesia-related Plagiarism that occurs when forgotten memories are returned unnoticed by the person concerned, who believes that memory is a new and first thing so that ideas arise without consciously imitating the work of others and as in line with Regulation of the Minister of Education Number 17 of 2010 that in implementing scientific autonomy and academic freedom, students / lecturers / researchers / education personnel are obliged to uphold honesty and academic ethics, especially the prohibition of plagiarism in producing scientific work, so that creativity in the academic field can grow and developing. Therefore, the copyright arrangement in Indonesia should be reconstructed without categorizing Cryptomnesia as plagiarism.

Keywords: Cryptomnesia, Copyright Law, Indonesia.

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INTRODUCTION

Plagiarism, is an act of claiming or taking essays, opinions, and so on from other people and make it seem like an essay and opinion itself [1]. As exemplified in the case above, it is not a light crime, because among academics in Indonesia for example, has a very heavy penalty because each university sets graduation requirements to obtain an academic, professional, or vocational degree (Article 25 paragraph (1) of the National Education System Law). If the scientific work used to obtain an academic, professional, or vocational degree is proven to be plagiarized, the title will be revoked (Article 25 paragraph (2) of the National Education System Law).

Furthermore, this legal provision does not only apply to academics, lecturers but also students, as stated in the National Education System Law where graduates who are proven to plagiarize other people's scientific works are also subject to a maximum imprisonment of two years and / or a maximum fine of Rp 200 million (Article 70 of the National Education System Law).

Plagiarism actor has the potential to be detrimental to academics if they do not know the rules well as even plagiarizing their own previous work is

also prohibited (auto-plagiarism). Even so, there is one condition where even though a plagiarism has clearly happened, the plagiarist basically doesn't do it because he in fact made the work himself without knowing that there is a same work already published. this is known as cryptomnesia. The term of cryptomnesia is indeed a term less commonly known to the Indonesian public [2] because although it has been known for quite a long time, studies of cryptomnesia have begun recently which has begun to question the copyright regime in Indonesia which believes that human intellect has no limits.

The term "cryptomnesia" signifies the existence of memories which are hidden from consciousness. Originally, it was assumed that cryptomnesic memories could only be remembered in states of altered consciousness. Today, the term is used to denote the appearance in normal consciousness of memories which are not recognized as such subjectively. In analysing cryptomnesic phenomena, a distinction is made between memories of specific occasions in a person's life, called "reminiscences", and the general memories of discrete events composing specific occasions, called "logical memories". When the logical memories of events which occurred on a specific

occasion are no longer remembered as joint components of a reminiscence, a state of "partial cryptomnesia" exists [3]. Thus a social situation and another event may still be recognized as memories, but not as the memories of events which occurred together. This can lead to social embarrassment, such as when a piece of news is related again to the person from whom it had come originally, or when it is related twice to the same company in relatively quick succession—symptoms which can be particularly noticeable in patients with a dysmnesic syndrome.

According to the author, the above matters are very interesting to study in to a research with the following subject matter:

1. How is The Current Protection against Plagiarism in Indonesia?
2. Can Cryptomnesia be Implemented on Indonesian Copyright Law?

RESEARCH RESULT AND DISCUSSION

Current Protection against Plagiarism in Indonesia

According to Indonesian Law Number 28 Year 2014, the definition of copyright is "the exclusive right for the creator or recipient of the right to publish or reproduce his work or grant permission for it without reducing the limitations according to the prevailing laws and regulations" (article 1 point 1). This right includes the creation of books, computer programs, pamphlets, layout (layout) of published works, lectures, speeches, props made for educational and scientific purposes, songs or music with or without text, drama, musical drama, dance, choreography, puppetry, pantomime, fine arts in all forms (such as painting, drawing, carving, calligraphy, sculpture, collage and applied arts), architecture, maps, batik art (and traditional works others such as *songket art* and *ikat art*), photography, cinematography, and excludes industrial designs (which are protected as separate intellectual property). Convertible works such as translations, interpretations, adaptations, anthologies (for example books containing a collection of written works, a collection of songs recorded in one medium, as well as the composition of various selected dance works), and databases are protected as separate creations without prejudice to the copyright of the original creation (Law 19/2002 article 12).

The concept of copyright in Indonesia is basically the same as the concept of copyright in England (in which in England use the term "copy right"). This copyright was created in line with the invention of the printing press. Prior to Johannes Gutenberg's invention of this machine, the process of making a copy of a written work required nearly the same effort and cost as the process of making the original work. So, it is most likely that publishers, not authors, are the first to ask for legal protection of printed works that can be copied [4].

Copyright, in contrast to other intellectual property which is also known as Industrial Rights is an Individual Right which consists of Moral Rights, is a right that is eternally attached to an Author to keep or not to include his name on the copy in connection with the use of his Work for the public; using his alias or pseudonym; change his work in accordance with the appropriateness of society; change the title and sub-title of the Work; and defend their rights in the event of any distortion of work, mutilation of works, modification of works, or things that are detrimental to one's honor or reputation. Meanwhile, economic rights are exclusive rights of creators or copyright holders to obtain economic benefits for works. (Article 5 and Article 8 of Law No.28 of 2014 concerning Copyright).

Economic rights are rights to obtain economic benefits for works, while moral rights are rights inherent in creators or actors (art, recordings, broadcasts) that cannot be removed for any reason, even though copyright or related rights have been transferred [5].

In addition to the rights mentioned above, the applicable law in Indonesia also regulates "related rights", which are related to copyright and are also exclusive rights, which are owned by actors of art works (namely musicians, actors, dancers, etc.), record producers, voice, and broadcasting institutions to regulate the use of documentation of artistic activities carried out, recorded, or broadcast by each of them (Law 19/2002 article 1 points 9-12 and chapter VII). For example, a singer has the right to prohibit the other party from reproducing a recording of his singing voice.

Exclusive rights which are covered by copyright can be transferred, for example by inheritance or written agreement (Law 19/2002 articles 3 and 4). Copyright owners can also allow other parties to exercise their exclusive rights with a license, with certain conditions (Law 19/2002 chapter V).

In enforcing copyright, it is closely related to plagiarism, an action carried out by a person or group of people called plagiarism in the form of plagiarism or taking articles, opinions, etc. from other people and make it appear to be an essay and their own opinion.

To be able to know well the boundaries of whether an action can be said as an act of plagiarism or not, in the Indonesian language book: Felicia Utorodewo [6] classifies the following items as acts of plagiarism :

- 1) Recognizing other people's writings as their own,
- 2) Recognizing the ideas of others as one's own thoughts,
- 3) Recognizing the findings of others as their own,
- 4) Recognize group work as its own,

- 5) Presenting the same article in different occasions without mentioning the origin,
- 6) Summarize and paraphrase (quoting indirectly) without mentioning the source, and;
- 7) Summarize and paraphrase by mentioning the source, but the series of sentences and choice of words are still too the same as the source.

Meanwhile, actions that are not classified as plagiarism include:

- 1) Using information in the form of general facts.
- 2) Rewrite (by changing sentences or paraphrasing) the opinions of others by providing clear sources.
- 3) Quoting sufficiently other people's writings by giving the writer clear boundaries of the quotation section and writing down the source.

Plagiarism, as exemplified in cases such as the one at the Jakarta State University which could even led to the Sanctions of Revocation of Five Doctorate Degree means that it is not a minor crime, because among academics this has a very heavy punishment because each university sets graduation requirements to get academic, professional, or vocational degrees (Article 25 paragraph (1) of the National Education System Law) as for the sanctions can be seen in Law Number 28 of 2014 concerning Copyright in general, as well as Regulation of the Minister of National Education of the Republic of Indonesia no. 17 of 2010 concerning Sanctions for plagiarists in particular which contains the following rules:

Article 12 Sanctions for students who are proven to have committed plagiarism as intended in Article 10 paragraph (4), in order from the lightest to the most severe consist of:

- 1) *Verbal Warning*
- 2) *Written warning*
- 3) *Postponement of giving a student right*
- 4) *Cancellation of the value of one or more courses obtained by the Student.*
- 5) *Dismissal with respect from status as a Student*
- 6) *Dismissal without respect from status as a student or;*
- 7) *Cancellation of the certificate if the student has graduated from a program.*

As for Sanctions for lecturers / researchers / education personnel who are proven to have committed plagiarism as referred to in Article 11 paragraph (6), in order from the lightest to the most severe, consist of :

- 1) *Verbal Warning*
- 2) *Written warning*
- 3) *Postponement of granting rights for lecturers / researchers / educational staff.*
- 4) *Decrease in rank and academic / functional position*
- 5) *Revocation of rights to be proposed as professor / principal research expert for those*

who meet the requirements.

- 6) *Dismissal with respect from the status as lecturer / researcher / educational staff.*
- 7) *Dismissal without respect to the status as lecturer / researcher / education staff.*
- 8) *Cancellation of the certificate obtained from the university concerned.*

If the lecturer / researcher / educational staff as referred to in paragraph (2) letter f, letter g, and letter h write the title of professor / professor / main research expert, he will also be subject to additional sanctions in the form of dismissal from the position of professor / professor / expert. principal investigator by the Minister or an authorized official on a university proposal organized by the Government or on a university proposal organized by the community through the Private Higher Education Coordinator (Kopertis, or what is now known as LLDIKTI), then in relation to the dismissal of the professor / professor / expert, the Minister or the authorized official may reject the proposal to re-appoint the lecturer / researcher / education staff in the position of professor / professor / main research expert at the suggestion of another university, if the lecturer / researcher / The educational staff has been subject to sanctions as referred to in paragraph (2) letter f or letter g and received additional sanctions in the form of dismissal from the position of professor / professor / main research expert.

Higher education leaders also responsible for the plagiarism, where if the leader of the higher education is proven not to impose sanctions as referred to in paragraph (1), paragraph (2), and paragraph (3), the Minister can impose sanctions on plagiarists and on higher education leaders who do not impose sanctions on plagiarists.

Sanctions to higher education leaders as referred to in paragraph (5) are in the form of:

- 1) *Verbal Warning*
- 2) *Written Warning*
- 3) *Government statement that the Institution concerned is not authorized to take legal action in the academic field.*

The provisions for sanctions as referred to above are given if they meet the criteria as written in Article 13, namely:

1. *The sanctions as referred to in Article 12 paragraph (1) letter a, letter b, and letter c shall be imposed in accordance with the plagiarism proportion resulting from the review and if it is carried out accidentally.*
2. *The sanctions as referred to in Article 12 paragraph (1) letter d, letter e, letter f and letter g, shall be imposed in accordance with the plagiarism proportion of the results of the review and if it is carried out intentionally and / or repeatedly.*

3. *The sanctions as referred to in Article 12 paragraph (2) letter a, letter b, letter c and letter d shall be imposed in accordance with the plagiarism proportion of the review results and if it is carried out accidentally.*
4. *The sanctions as referred to in Article 12 paragraph (2) letter d, letter e, letter f, letter g and letter h, shall be imposed in accordance with the plagiarism proportions as a result of the review and if it is done intentionally and / or repeatedly.*
5. *The imposition of sanctions as referred to in Article 12 does not eliminate other sanctions in accordance with the provisions of laws and regulations.*

Implementing Cryptomnesia on Indonesian Copyright Law

The world of higher education in Indonesia is lagging behind in rankings from other countries such as America and the UK because based on the survey results topuniversities.com, from hundreds of universities throughout Indonesia there are only 3 universities namely the University of Indonesia, the Bandung Institute of Technology and Gajah Mada University which are able to penetrate the 500 best universities in the world.

The low ranking can be caused by many things, but as an institution engaged in education, the thing that deserves attention is scientific writing. For a country, the development of good scientific writing certainly influences the development of science and technology, as well as good economic and social and cultural aspects, but in fact cases such as plagiarism are often found, for example, as can be seen in the case of Plagiarism at the State University of Jakarta which occurred in 2016. Where the plagiarism case for Nur Alam's dissertation, according to the application of the indicated plagiarism check, is up to 74.4 percent. This is an iceberg phenomenon, because in 2013 alone it was found that there were at least 808 cases of plagiarism in Indonesia.

Learning from this experience, an Academic Performance Evaluation Team (EKA) was formed from the Ministry of Research, Technology and Higher Education to monitor plagiarism in Indonesia and this is a milestone point of change for the academic world in Indonesia to clean up the culture of plagiarism. The thing that should be of concern in the enforcement of Anti-Plagiarism in Indonesia is the writing of the plagiarism itself because until the time this research was conducted there was no national standard for the plagiarism threshold that was explicitly stated in the statutory regulations.

Even though the institution which until now has often been used as a benchmark, namely the Perbanas Institute, for example, sets a plagiarism

threshold of 20% for the exact sciences, and 25% for the non-exact sciences, but in reality this threshold is often not uniform in every university because of the threshold threshold. it cannot represent the plagiarism threshold standard in Indonesia even though this threshold standard is often used in various leading Journals in the worlds.

The plagiarism threshold is indeed an important effort to support the originality of academic writing, both for lecturers and students, but this should not be a barrier for lecturers and students in their work. Regarding the threshold as applied by Perbanas it is necessary to apply to academics, but it is better if it is not applied to all academics because based on the research results it can be seen that the level of plagiarism among students is higher than that of lecturers. This is considered reasonable because in addition to the different levels of human resources for lecturers and students, the level of supervision between lecturers and students is also different. Because for lecturers, quality articles are the demands of the profession so that supervision of plagiarism is very strict. But on the other hand, the monitoring of Plagiarism against student scientific works is still not strict because of the large number of them, so that if one is checked one by one with a high standard, it will certainly be difficult so that what needs to be considered here is the value of its usefulness and effectiveness. If Lecturers apply the 25 percent plagiarism threshold rule, this can be said to be effective and effective because Lecturers who are a source of knowledge are not only for students but also for the community, of course, must meet the existing professional standards, where plagiarism is one of them. But on the other hand, if the same rules apply to students, it will be very difficult for students to achieve graduation so that it is less effective. In addition, when viewed in terms of efficiency, the low level of plagiarism in student thesis writing is not the main point in thesis preparation because it is different from Lecturers who do have Tri Dharma duties, namely teaching, research and community service, the purpose of students taking lectures is only to seek work so that researchers feel natural that some universities even dare to apply a plagiarism threshold of up to 50 percent for Student Thesis [7].

The protection of scientific papers against plagiarism is indeed very important to protect originality and to prevent fraud, but the Problem of Thresholds, which until now there is no standard that applies nationally, is a problem in itself. However, two findings from this study are interesting to study.

First, namely when there is an act of plagiarism but not on the work of others but yourself or what is also known as auto plagiarism or self-plagiarism.

Even though this is not explicitly regulated in the National Education Ministry Regulation No. 17/2010, "auto-plagiarism", which comes from the English translation of self-plagiarism, is the reuse of one's own work that is significant, identical, or nearly identical, without giving know the act or without reference to the original work.

The term self-plagiarism itself is still pros and cons as well as the provision of whether or not this action should be punished. Stephanie J Bird, author of *Self-plagiarism and dual and redundant publications: What is the Problems?*, for example, considers the use of the term inaccurate because the definition of plagiarism requires that "another party" is being rigged. Meanwhile, in terms of reusing his own work, no other party was cheated.

David B Resnik [8], a bioethicist from the National Institutes of Health, USA, does not mind the term self-plagiarism because it contains an element of dishonesty. However, it is not intellectual theft. The question is, is all reuse of scientific works, either partially or completely, whether in the making, loading, publication, or presentation (without mentioning sources adequately), considered auto-plagiarism? If true, it seems that there are no scientists, lecturers, or academics who don't do it often.

Differences in writing about auto-plagiarism can also be found in each scholarship. The Journal of International Business Studies (JIBS), for example, explicitly includes auto-plagiarism as part of the code of conduct that authors should avoid. In the JIBS Code of Ethics for Authors, it is stated that self-plagiarism is an act that cannot be accepted. It is different from The American Political Science Association (APSA) which only includes the issue of plagiarism in its code of ethics, which is defined: "Intentionally taking other people's work as their own", but does not mention the problem of auto-plagiarism.

In *A Guide to Professional Ethics in Political Science* (2008) published by APSA [7], the problem of repetition of scientific publications is even regulated. For example, it is stated that if a thesis is published in part or in whole by the author, the person concerned has no ethical obligation to inform. Also, the author is allowed to send a manuscript to more than one professional journal, but it is obligatory to notify the editor. Pamela Samuelson [10], professor of law and information science at the University of California, Berkeley, cites several reasons when repetition of a scientific work is allowed, she argued that repetition of previous scientific publications may be done if: the scientific work needs to be re-stated as an author for the next scientific work; part of the previous scientific work related to new evidence and reasons for the next work; The targets aimed at the publication of scientific works vary because of their multidisciplinary nature, so that

publications in different media are needed to reach multidisciplinary communities.

If Auto-plagiarism occurs when the repetition of a work is not accompanied by adequate reference notes on previous works. Then, the question arises, should the author make reference notes for his own work? Because, logically, all the body of the text of a scientific work that does not refer to the work of others, implicitly originates from the person concerned. So, there is no need to make reference notes.

Another opinion states that auto-plagiarism is a minor offense therefore it doesn't need to be regulated. However, there is a practice of reusing one's own work which can be categorized as a serious violation of academic ethics, because there is an element of cheating. For example, repetition of works whose copyright already belongs to other parties, students who use their scientific work to fulfill assignments in more than one course, or reuse of their scientific work for a final project that requires originality (thesis, thesis, or dissertation). For Lecturers, if they use their scientific work for the second time for a promotion proposal, even though the work has been used for the same purpose. However, indeed, if all repetition of a work is considered a violation, no matter how minor the violation is, it might hinder the work of the lecturer or scientist. In fact, according to Law No. 12/2012 on Higher Education, Article 12 Paragraph (2), the duty of a lecturer as a scientist is not only to develop science and / or technology, but must disseminate it so that it can be said that self-plagiarism is not a legal act that can be punished. It is only a violation of academic ethics because there is no element of imitation or recognition of other people's work as their own.

The second and most interesting discovery to study is Cryptomnesia. This term is relatively new and quite foreign to Indonesia. Cryptomnesia according to Taylor [11] is a condition when a memory that actually already exists in a person's memory but over time is forgotten so that it is in the subconscious so that when the person finds a new idea he experiences a memory experience that the idea is a A new idea, even though the idea is none other than a Memory that has been embedded in his subconscious. To be able to understand about Cryptomnesia, researchers took the example of research conducted by Brown and Marsh [12], the first empirical study of cryptomnesia, people in the group took turns creating an example category (for example, bird species: parrots, canaries, etc.). They were then asked to make new copies in the same category, which had not been produced before, and also to recite the words they had produced. The study participants accidentally plagiarized about 3-9% of the times, either recounted what someone else had produced, or had mistaken what others had mentioned to be their own results. The same effect was replicated using other experiments such as word search puzzles, and in brainstorming sessions.

Through this research, two types of cryptomnesia have been able to distinguish, although the two are often studied together. The difference between the two types of plagiarism is in the biased memory which is responsible / underlying it - specifically, is it a forgotten memory, or is it the thinker? The first type of bias is the familiar side of a person. The plagiarist reproduces an idea that has been submitted before, but believes that the idea is an original creation. The idea that is reproduced may be someone else's idea, or someone had the idea at a previous time.

The second type of cryptomnesia is the result of a creative error, in which the ideas of others are remembered as their own. In this case, the plagiarist is fully aware that the idea originated from a previous time, but mistakenly remembers it as the origin of the idea (or, experiences certain memory loss while dealing with it in print or in conversation, considers the idea to the plagiarist as an idea that comes from their mind).

Various terms have been coined to distinguish between the two forms of plagiarism that occur - forgetfulness vs. sources of forgetfulness, and error of creation vs. admission of error. Two types of cryptomnesia each appear independently: no relationship was found between the error rate and the two types of cryptomnesia were triggered by different causes so that when viewed from the point of view of the perpetrator's intention, of course this needs to be distinguished from Plagiarism and Self-Plagiarism.

Furthermore, in relation to Cryptomnesia the researcher argues that this should be regulated in a separate article as an exception because it is not an illegal act. Be it the first form, or the second form. This writer feels that it is in accordance with the spirit of Regulation of the Minister of Education Number 17 of 2010 that in implementing scientific autonomy and academic freedom, students / lecturers / researchers / education personnel are obliged to uphold honesty and academic ethics, especially the prohibition of plagiarism in producing scientific work, so that creativity in academics can grow and develop. In connection with the above statement, it can be said that Cryptomnesia should not be categorized as plagiarism.

Furthermore, the researcher also further strengthens the argument that Cryptomnesia should not be categorized as plagiarism by adhering to article 362 of the Criminal Code concerning theft which reads:

"Anyone who takes property wholly or partly belongs to another person, with the intention of having it illegally, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiahs".

This article is the basis why Plagiarism is considered a criminal act that must be punished. However, it should be remembered that "theft" here is the theft of "ideas" which is certainly difficult to prove its loss, because it is different from stealing goods that have a physical form, stealing an "idea" which in this case can be equated with copyright, of course, can only be proven by when the copyright is. was announced. However, with the existence of a new discourse on Cryptomnesia accompanied by quite a number of cases that have emerged about Cryptomnesia, the government should re-examine the Plagiarism arrangement by deepening the regulation of "deliberate" elements.

To be able to avoid plagiarism there are several efforts that can be done. Several attempts have been made by higher education institutions to prevent the academic community from acts of plagiarism, intentionally or unintentionally. Following, prevention and various forms of supervision are carried out, among others (Regulation of the Minister of Education of the National Education Ministry No. 17/2010 Article 7):

- 1) Student works (thesis, thesis and dissertation) are accompanied by a statement letter from the person concerned, stating that the scientific work does not contain plagiarism.
- 2) Higher Education Leaders are required to upload all scientific works produced within the university, such as the Garuda portal or other portals stipulated by the Directorate of Higher Education.
- 3) Socialization related to the Copyright Law no. 19 of 2002 and Regulation of the Minister of Education and National Education No. 17 of 2010 to the entire academic community

CONCLUSION

- a) Plagiarism enforcement in Indonesia apart from adhering to Law no. 28/2014 concerning Copyright, also adheres to the Regulation of the Minister of Education and National Education No 17/2010 where for plagiarists, in addition to criminal testimony, administrative sanctions can also be imposed, especially if the plagiarist is a student or a lecturer.
- b) Through this research, the findings obtained are that not all plagiarism acts are carried out purely due to deliberate factors. This is known as Cryptomnesia which is different from self-plagiarism. Therefore, the copyright arrangement in Indonesia should be reconstructed where Cryptomnesia is not categorized as plagiarism.

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