

THESIS

**COPYRIGHT PROTECTION FOR THE AUTHORS
IN THE SALES OF ACADEMIC PAPER
ON DIGITAL PLATFORM**



By:
AULIA SALSABILA RIDWAN
NIM. B011191389

**BACHELOR OF LAW STUDY PROGRAM
FACULTY OF LAW HASANUDDIN UNIVERSITY
MAKASSAR
2024**

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TITLE PAGE

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Submitted as One of the Requirements to Achieve a Bachelor's Degree
in the Bachelor of Law Study Program

Arrange and submitted by:

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**BACHELOR OF LAW STUDY PROGRAM
FACULTY OF LAW HASANUDDIN UNIVERSITY
MAKASSAR**

2024

THESIS APPROVAL

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I hereby declare that the thesis entitled **COPYRIGHT PROTECTION FOR THE AUTHORS IN THE SALES OF ACADEMIC PAPER ON DIGITAL PLATFORM** is genuinely my own work. Anything that is not my own work in this thesis is appropriately cited and indicated in the bibliography.

If in the future it is proven that my statement is untrue, I am willing to accept sanctions in accordance with the regulations of the Minister of National Education of the Republic of Indonesia Number 17 of 2010 and the applicable law and regulation.

Makassar, January 19, 2024



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PREFACE

All Praise to Allah SWT for His abundance of grace so that the Author can complete the writing of a thesis entitled "Copyright Protection for The Authors in the Sales of Academic Paper on Digital Platform" as one of the requirements in obtaining a Bachelor of Law degree at the Faculty of Law, Hasanuddin University. Shalawat and salaam to Prophet Muhammad SAW and His Family, the Prophet who has led us to a life full of goodness.

On this occasion, with humility, the Author would like to express the deepest gratitude to the Author's parents, Mr. Ridwan Jamaluddin and Mrs. Surayya Syamsu whose prayers and support have never been stopped for the Author, may Allah always give the blessing of life with a lot of happiness for Papa and Mama. As well as the Author's sisters, Amelia, Arsy, Almira, and Ariqa who always provide warmth at home, may you all always be surrounded by good things in this world.

The author would also like to express the deepest of gratitude to:

1. Prof. Dr. Ir. Jamaluddin Jompa, M.Sc. Rector of Hasanuddin University, Mr. Prof. drg. Muhammad Ruslin, M. Kes., Ph.D., Sp.BM(K), Vice-Rector for Academic and Student Affairs, Prof. Dr. Subehan, S.Si., M.Pharm., Sc., Ph. D, Apt., Vice-Rector for Planning, Development and Finance, Prof. Dr. Farida Patittingi S.H., M. Hum., Vice-Rector for Human Resources, Alumni, and Information Systems, Prof. Dr. Eng. Adi Maulana, S.T., M.Phil., Vice-Rector for Partnership, Innovation, Entrepreneurship, and Business, Prof. Ir. Sumbangan Baja, M.Phil., Ph.D., Secretary of Hasanudin University;

2. Prof. Dr. Hamzah Halim, S.H., M.H., M.A.P. as Dean of the Faculty of Law, University of Hasanuddin, Prof. Dr. Maskun, S.H., LL.M. as Vice Dean for Academic and Student Affairs, Faculty of Law, University of Hasanuddin, Prof. Dr. IIn Karita Sakharina, S.H., M.A. as Vice Dean for Resource Planning and Alumni, Faculty of Law, Universitas Hasanuddin, Dr. Ratnawati, S.H., M.H. as Vice Dean for Partnership, Research and Innovation, Faculty of Law, Universitas Hasanuddin;
3. Dr. Muh. Ilham Arisaputra, S.H., M.Kn. as the Head of Undergraduate Law Program in the Faculty of Law Hasanuddin University;
4. Dr. Winner Sitorus, S.H., M.H. LL.M., as the main supervisor and Ma'am Andi Kurniawati, S.H., M.H., as co-supervisor. Thank you for the guidance, direction, knowledge, and opportunities in compiling this thesis research.
5. Dr. Oky Deviany, S.H., M.H., and Ma'am Amaliyah, S.H., M.H., as examiners in this thesis research. Thank you for the feedback, advice, and knowledge to the Author in compiling this thesis research.
6. Dr. Winner Sitorus, S.H., M.H., LL.M. as the Author's Academic Advisor who give direction for the Author during the Author's lecture period in the Faculty of Law Hasanuddin University;
7. Dr. Aulia Rifai, S.H., M.H. as the Head of Civil Law Department and Ma'am Amaliyah, S.H., M.H. as the Secretary of Civil Law Department in Faculty of Law Hasanuddin University;

8. All Lecturers and Staffs in Faculty of Law Hasanuddin University, especially the lecturers of Civil Law Department and all the lecturers in charge for the International Class;
9. To Mr. Husain Abdullah, Mr. Nezar Patria, and Mr. Samuel A. Pangerapan. Thank you so much for the opportunity to conduct an interview with Directorate General of APTIKA;
10. To Tommy Sambahar, S.H., Thoby Rangkuty, S.H., Mr. Kamaluddin M. S.Ip., M.Hum., and all the informants. Thank you so much for the information which are useful and helpful for this thesis research;
11. To Rafly Zahrandika Novianto, as the closest and dearest person who has encouraged and accompanied the Author since the lecture process till the completion of this thesis. Thank you for all the life lessons and affection, I'm forever grateful for your existence;
12. To my Junior High School sweethearts, Winda, Andiza, Puput, Andien, Fijel, and Mega. Thank you for always being the most comfortable place to share all the worries;
13. To my Senior High School 'cousins', Icha, Isma, Caber, Alfira, Mimah, Teysha, Alvi, Nana, Manda, Pado, Indah, Nayer, and Ansal. Thank you for always giving positive energy, high school will be bored without you;
14. To my lovely friends, Agizah and Meutia. Thank you for being with the Author since the beginning of college and always being there to go through many happy and sad things together in this college journey;
15. To my International Class-mates, Syabina, Rifa, Almira, Sarah, Ipeh, Fira, Atha, Vivi, Agizah, Meutia, Jihad, Arya, Nata, Aghil, Amjad, and

Rafly. Thank you for being a big part of this college journey, may we all be able to continue this friendship even though college is over;

16. To my KKN friends, Azhar, Odie, Agnes, Inci, Grace, Ikka, Echa, and Puji. Thank you for being a kind and fun new friend during the KKN process;

17. To Adakatrip, Vivi, Yaomil, Afhi, Ilma, Hanny, Efi, Nafa, Kak Nupe, Ririn, Icha, Ody, Galuh, Marsyah, Cicha, Agizah, and Meutia. Thank you for being a part of Author's college journey;

18. To HLSC. Thank you for being an organization that provided many opportunities to self-develop in this college journey.

Likewise, thank you so much to all the parties whose names cannot be mentioned one by one who helped the Author in completing this thesis. This thesis is far from perfect, therefore, with all humility, the Author expects the criticism and suggestions.

Makassar, November 2023

Aulia Salsabila Ridwan

ABSTRACT

AULIA SALSABILA RIDWAN (B011191389), with the title "***Copyright Protection for the Authors in the Sales of Academic Paper on Digital Platform***". Supervised by **Winner Sitorus** and **Andi Kurniawati**.

This research aims to analyze what form of legal protection is for the author and the liability of the parties involved for the sales of academic papers on the digital platform.

This research uses empirical research methods. The research location conducted in Makassar City as one of the informant's domiciles, using daring and luring methods.

The research results indicate that there are two forms of legal protection that can be obtained by the author, namely preventive legal protection that comes from a closed access system on the repository file and the existence of marketplace policies related to prohibiting the sales of goods that violate copyright. Repressive legal protection that is explicitly regulated in the Copyright Law, which is litigation efforts in Article 95 - Article 99 of the Copyright Law for the Civil domain and Article 112 - Article 120 of the Copyright Law for the Criminal domain. As well as non-litigation efforts in Article 95 paragraph (1) of the Copyright Law. The liable party is the thesis seller who can take civil liability in accordance with Article 96 of the Copyright Law regarding compensation if proven to have committed an unlawful act in accordance with Article 1365 BW. As well as criminal liability in Article 113 paragraph (3) concerning violation of economic rights for commercial use without permission.

Keywords: Academic Paper; Copyright; Legal Protection

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CHAPTER I

INTRODUCTION

A. Background of the Problem

Intellectual Property Rights (hereinafter referred to as IPR) are rights born from the results of human thought that produce a product or process that benefits humans.¹ The nature of ownership is not to an item but the result of human intellectual ability and creativity in the form of ideas. Therefore, in IPR, there are property rights, the right to control an item and defend the thing from everyone. The nature of objects in IPR is classified as intangible objects that can be transferred because IPR results from creativity derived from human thought to accommodate human needs, which need to be appreciated and protected.²

Copyright is part of IPR protection. Copyright is regulated in Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law). In this law, copyright is defined as follows:³

“Copyright is the exclusive right of the author that arises automatically through the declarative principle after a work is realized in a tangible form without reducing restrictions under the provisions of laws and regulations.”

¹ Niru Anita Sinaga, 2020, *The Importance of Intellectual Property Legal Protection for Indonesia's Economic Development*, Journal of Law Sasana, Volume 6 Number 2, 144-165, Legal Studies Dirgantara Marsekal Suryadarma University, Jakarta, p. 145.

² Kholis Roisah, 2015, *Legal Policy "Transferability" Against the Protection of Intellectual Property Rights in Indonesia*, Journal of Law Reform, Volume 11 Number 2, 241-254, Legal Studies Diponegoro University, Semarang, p. 243.

³ Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright.

The rapid development of technology during the Industrial Revolution 5.0 impacted aspects of social life, from political, economic, social, and cultural to educational factors.⁴ It is in accordance with the percentage of global internet users, which reached 5.16 billion people as of January 2023. This number reaches 64.4% of the worldwide population, totaling 8.01 billion people.⁵ Based on survey results from the *Asosiasi Penyelenggara Jasa Internet Indonesia (APJII)*, Indonesia's internet users have reached 215.63 million people from 2022 through 2023. It indicates that around 78.19% of Indonesia's total population (275.77 million) are internet users.⁶

The rapid development of technology certainly helps and facilitates human activities. This convenience can be seen in social interactions between individuals who are no longer limited by the barrier between space and time, and this has led to changes in the pattern of life and interaction in society.⁷ Technology development also impacted companies or individuals who adjusted themselves by creating digital platforms to meet the community's needs. A digital platform is a place that allows parties to exchange information, conduct trade transactions, and offer an online

⁴ Ana Maritsa, *et al.*, 2021, *The Influence of Technology in the World of Education*, Al-Mutarahah: Journal of Research and Social Studies of Religion, Volume 18 Number 2, 91-100, Ahmad Dahlan Univeristy, Yogyakarta, p. 92.

⁵ Cindy Mutia Annur, 2023, *The Number of Global Internet Users Reaches 5.16 Billion People in January 2023*, <https://databoks.katadata.co.id/datapublish/2023/02/03/jumlah-pengguna-internet-global-tembus-516-miliar-orang-pada-januari-2023>, accessed on April 6, 2023.

⁶ Andrean W. Finaka, 2023, *Internet Users in Indonesia are Increasing*, <https://indonesiabaik.id/infografis/pengguna-internet-di-indonesia-makin-tinggi>, accessed on April 6, 2023.

⁷ Salman Yoga S, 2018, *Socio-Cultural Changes in Indonesian Society and the Development of Communication Technology*, Journal Al-Bayan, Volume 24 Number 1, 29-46, Da'wah and Communication Islam Negeri Ar-Raniry, Aceh, p. 30.

service. Based on this definition, digital platforms have several features tailored to the community's needs.⁸

One of the features of the digital platform is the sales transaction feature. The feature is divided into two forms, namely electronic commerce (hereinafter referred to as e-commerce) and marketplace. E-commerce is an online site used for sales. A marketplace is a site managed by a third party with various products from several sellers where the third party is an intermediary between sellers and buyers.⁹

The types of goods traded in e-commerce and marketplaces are very diverse, such as beauty products, home equipment, electronic devices, books, and other academic works. One of the goods traded in e-commerce is an academic paper, one of which is a thesis. The e-commerce site that sells thesis as its selling product is koleksiskripsi.com. Based on the data on the website, more than 300 users access the website. At the same time, the website also attaches testimonials from users who have bought a thesis through the website, which amounts to more than 700 testimonials. The website also lists a thesis's prices, starting from IDR 50,000 - IDR 100,000 per thesis.¹⁰

Apart from selling thesis through e-commerce, there are also thesis sales through marketplaces, which are Shopee Indonesia and Tokopedia.

⁸ Digitalbisa, 2021, *What is Digital Platform?* <https://digitalbisa.id/artikel/apa-itu-digital-platform-LL6CQ>, accessed on April 7, 2023.

⁹ Nuraini, 2022, *What is Ecommerce? These Types and Differences with Marketplace*, <https://ekonomi.bisnis.com/read/20221102/12/1594267/apa-itu-Ecommerce-ini-jenis-dan-perbedaannya-dengan-marketplace>, accessed on April 7, 2023.

¹⁰ Website Koleksi Skripsi, <http://www.koleksiskripsi.com>, accessed on July 3, 2023

Tokopedia. This is because the thesis is an academic paper derived from human intellectual ability and creativity produced in the form of writing. The nature of copyright protection against an academic paper arises declaratively following the basic principles of copyright protection in Copyright Law. A thesis sold in the digital platform is obtained through easy internet access.

The thesis is traded without the permission of the owner of the related thesis, and from the sale proceeds, both sellers who sell the thesis through the website koleksiskripsi.com, Shopee Indonesia, and Tokopedia get economic benefits. Based on the results of the pre-research author did to five authors of academic paper from the same alma mater, namely the University of North Sumatra, four of them admitted that the sales of their academic paper by the website koleksiskripsi.com was carried out without their permission. The same thing was also corroborated by two Shopee Indonesia account owners who participated in selling academic paper, both of whom openly stated that there was no prior permission procedure for making sales.¹¹

Access for irresponsible people to obtain academic paper is assumed to be due to the implementation of open access to the repository service of a university institution. Contrary to that, there are also university institutions that apply for closed access or cannot be accessed by people

¹¹ Thesis Authors and Sellers, Interview Results as a Part of Pre-research, via Direct Message, on March 2023.

other than the institution itself in the repository service. Still, they also provide particular students with repository accounts or access obtained from university libraries to their repository services. Based on the results of research conducted by the author on the social media platform Twitter, the steps to gain access to the repository are taken only by searching on the platform itself. It is known that in this platform, few people abuse the access they have to benefit from those who try to gain access to academic paper protected by the repository of a university institution.

The act of selling a thesis without permission on this digital platform has the potential to violate the Copyright Law. Since the thesis has been done in real or written form, declarative protection arises for the moral and economic rights of the author of the thesis. Therefore, all utilization related to the thesis must obtain permission from the author of the related thesis. If the utilization is carried out without the consent of the author of the related thesis, then it has violated the economic rights of the author under the provisions of Article 9 of the Copyright Law which stipulates that:

- 1) The Author or the Copyright Holder, as referred to in Article 8, has the economic rights to engage in:
 - a. publication of the Works;
 - b. reproduction of the Works in all its forms;
 - c. translation of the Works;
 - d. adaption, arrangement, or transformation of the Works;
 - e. distribution of the Works;
 - f. performance of the Works;
 - g. announcement of the Works;
 - h. communication of the Works; and
 - i. rental of the Works.
- 2) Every Person who exercises the economic rights referred to in section (1) must obtain permission from the Author or the Copyright Holder.

- 3) Everyone is prohibited from exercising Reproduction and/or Commercial Use without permission from the Author or the Copyright Holder."

As it is known that an academic paper is a written work in the field of science whose existence is protected in the Copyright Law, as stipulated in Article 40 paragraph (1) letter a of the Copyright Law:

"Protected Works, which include academic, artistic, and literary works, comprises:

- a. Books, pamphlets, typographical arrangement of published written work, and all other written Works;"

Based on the explanation above, the legal issue of this study is the act of selling a thesis without permission through a digital platform, namely on koleksiskripsi.com, Shopee Indonesia, and Tokopedia that has the potential to violate the Copyright Law in this case related to moral rights and economic rights owned by the thesis author as an author. In accordance with Copyright Law, a thesis is a form of academic paper embedded in a declarative principle that guarantees the protection of the moral and economic rights of the author of the thesis.

B. Problem Statement

1. What is the legal protection for authors whose works are traded without permission on a digital platform?
2. What are the parties' liability in selling academic paper without permission on a digital platform?

C. Research Purpose

1. To find out and analyze the legal protection of authors whose works are traded without permission on digital platforms.

2. To find out and analyze the forms of liability of the parties involved in selling academic paper without permission on the digital platform.

D. Research Usability

This thesis is expected to be beneficial both from a theoretical and practical perspective, as follows:

1. Theoretical Utility

- a. It is expected to elaborate on the positive law against the unauthorized sale of academic paper through digital platforms.
- b. It is expected to be a contribution of thought for the community regarding the form of liability of the parties involved in the unauthorized sale of academic paper on digital platforms.

2. Practical Utility

It is expected to be an academic paper that will be used as an alternative basis for adding new references in issues regarding the sale of academic paper without permission through digital platforms and the form of liability of the parties involved in the sale of academic paper without consent through digital platforms.

E. Research Authenticity

The research in the preparation of this thesis entitled "Copyright Protection of Author in the Sales of Academic Paper on Digital Platform" was originally conducted by the author based on legal issues that develop in society and take various approaches in analyzing the legal issues raised in this study.

As a comparison to the previous thesis, the author can mention:

1. Rindam Samuel Sipayung, 2019, *Juridical Review of the Protection of Intellectual Property Rights (IPR) Against Thesis Writing Based on Intellectual Property Rights Law Number 28 of 2014 concerning Copyright*, Faculty of Law, University of North Sumatra. The problems statement discussed in this thesis are related to the legal protection arrangements for thesis writing in Law Number 28 of 2014 concerning Copyright, the Application of Plagiarism Regulations for thesis writing according to the Copyright Law in the USU Faculty of Law environment, and how students' perceptions of thesis writing plagiarism that occurs in the USU Faculty of Law environment. The results of this research, that is, the protection of the results of thesis writing have the same protection as moral rights and economic rights for students, in which thesis writing is more inclined to moral rights because it has less monetary value. Furthermore, the application of thesis writing plagiarism regulations in Law Faculty environment has been implemented, as seen from USU Rector Regulation Number 03 of 2017 concerning Academic Regulations for USU Undergraduate Programs. Students' perceptions of thesis writing plagiarism in data collection on 100 students, the majority of them know about the rules and prohibitions against plagiarism rules. While this research discussed the copyright violation on the sales of academic paper without permission through a digital platform.

2. Muhammad Rifqi Rahim, 2022, *Copyright Protection on E-Books Downloaded Without Permission on Sites According to Law Number 28 of 2014 concerning Copyright*, Faculty of Law, Hasanuddin University. The issue discussed in this research is related to the illegal downloading of e-books on-site. The problem statement discussed in this research is whether there is copyright protection against illegally downloaded e-books based on Law Number 28 of 2014 concerning Copyright and how legal remedies can be taken for violations of e-books downloaded without permission. The research result shows that although e-books are not mentioned in the Copyright Law, theoretically, based on the definition of books in the Copyright Law, e-books can be categorized as one type of book. The implications of including e-books in the Copyright Law are that e-books also receive legal protection, and violations can be subject to criminal and civil law under the Copyright Law. Due to the digital form of e-books, the ITE Law affects the protection of e-books because the distribution process is through cyberspace. While the issues of this research will discuss about the copyright violation conduct by the sellers of thesis who conduct their action without any permission.
3. Atiqah Fadhilah Zakaria, 2023, *Legal Review of The Act of Piracy of Written Works Traded Through E-Commerce*, Faculty of Law, Hasanuddin University. The issues discussed in this research is related to the piracy of written works in the form of novels from well-

known authors through the sales of physical forms on e-commerce platforms, the physical form of these written work is obtained from reprinting activities by irresponsible individuals which causes economic losses to the authors. The problem statement discussed in this research is about how legal remedies can be taken by the author and how the form of e-commerce responsibility as a platform for selling pirated works. The research result shows that there are legal remedies that can be taken by the author, namely by claiming compensation through the commercial court and making criminal charges, while the non-litigation path can be taken with the mediation process. Then related to e-commerce responsibilities based on Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, ITE Law, and e-commerce provisions is to follow up on all forms of reports and conduct screening related to the reported products. Tokopedia, Shopee Indonesia, and Bukalapak have regulated sanctions in the form of account deletion to store blocking if violations are indicated. While this research will discuss the copyright violation of written works in the form of academic works as the object, by the sellers who conduct their action without any permission, either on the marketplace or e-commerce.

CHAPTER II

LITERATURE REVIEW

A. Intellectual Property Rights

1. Definition of Intellectual Property Rights

It is essential to know the difference between Intellectual Property (hereinafter referred to as IP) and Intellectual Property Rights (hereinafter referred to as IPR). The term IP refers to the result or product of human intelligence that is susceptible to intellectual property protection, which is then externalized, and means that it is not just an abstract thought, idea or concept but realized in a tangible form. The term IPR, on the other hand, entails the exclusive rights provided to intellectual property owners by law.¹²

Indonesia translates Intellectual Property Rights as *Hak Kekayaan Intelektual* (HKI), which are rights arising from a person's (from that matter, an author and an Inventor) intellectual ability to create or discover something new and original in various forms such as technology, knowledge, art, and literature that has benefits and valuable for humans. Hence, it has economic, practical and moral value.¹³ In creating a work, sometimes the author must sacrifice material, time, and energy. Therefore,

¹² Osman Bugra Beydogan, 2020, *From Intangible Assets to Intellectual Property: Delineating the Intellectual Property Commercialization from the Legal Perspective*, *Journal Lex ET Scientia International*, Volume 2 Number 27, 14-31, Legal Studies Debrecen University, Hungary, p. 24.

¹³ Andy Usmania, *et al.*, 2021, *Philosophical Values of Pancasila on the Intellectual Property Rights Regulation in Indonesia*, *Journal of Law, Policy and Globalization*, Volume 113, 28-34, Legal Studies Wijaya Putra, Surabaya, p. 28.

Intellectual Property Rights are present as a form of appreciation and protection for authors of copyrights or inventions produced.¹⁴

Intellectual Property Rights contain the predicate of exclusive rights attached to the Author and Inventor as the owner, which means that only the owner has the right to perform, use, and/or reproduce the works according to his will or by granting rights through a license to other parties who want to utilize or use the rights to the works or invention.¹⁵ At the international level, Intellectual Property Rights are regulated in the Trade-Related Aspects on Intellectual Property Rights Agreement (hereinafter referred to as TRIPs), which has been agreed upon by member countries of the World Trade Organization (WTO), one of which is Indonesia through Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. The TRIPs script emphasizes that "Intellectual property rights are private rights". The WTO further clarifies the definition of intellectual property rights: "Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the author an exclusive right over using his/her creations for a certain period".¹⁶ World Intellectual Property Organization the mind, such as

¹⁴ Zulkifli Makkawaru, Kamsilaniah, and Almusawir, 2021, *Intellectual Property Rights Series of Copyright, Patents, and Trademarks*, First Printing, Sukabumi: Farha Pustaka, p. 2.

¹⁵ *Ibid*, p. 12.

¹⁶ *World Trade Organization*, 2023, *What are IPRS?*
https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm, accessed on May 12, 2023.

inventions; literary and artistic works; design; and symbols, names and images used in commerce”.¹⁷

Several experts have their definitions of Intellectual Property Rights, as follows:

- a. Khoirul Hidayah, in his book “*Hukum Hak Kekayaan Intelektual*” explains that IPR is an economic right granted by law to an author or inventor of a work of human intellectual ability;¹⁸
- b. Irawan Chandra, in his book “*Politik Hukum Kekayaan Intelektual Indonesia*”, explains that IPR is a right granted by law to a legal subject over an object that is the result of human intellectual intelligence.¹⁹
- c. Quoted in “*Hak Milik Intelektual; Sejarah, Teori, dan Praktiknya di Indonesia*” book by Muhammad Djumhana & R. Djubaedillah, David I. Bainbridge said that IPR is a legal right that protects human intellectual work;²⁰

Based on the definition that has been described, it can be seen that IPR can be interpreted as the rights attached to a person to wealth arising from his intellectual abilities in realizing new original works, having

¹⁷ WIPO, 2020, *What is Intellectual Property?* <https://www.wipo.int/about-ip/en/>, accessed on May 12, 2023.

¹⁸ Khoirul Hidayah, 2017, *Intellectual Property Rights Law*, Malang: Setara Press, p. 1.

¹⁹ Irawan Chandra, 2011, *The Politics of Indonesian Intellectual Property Law*, Bandung: Mandar Maju, p. 48-49.

²⁰ Muhammad Djumhana, R. Djubaedillah, 1993, *Intellectual Property Rights: History, Theory, and its Practice in Indonesia*, First Printing, Bandung: PT. Citra Aditya Bakti, p. 17.

differentiating power, and being helpful for many people so that they have economic value.

2. Scope of Intellectual Property Rights

Along with the advancement of human civilization, intellectual property as a work born from human ideas is increasingly developing as a right with unlimited objects. The international context can be seen from many international legal instruments that regulate and discuss what instruments are included in Intellectual Property Rights. It can be seen from the results of the WIPO convention, which explains that Intellectual Property is traditionally divided into two branches, namely industrial property and copyright. Industrial property includes patents, utility models, industrial designs, trademarks, trade names, and indication of source or appellation of origin.²¹

The 1994 Uruguay Round, which resulted in the TRIPs Agreement framework, also describes the scope of intellectual property rights, namely, "... the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II".²² Which are includes; Copyright and Related Rights (Section 1), Trademarks (Section 2), Geographical Indications (Section 3), Industrial Design (Section 4), Patents (Section 5), Layout Design of Integrated Circuits (Section 6), and Protection of Undisclosed Information (Section 7). The script also managed

²¹ WIPO, 2004, *WIPO Intellectual Property Handbook: Policy, Law, and Use*, Switzerland: WIPO Publication, p.3.

²² Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 1 paragraph 2.

to add two new fields that need to be added to the scope of Intellectual Property Rights, namely: 1) Plant Variety Protection and 2) Integrated Circuit Layout Design.²³

The following are legal instruments in Indonesia that regulate Intellectual Property Rights that have been adjusted under the TRIPs Agreement:

- a. Law Number 28 of 2014 concerning Copyright;
- b. Law Number 13 of 2016 concerning Patent;
- c. Law Number 20 of 2016 concerning Trademark and Geographical Indication;
- d. Law Number 29 of 2000 concerning Plant Variety Protection;
- e. Law Number 30 of 2000 concerning Trade Secret;
- f. Law Number 31 of 2000 concerning Industrial Design; and
- g. Law Number 32 of 2000 concerning Integrated Circuit Layout Design.

3. Protection of Intellectual Property Rights in Digital Era

The world is now entering the digital era along with the development of science and technology, which makes technology a thing that is closely related to human daily life. Internet technology is one of the results of developments in the digital era, which is currently increasing along with the times. Internet technology can easily connect one device to another, making

²³ OK Saidin, 2015, *Legal Aspects of Intellectual Property Rights*, Revised Edition, Ninth Printing, Jakarta: Rajawali Pers, p. 18.

human work more efficient and effective in accessing information and telecommunications and producing goods and services. Thus, awareness of the significant changes in the world that make business people need to adapt and innovate to adapt to existing developments is influenced by the development of technology and consumer behavior, which has also changed.²⁴

Unfortunately, the technology that is considered to make it easier for humans also has a negative impact. When referring to IPR, IPR protection becomes irrelevant if it is not associated with the activity or process of commercialization of the IPR object itself.²⁵ Regarding copyright, modernization makes the form of works more varied and flexible. Still, modernization can also be a loophole for copyright violation due to the ease of access obtained through the internet network that irresponsible parties can easily access, then duplicate or distort and then distribute without permission the work produced by the author. It is undoubtedly detrimental to the author and violates the existing provisions.

On an international forum, WIPO 1996 held a conference in Geneva with 160 countries with the discussion related to the development of IPR protection characteristics in the digital era to refurbish norms on intellectual property in addressing the digital environment. The scope of discussion in this WIPO conference is related to the works, adoption, transmission, and

²⁴ Nufiana S, Wayan Weda, 2019, *Consumer Behavior in the Digital Age: With Case Studies*, First Printing, Malang: UB Press, p. 58.

²⁵ Agus Sardjono, 2009, *The Grounding of IPR in Indonesia*, First Printing, Bandung: Nuansa Mulia, p. 6.

distribution of works through digital media. Then, the WIPO conference produced two conventions that are internationally known as WIPO Internet Treaties, namely the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonogram Treaty (WPPT).²⁶

In Indonesia, copyright protection is regulated in the Copyright Law. While related to works on the internet, it is stipulated in Law Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Law Number 19 of 2016 concerning the Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as ITE Law). Article 25 of the ITE Law stipulates that:

"Electronic Information and/or Electronic Documents compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights based on the provisions of the Laws and Regulations".

B. Copyright

1. Definition of Copyright

In Indonesia, copyright was first known as the author's rights, a translation of the Dutch language, *Auteursrecht*.²⁷ Because the term Author's Rights was considered to have a narrower of definition, in 1951, the cultural congress in Bandung approved the term Copyright proposed by

²⁶ Khwarizmi Maulana Simatupang, 2021, *Juridical Review of Copyright Protection in the Digital Realm*, *Academic Journal Legal Policy*, Volume 15 Number 1, 67-80, Legal Studies Indonesia University, Depok, p. 74.

²⁷ Muhammad Djumhana, R. Djubaedillah, 2014, *Intellectual Property Rights: History, Theory, and its Practice in Indonesia*, Fourth Printing, Bandung: PT. Citra Aditya Bakti, p. 47.

St. Moh. Syah because it was considered to have a broad meaning.²⁸ The word Copyright was published 65 years after the enactment of the *Auteurswet* 1912, which was promulgated in *Staatblad* Number 600 on September 23, 1912²⁹

The author will compare several definitions of Copyright according to Law Number 28 of 2014 concerning Copyright, *Auteurswet* 1912, Universal Copyright Convention, and Black's Law Dictionary.

According to Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright, it is defined that:

“Copyright means an exclusive right of the author vested automatically based on declaratory principle after Works are embodied in a tangible form without reducing by restrictions under the provisions of laws and regulations”.

Furthermore, according to Article 1 of the *Auteurswet* 1912, it is defined that:

“Copyright is the exclusive right of the author of a literary, academic or artistic work or his successors in title to communicate that work to the public and to reproduce it, subject to the limitation laid down by law”.

Then, in Article 5 of the Universal Copyright Convention, it is stipulated that:

“Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of a translation of works protected under this convention”.

²⁸ Fransiska Novita Eleanora, 2013, *Copyright According to Law Number 19 of 2002*, Academic Forum, Volume 10 Number 1, 98-109, Legal Studies MPU Tantular, Jakarta, p. 103.

²⁹ Sri Pujianti, 2022, *Copyright Attaches Exclusively to Author's Creativity*, <https://www.mkri.id/index.php?page=web.Berita&id=18414&menu=2>, accessed on April 8, 2023.

While in Black's Law Dictionary, the definition of copyright is as follows:

“Copyright is the exclusive right of the owner of an intellectual production to multiply and dispose of copies; the sole right to the copy, or to copy it”.³⁰

At its core, the four descriptions of the copyright have the equation that the copyright is an exclusive right that arises and is owned by the author of the work. In other words, since a work is embodied, the author's rights also emerge from that moment.³¹

2. Function and Purpose of Copyright Protection

Copyright is born from the author's works, not pre-existing or from non-human creative origin.³² It should be noted that copyright protection does not apply to a mere idea but applies to the form of the concept. Therefore, a work should have a distinctive and original form that arises from the creativity or expertise of the author so that the works can be seen, read or heard.³³

In the mid-19th century, international treaties still needed to deliver a unified form, even though each recognized the existence of copyright-related rights. So, in this case, establishing the Bern Convention for the

³⁰ The Law Dictionary Featuring Black's Law Dictionary 2nd Ed., *Copyright Definition & Legal Meaning*, <https://thelawdictionary.org/copyright/>, accessed on April 8, 2023.

³¹ Sophar Maru Hutagalung, 2012, *Copyright: Its Position & Role in Development*, First Printing, Jakarta: Sinar Grafika, p.15.

³² Winner Sitorus, Amaliyah, and Ahmadi Miru, 2020, *Intellectual Property Rights Protection on Dance and Song as a Traditional Cultural Expression in South Sulawesi Under National and International Law*, *Jurnal IPR Review*, Volume 3 Number 1, 185-202, Hasanuddin University, Makassar, p. 187.

³³ Agustinus Pardede, *et.al*, 2020, *Module: Intellectual Property Basic Level, Copyright Field*, Jakarta: Directorate General of IPR, Ministry of Law and Human Rights, p. 15.

Protection of Literary and Artistic Works on September 9, 1886, requires a harmonized regulation.³⁴ In this case, with Presidential Decree Number 18 of 1997, Indonesia ratified the Berne Convention with a reservation on Article 33 paragraph (1). It is understood that the essence of the Bern Convention aims to protect copyright in the field of art, literature, and science. The protection is given to avoid any violation or crime that directly or indirectly can harm the author and copyright holder.

In Indonesia, the enactment of the Copyright Law has facilitated the authors and copyright holders to get protection for their works so that there is legal protection for the author. It is undoubtedly also intended to encourage individuals in society with intellectual abilities and creativity to be more eager to create as many copyrighted works that are useful for the nation's progress. Protection is also directed to protect related rights, namely, the exclusive right for performers to reproduce or broadcast their sound recording works and broadcasting institutions to create, reproduce, or broadcast their broadcast works.

3. Characteristic of Copyright

The characteristics of copyright are as follows:³⁵

- a. Immaterial (moving object);

³⁴ Oksidelfa Yanto, 2016, *The Bern Convention and Copyright Protection*, Journal Surya Kencana Dua: Dynamics of Law and Justice Issues, Volume 6 Number 1, 108-122, Pamulang University, Banten, p. 116.

³⁵ A. Tenripadang Chairan, 2011, *Juridical Analysis of Legal Protection of Copyright*, Journal Hukum Diktum, Volume 9 Number 2, 164-175, Sekolah Tinggi Agama Islam Negeri, Pare-Pare, p. 166.

- b. A character that merges with the author so that the works are distinctive and can be distinguished from other people's works even though the object created is the same;
- c. No one can confiscate it.

Furthermore, Article 16 of the Copyright Law describes the characteristics and provisions related to the transfer of copyright, which stipulates that:

- 1) Copyright is an intangible movable object;
- 2) Copyright may be transferred or assigned, either wholly or partially due to the following:
 - a. Inheritance;
 - b. Grant;
 - c. Waqf;
 - d. Testament;
 - e. Written Agreement; or
 - f. Other justified reasons under the provisions of laws and regulations.

Based on the description above, copyright contains the meaning of ideas and the conception of property rights. Although copyright is essentially an intellectual property in intangible conditions, others who use it must obtain permission or license from the copyright holder. Regarding control or transfer, the characteristic of copyright causes a difference between copyright ownership and ownership of other objects. In its implementation, the transfer of copyright does not eliminate the moral rights of the author, the original author will always be the owner of the moral rights to his works

even though it has been transferred with the consequence of the economic rights switch.³⁶

4. Subject of Copyright Protection

The term subject in law means a person who holds rights and obligations. The term legal subject comes from the Dutch language, namely *rechtssubject*, defined as a proponent of rights and obligations, namely a person and a legal entity.³⁷ In his book "*Menguak Tabir Hukum*", Achmad Ali stated that the subject of law is everything that can support rights and obligations.³⁸

Private interests, which include the interests of not only individual people but also other subjects of civil legal relations, including public entities, are given special consideration under civil law, of which copyright is a component. Both authors and other right holders are bearers of private interest in copyright. However, the concept of personal interest is applied mainly to authors as authors of creative works.³⁹ In the Copyright Law, two subjects hold the rights and obligations of a work: the author and the copyright holder. Article 1 number (2) of the Copyright Law stipulates that the Author is a person or several people who individually or jointly produce a distinctive and personal work individually or jointly. At the same time, the

³⁶ Arif Lutviansori, 2010, *Copyright and Foklor Protection in Indonesia*, Yogyakarta: Graha Ilmu, p. 70-71.

³⁷ Titik Triwulan Tutik, 2008, *Civil Law in Indonesia Legal System*, Jakarta: Prenada Media, p. 40.

³⁸ Achmad Ali, 2015, *Revealing the Veil of Law*, Second Printing, Jakarta: Kencana, p.245.

³⁹ Roza Sitdikova, 2019, *Concept of Interest in Copyright: Definition and Types*, Volume 4 Number 3, 216-223, Legal Studies Kazan University, Russia, p. 217

copyright holder under Article 1 number (4) of the Copyright Law is the owner of the copyright, the party who receives the rights legally from the author. Then mentioned again in Article 31 of the Copyright Law that the so-called author is:

- a. The person named in the Works;
- b. The person who is declared as the Author of a Work;
- c. The person mentioned in the certificate of Work Recordation;
- d. Listed in the general register of Work as the author.

Copyright Law protects two kinds of authors or legal subjects, which are:

1. Individuals

An author will automatically become the copyright holder of his works and will be transferred to another party as the copyright holder by the will of the author himself. However, if a work is created by several people (joint works), then Article 34 of the Copyright Law stipulates that the author is the person who designed the works; if someone develops the works, then be embodied and executed by others under the leadership and supervision of the person who created. WIPO also explains that the results of works through joint works are recognized by all parties (joint owners of the entire work) who contribute their work.

2. Legal Entity

A legal entity, which is also a legal subject, certainly can carry out activities on its behalf like a human being. A legal entity can also have its works. As it is known that in the definition of author, the author is a person

or individual, however, the exception is in Article 37 of the Copyright Law, as it stipulates that:

"Unless proven otherwise, in the event that a legal entity makes a Publication, Distribution, or Communication of the work originating from the legal entity, without citing any person as the author, the one who will be regarded as the author is the legal entity".

Thus, a legal entity can be considered as the author, if it publishes, distributes, or communicates the creation originating from the legal entity, without mentioning a person as the author. However, if it can be proven otherwise, then the legal entity is not the author.

5. Object of Copyright and Its Protection Period

The objects regulated in IPR are works born from a person's intellectual abilities. As Article 40 letter a to s of the Copyright Law mentions, protected works consist of works in the fields of science, art, and literature. Then, the validity period of copyright has been explained in detail in Articles 57 to 63 of the Copyright Law.

Related to the protection of moral rights, which are things that can damage the honor of the author, according to Article 57, paragraphs (1) and (2) of the Copyright Law is valid for an indefinite period. The right to change the name of the work to fit the decency of society and change the title and subtitle of the work is valid during the term of copyright on the work concerned.

The protection of economic rights is divided into three periods, as follows:

According to Article 58, paragraphs (1), (2), and (3) of the Copyright Law, it is valid for the lifetime of the author and continues for 70 years after the author dies. However, if the copyright of these works is owned or held by a legal entity, then the protection will be valid for 50 years from the announcement.

On the type of works:

- a. Books, pamphlets, illustrations of published works, and all other written works;
- b. Talks, lectures, speeches, and other similar works;
- c. Props made for education and academics;
- d. Songs or music with or without lyrics;
- e. Dramatic works, musical dramas, dances, choreography, puppet shows, and pantomimes;
- f. Fine artworks in all forms, such as paintings, drawings, engravings, calligraphy, sculpture, statues, or collage;
- g. Architectural works;
- h. Maps;
- i. Batik artworks or other pattern arts.

Then, in Article 59 paragraph (1) of the Copyright Law, copyright protection is either owned by individuals or legal entities, valid for 50 years since the announcement.

On the type of works:

- a. Photographic works;
- b. Portraits;
- c. Cinematographic works;
- d. Video games;
- e. Computer programs;
- f. Typographical arrangement of written works;
- g. Translation, interpretations, alterations, anthologies, databases, adaptations, arrangements, modifications, and other work resulting from transformations;
- h. Translations, adaptations, arrangements, transformations or modifications of traditional cultural expressions;

- i. Compilation of works or data, either in a readable format by a computer program or other media, and
- j. Compilation of traditional cultural expressions insofar as the compilation is an original work.

As for applied artworks, based on Article 59 paragraph (2) of the Copyright Law, copyright protection owned by individuals or legal entities is valid for 25 years.

6. Moral Rights and Economic Rights in Copyright

The essence of Copyright Law is to classify the form of protection into two groups, namely the moral and economic rights of the author of their work.⁴⁰ Article 4 of the Copyright Law rules that copyright is an exclusive right consisting of moral and economic rights. The exclusive right is automatically attached to the author based on the declarative principle after a work is embodied in a tangible form without reducing restrictions per the provisions of laws and regulations. Exclusive rights are rights reserved for the author so that other parties cannot utilize these rights without the author's permission.

Moral rights are rights that are eternally attached; that is, the right to always put the author's name in every work, and the right to the integrity of the works cannot be removed or eliminated without any reason, although copyright or related rights have been transferred. Moral rights can be transferred after the author dies to:

- a. The recipient party through a testament;

⁴⁰ Andi Kurniawati, 2020, *Law Enforcement against Copyright Violation through Internet Media*, Scientific Journal of Law and Society Dynamics, Volume 19 Number 1, 19-32, Legal Studies Hasanuddin University, Makassar, p. 19

- b. The recipient party, for other reasons, receives such rights under the provision of laws and regulations.

However, Article 5, paragraph (3) states that the recipient can release or refuse to exercise such rights through a written statement.

Economic rights are rights owned by the author or copyright holder to obtain economic benefits from his works or the right to allow or prohibit others to publish and/or reproduce his works. According to Article 9 paragraph (1), the author or copyright holder has the economic right to:

- a. publication of the Works;
- b. reproduction of the Works in all their forms;
- c. translation of the Works;
- d. adaption, arrangement, or transformation of the Works;
- e. distribution of the Works;
- f. performance of the Works;
- g. announcement of the Works;
- h. communication of the Works; and
- i. rental of the Works.

Then, when referring to Article 9, paragraphs (2) and (3), all forms of economic rights mentioned above are the rights of the author or copyright holder, which means, in this case, any other person who wants to exercise these economic rights and/or use the works as a commercial purpose must obtain permission from the author or copyright holder.

C. Academic Paper in Copyright Protection

1. Definition of Academic Paper

All science or technology needs to be researched, improved, and developed its function and role to create a change. Positive changes can lead to progress, and progress does not escape from the existence of science. One way to progress is to make observations, studies, and

research from academic sources on the occurring phenomena, which are then conveyed in academic paper.

An academic paper is a written work describing the research results or studies that a person or a group has carried out.⁴¹ An academic paper is preceded by a research idea that comes from many things, for example, the gap between existing facts and theories, complex problems that need to be solved, continuation of previous research, and so on.⁴² Therefore, it needs to be compiled with academic methods and systematics that have been determined and can be accounted for.⁴³

Awidyamartaya describes an academic paper as a work that contains and examines a particular problem using academic principles.⁴⁴ In line with the book written by Totok Djuroto and Bambang Supriyadi, it is explained that an academic paper is a series of writing activities based on research results that are systematically arranged based on academic methods to obtain academic answers to the problems studied.

Based on the above definition, an academic paper is a work of thought from the results of research conducted by a person/group as a contribution to science. Along with that, academic paper can be categorized

⁴¹ Zulmiyetri, Safaruddin, and Nurhastuti, 2020, *Writing Academic Work*, Jakarta: Kencana, p. 1.

⁴² Hera Khairunnisa, *et.al.*, 2022, *Concepts and Tips in Writing Academic Paper*, Banten: Pascal Books, p. 2.

⁴³ Ridwan Abdullah Sani, 2020, *Tips for Writing a Quality Academic Paper*, Malang: Intelegensia Media, p. 1.

⁴⁴ Ana Rosmiati, 2017, *Basics of Academic Writing*, First Printing, Surakarta: ISI Press, p. 84.

as a protected work, as Article 1 paragraph 3 of the Copyright Law stipulates that:

“Works mean any academic, artistic, and literary works resulted from inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in a tangible form”,

Furthermore, in Article 40 paragraph (1) letter a of the Copyright Law:

"Protected Works, which include academic, artistic, and literary works, comprise:

- a. Books, pamphlets, typographical arrangement of published written work, and all other written Works;"

2. Types of Academic Paper

Academic paper is vital in developing science, especially in disseminating information on new knowledge, findings or ideas around us.⁴⁵

An academic paper is a work that supports the learning process for every group, such as students, lecturers, researchers, and so on.

In general, the types of academic paper that are most widely published by each group are as follows:⁴⁶

- a. Research Report is a form of writing that contains a record of activities that include suggestions related to something that is being worked on;
- b. A paper is a written work that discusses a problem based on a literature review or research results. Students generally write them regarding a specific lesson assignment;

⁴⁵ Kasiyan, *et al.*, 2019, *Training of Academic Writing to Improve Teacher Professionalism*, Journal of Community Service and Empowerment, Volume 3 Number 1, 47-53, Language and Art Negeri Yogyakarta, Yogyakarta, p. 49.

⁴⁶ Ridwan Abdullah Sani, *Op.Cit.* p. 91.

- c. A Working Paper is a written work that is more in-depth than a paper by presenting proposals related to the discussion of a subject matter based on data in the field or literature that will be discussed in work meetings, seminars, symposiums, and so on;
- d. Undergraduate Thesis is an academic paper submitted to achieve a bachelor's degree. The thesis is written based on literature study or field research as an academic prerequisite that must be taken and can be accounted for by the author in the examination session;
- e. Magister Thesis is an academic paper submitted to achieve a master's degree. A thesis has a deeper level of discussion than an undergraduate thesis, where stronger arguments support the statements and theories in it;
- f. A dissertation is an academic paper submitted to achieve a Doctoral degree; a dissertation contains a discussion of more complex and in-depth problems than a thesis. This dissertation is written under the guidance of a promoter or lecturer who holds the rank of professor.

D. Legal Protection

1. Definition of Legal Protection

Indonesia is a state of law based on Pancasila and the 1945 Constitution, which both respect and guarantee human rights and equality before the law. As stipulated in Article 28 D paragraph (1) of the 1945

Constitution: "Every person shall be entitled to recognition, guarantee, protection, and equitable legal certainty as well as equal treatment before the law".

Satjipto Raharjo argues that legal protection is an effort to organize various interests in society so that there are no clashes between interests and one can enjoy all the rights granted by law.⁴⁷ Philipus M. Hadjon defines legal protection as protecting a person's dignity and human rights as a legal subject from being abused.⁴⁸

On the other hand, Barda Nawawi Arief defines legal protection as a condition of fulfilling someone's rights and obligations to individuals and groups.⁴⁹ Meanwhile, Setiono argues that legal protection can also be interpreted as an action or effort to protect the public from any arbitrary actions of the authorities that are not under the rule of law, to create peace and harmony so that it allows humans to enjoy their dignity as human beings.⁵⁰

Based on several definitions related to legal protection, it can be concluded that legal protection is an effort guaranteed by the state against

⁴⁷ Satjipto Rahardjo, 2003, *The Other Side of Indonesian Law*, Jakarta: Kompas, p. 121.

⁴⁸ Philipus M. Hadjon, 2007, *Legal Protection for Indonesian People*, Surabaya: PT Bina Ilmu, p. 2.

⁴⁹ Ndaru Noer Prabowo, 2015, *Legal Protection of Unregistered Copyright of Photographic Works According to Law Number 28 of 2014 on Copyright*, Thesis, Jember University, Jember, p. 12.

⁵⁰ Theresia Louise Pesulima, Yosia Hetharie, 2020, *Legal Protection of Occupational Safety for Health Workers Due to the Covid-19 Pandemic*, Journal SASI, Volume 26 Number 2, 280-285, Legal Studies Pattimura University, Ambon, p. 283.

a person as a legal subject. It is intended to protect his dignity from arbitrary actions not under the rule of law, which is realized in legal certainty.

2. Theory of Legal Protection

The law aims to provide justice, certainty, and benefits.⁵¹ The goal of providing benefits is related to the understanding that law is a rule that has a function to protect human interests.⁵² The diverse interests of humans require organization by limiting particular interests and granting power in a measured manner.⁵³ It is in line with Satjipto Raharjo's view by quoting Fitzgerald's view on the purpose of the law, that legal protection is present to coordinate various interests in society by regulating the protection and limitation of these various interests.⁵⁴

Soerjono Soekanto explained that the most important thing about the legal system is the values of the functioning of the law itself. Because, in essence, the law exists to resolve conflicts between human interests.⁵⁵ Hence, the substance of a law must provide benefits for human life. It is aligned with the Legal System theory proposed by L.M. Friedmann that the legal system is influenced by 3 (three) subsystems, namely: 1. Legal substance, 2. Legal structure, 3. Legal culture. Legal System theory

⁵¹ Agus Setiawan, 2017, *Legal Reasoning that is Capable of Creating Legal Objectives Proportionally*, Journal Law Mimbar Justitia, Volume 3 Number 2, 204-215, Legal Studies Katolik Parahyangan University, Bandung, p. 207.

⁵² Ibrahim Ahmad, 2018, *Plan and Strategy for Improving Community Legal Awareness*, Gorontalo Law Review, Volume 1 Number 1, 15-24, Legal Studies Gorontalo University, Gorontalo, p. 16.

⁵³ Luthvi Febryka Nola, 2016, *Efforts for Integrated Legal Protection for Migrant Workers*, Journal Negara Hukum, Volume 7 Number 1, 35-52, Pusat Penelitian Badan Keahlian DPR RI, Jakarta, p. 40.

⁵⁴ *Ibid.*

⁵⁵ Ibrahim Ahmad, *Loc.Cit.*

explains that the substance of a law must be a rule that can be obeyed; for instance, the rules are clear and not multi-interpreted, not vague, synchronous, and bring benefits to social life.⁵⁶

Conflicts between human interests, as stated by Soerjono Soekanto, frequently cause problems; this is because human interests are in connection with human dignity in fulfilling their desires and rights that have been regulated under applicable law. Therefore, the law, which has a binding and enforcing characteristic, must be a solution to create peace and harmony in social life.⁵⁷ Legal protection is one of the realizations of legal expediency. Lili Rasjidi and LB Wysa Putra argued that the law must be able to function to create protection that is not only adaptive and flexible but also predictive and anticipatory.⁵⁸ For that reason, legal protection is closely related to or inherent to the nature of the law itself.

3. Principles of Legal Theory

Indonesia has used the Pancasila as the foundation for formulating the principles of legal protection in Indonesia. The position of Pancasila as a *philosophische grondslag* or view of life means that Pancasila is the basis of the state, so an obligation in all state arrangements regarding law, politics, economics and social society must be based on and refer to Pancasila.⁵⁹ It

⁵⁶ *Ibid.*, p. 17.

⁵⁷ Anisa Nur Saftiani, 2022, *Legal Protection for Men as Victims of Treatment that Degrades Honor and Dignity in the Perspective of Human Rights (Cases of Obscene Acts Against Men)*, Thesis, Pasundan University, Bandung, p.9.

⁵⁸ *Ibid.*

⁵⁹ Ministry of Finance of the Republic of Indonesia, 2020, Pancasila as Philosophische Grondslag and the Position of Pancasila in Relation to *Theorie Von Stufenbau der Rechtsordnung*,

is in line with Hadjon's view that the basis of the principle of legal protection in Indonesia is the principle of legal recognition and protection of human dignity based on Pancasila.⁶⁰

According to Phillipus M. Hadjon, the principles of legal protection for the people based on Pancasila are as follows:⁶¹

- a. Principle of recognition and protection of human rights. The principle of legal protection for citizens against government action is based on recognizing and protecting human rights, which leads to the limitation and placement of obligations for society and government. To formulate the principles of legal protection for the people based on Pancasila, begin with the concept and declaration of human rights.
- b. The principle of the rule of law underlies the formation of legal protection for the people against government acts. It was attributed to the principle of recognition and protection of human rights, which gets the main place and is said to be the purpose of the rule of law.

<https://www.djkn.kemenkeu.go.id/artikel/baca/13144/Pancasila-Sebagai-Philosopische-Grondslag-Dan-Kedudukan-Pancasila-Dikaitkan-Dengan-Theorie-Von-Stafenufbau-Der-Rechtsordnung>, accessed on April 29, 2023.

⁶⁰ Phillipus M. Hadjon, *Op.Cit.*, p. 38.

⁶¹ *Ibid*, p. 19.

4. Forms of Legal Protection

According to Muchsin, legal protection can be divided into 2 (two), as follows:⁶²

- a. Preventive legal protection is a protection provided by the government that aims to prevent infringements. It is contained in laws and regulations to avoid a violation and provide indications and limitations in carrying out an obligation.
- b. Repressive legal protection is final protection in the form of sanctions such as fines, imprisonment, and additional penalties in case of a dispute or an offence that has been committed.

Similar to Muchsin's opinion, Philipus M. Hadjon also categorizes legal protection into two forms, as follows:⁶³

- a. Preventive legal protection is a form of legal protection for the people by being allowed to submit objections or opinions before a government decision gets a definitive form. The aim is to prevent conflict. Because preventive legal protection is related to conflict prevention, this legal protection has a significant impact on government actions in terms of their freedom of movement.
- b. Repressive legal protection is a form of legal protection that is more focused on dispute resolution. This category of legal protection also includes the process of legal protection by general

⁶² Muchsin, 2003, *Protection and Legal Certainty for Investors in Indonesia*, Surakarta: Universitas Sebelas Maret, p. 20.

⁶³ Philipus M. Hadjon. *Op.Cit.*, p. 4.

courts and administrative courts in Indonesia. This repressive legal protection leads to legal protection closely related to dispute resolution. In other words, repressive legal protection is the same as law enforcement because the process of dispute resolution up to the stage in court is a part of law enforcement.

E. Settlement of Copyright Dispute

1. Civil Lawsuit

Article 1365 BW stipulates: "Every unlawful act by which damage is caused to another person shall oblige the person through whose fault the damage is caused to compensate for the damage".

Referring to the explanation of Article 1365 BW, in suing based on unlawful acts, the following elements must be fulfilled:⁶⁴

- a. The existence of an act, either doing something (in the active sense) or not doing something (in the passive sense). In this case, Not doing something is someone who does not perform legal obligations.
- b. The act is against the law, considered against the law if the act violates the applicable law, infringes the rights of others guaranteed by law and is contrary to legal obligations, or the action is contrary to decency in society;

⁶⁴ Indah Sari, 2020, *Unlawful Acts (PMH) in Criminal Law and Civil Law*, Legal Journal Dirgantara, Volume 11 Number 1, 53-70, Legal Studies Dirgantara Marsekal Suryadarma University, Jakarta, p. 67.

- c. The existence of fault on the part of the perpetrator, where an action is considered to contain elements of fault that can be held liable if it fulfills the following elements:
 - 1) There is an element of intention;
 - 2) There is an element of negligence and
 - 3) There is no justification or excuse such as force majeure, self-defense, insanity, and others;
- d. There is a loss to the victim; the loss in this context is material (actual loss suffered) and/or immaterial loss (loss of benefits or advantages that may be received in the future);
- e. There is a causal relationship between the act and the loss, where before requesting liability, it is necessary to prove the causal relationship from the perpetrator to the victim in advance. This relationship concerns the loss suffered by the victim due to the unlawful act committed by the perpetrator.

In line with the explanation of Article 1365 BW in the event of copyright violation, Article 99 paragraph (1) of the Copyright Law provides that the author and/or copyright holder is entitled to file a lawsuit for compensation to the Commercial Court for copyright violation that occurred. Furthermore, Article 99 paragraph (4) of the Copyright Law stipulates that at the request of the party who is harmed by copyright violation, then:

- “... Authors, Copyright Holders, or Related Rights owner may request an interlocutory injunction to the Commercial Court to:
 - a. Order the seizure of the Works that have been published or reproduced, and/or Reproduction tools used to produce the

- Works resulting from a violation of Copyright and Related Rights products; and/or
- b. Cease the activity of Publication, Distribution, Communication, and/or Reproduction of the Works resulting from a violation of Copyright and Related Rights products.”

The procedure for civil suits for copyright violation is regulated in Article 100 of the Copyright Law as follows:

- 1) A claim for Copyright Violation is submitted to the chief justice of the Commercial Court
- 2) The claim, as referred to in paragraph (1), is recorded by the clerk of the Commercial Court in the register of court cases on the date the claim is filed;
- 3) The clerk of the Commercial Court provides a receipt that has been signed on the same date as the date of registration;
- 4) The clerk of the Commercial Court submits the claim application to the chief justice of the Commercial Court not later than 2 (two) days from the date the claim is filed;
- 5) Within a period of not later than 3 (three) days from the registration date, the Commercial Court sets the trial day;
- 6) Notices and subpoenas of parties are carried out by the bailiff not later than 7 (seven) days after they are registered.

2. Criminal Charges

Article 105 of the Copyright Law stipulates that the right to file a civil lawsuit for copyright violation and/or related rights does not reduce the rights of the author and/or holder of related rights to sue criminally. Article 120 of the Copyright Law stipulates that the criminal offense of copyright violation is a complaint delict, so the perpetrator can only be prosecuted if the affected party files a complaint. Related criminal provisions or penalties for copyright violation are set in Article 112 to Article 119 of the Copyright Law, which confirms that copyright violation by eliminating, altering, or damaging copyright management information for commercial use shall be punished

with imprisonment of 2 (two) years and/or a maximum fine of IDR 300 million.

The settlement of copyright offenses and related rights is the same as other general criminal offenses. However, there are particular matters regulated in the Copyright Law, such as the investigation of copyright crime, as stipulated in Article 110 paragraph (1) of the Copyright Law, which rules that:

“In addition to investigating officials of the Indonesian National Police, certain Civil Servant Officials in ministries who hold government affairs in the field of law specially authorized as investigators as referred to in the Law that regulates the criminal procedure to conduct investigations on Copyright and Related Rights crimes”.

Then, related to evidentiary to a criminal offense of copyright violation is outlined in Article 111 paragraph (1) and paragraph (2):

- 1) Evidence proceedings conducted during the examination process at the level of investigation, prosecution, and examination in court may be performed by utilizing information and communication technology per the provisions of laws and regulations.
- 2) Electronic information and/or documents are recognized as evidence per the laws and regulations.

Based on the explanation above, there are some differences in the prosecution of criminal copyright violation with action on other criminal offenses, wherein the process is given to the authority of certain civil servants within the ministry that organizes government affairs in the field of law to investigate copyright crime. However, if the civil suit and criminal

charges coincide, the civil case will take precedence as a dispute resolution process.⁶⁵

F. Sales Agreement

1. Definition of Sales

Etymologically, sales are defined as exchanging property for property. In terminology, sales have the definition of an agreement to bind each other between the seller, who is the party who delivers or sells the goods and the buyer, who is the party who pays or buys the goods.⁶⁶

Sales have a variety of definitions; according to experts, R. Subekti defines sales as a reciprocal agreement between the seller and the buyer where the seller promises to transfer ownership of an item and the buyer promises to pay in return for the transfer of ownership of the item.⁶⁷ Meanwhile, Wijono Prodjodikoro defines sales as an agreement between the parties to bind themselves with the obligation to deliver an item, and the other party must pay the price agreed upon by both.⁶⁸

Sales are also regulated in Article 1457 BW, an agreement by which one party binds himself to deliver an item and the other party to pay the promised price. Based on these various explanations, it can be seen that sales is an agreement that binds the parties (seller and buyer) where the seller must deliver the goods that are the object of sales to the buyer and

⁶⁵ Agustinus Pardede, *et.al*, *Op.cit.*, p. 71.

⁶⁶ Suharyadi, 2017, *E-Commerce Transactions whose Objects are Prohibited by Law in Legal Perspective*, Thesis, Muhammadiyah Malang University, Malang, p. 21.

⁶⁷ R. Subekti, 1995, *Variety of Agreements*, Bandung: PT Citra Aditya Bakti, p. 1.

⁶⁸ Wirjono Projodikoro, 1991, *Civil Law on Certain Agreements*, Bandung: Sumur, p. 17.

the buyer is obliged to pay for the goods that are the object of sales to the seller.

2. Terms of Agreement

Sales is a binding agreement between the seller and the buyer; the terms of sales are subject to the conditions for the terms of an agreement based on Article 1320 BW, as follows:

- a. There must be consent of the individuals who are bound thereby.

The agreement of the parties is intended as the willingness or will of the parties to bind themselves to each other; therefore, there is no element of coercion allowed in the agreement.⁶⁹

- b. There must be a capacity to conclude an agreement.

The intended capacity is the ability to perform legal acts, that is, carried out by people who are adults. Therefore, determining the benchmark for this capability must be adjusted to the measure of maturity based on the provisions of existing laws and regulations.

- c. There must be a specific subject matter.

A specific subject matter is defined as the object of an agreement. Therefore, in making an agreement, the object of the contract must be clear and agreeable. The agreement object in question is an obligation that the parties must fulfill.⁷⁰

⁶⁹ Salim H.S, 2003, *Contract Law: Contract Drafting Theories and Techniques*, Jakarta: Sinar Grafika, p. 33.

⁷⁰ Ahmadi Miru, 2007, *Contract Law and Contract Drafting*, Jakarta: Raja Grafindo Persada, p. 69.

d. There must be a permissible cause.

Abdulkadir Muhammad argues that what is meant by a permissible cause is that the substance of the agreement does not conflict with laws and regulations, decency, and public order.⁷¹

The provisions related to the terms of the agreement contain two elements, namely:

- a. The subjective element is associated with the subject of the agreement, which is the aspect of consent and capacity of both parties. If this element is not fulfilled, the contract can be canceled;
- b. Objective element related to the object of the agreement, which is to the specific object and a permissible cause. If this element is not fulfilled, it will be null and void, meaning the agreement is considered never to exist.

In addition to containing the provisions in Article 1320 BW, a sales agreement must also include the elements of the agreement, which are:⁷²

- a. The essential element is an element that must exist in an agreement; if these elements do not exist, then the contract cannot exist. For example, in a sales agreement, the essential elements are the existence of the object of sales and the price; if this does not exist, it cannot be said to be a sales agreement.

⁷¹ Abdulkadir Muhammad, 1992, *Obligation Law*, Bandung: Alumni, p. 20.

⁷² Fitri Novia Heriani, 2021, *Aspects to Understand in Drafting an Agreement*, <https://www.hukumonline.com/berita/a/aspek-aspek-yang-harus-dipahami-dalam-menyusun-perjanjian-lt60b440be526f4/>, accessed on June 18, 2023.

- b. A natural element is an element of the agreement that is regulated by law but can be ruled out by the parties. Therefore, the parties decide whether the natural element is included in the contract; if it is not included, it does not cancel an agreement.
- c. An accidental element is an element that is not regulated in the law but by the parties and can be regulated in the sales agreement. So, this element is entirely the desire of the parties to be included in a contract.

3. Principles of Sales Agreement

The principles generally found in agreements are also in sales agreement. In the agreement law, there are several principles, but in general, the principle of contract consists of:

- a. The consensualism principle refers to the Article 1320 paragraph (1) BW. In this article, it is determined that one of the conditions for the validity of an agreement is the agreement between the two parties involved. The principle is intended that agreement is a conformity between the will and statements of both parties.
- b. The freedom of contract principle refers to Article 1338 paragraph (1) BW, which states that "all agreements made legally shall apply as laws for those who make them". This principle means that everyone can enter into an agreement even though it has not been regulated by law; however, it must not conflict with laws and regulations, decency, and public interests.

- c. The binding force principle (*pacta sunt servanda*) refers to Article 1338 paragraph (1) BW, which states that "*all agreements made legally shall apply as laws for those who make them*". This principle means that the agreement is as binding for the parties as the law is for the parties; therefore, the parties are obliged to fulfill the provisions that have been agreed upon.
- d. The good faith principle refers to Article 1338 paragraph (3) BW, which states that "*the agreement shall be executed in good faith*". Good faith is divided into 2 (two) forms: objective and subjective. Objective means heeding decency, while subjective is determined by a person's inner attitude.
- e. Personality principle refers to Article 1340 BW, which states, "An agreement is valid only between the parties who make it. An agreement cannot bring loss to third parties; third parties cannot benefit from it, other than in matters regulated in Article 1317". This principle means an agreement only applies to the parties bound in the agreement, not those outside the contract.

All of these principles are interrelated and cannot be separated. They must be applied simultaneously, take place proportionally and fairly, and serve as a binding frame for the contents of the agreement.

G. Digital Platform

1. Definition and Function of Digital Platform

Starting from the general definition, a Digital Platform is a digital-based media that aims to facilitate people's lives.⁷³ Digital platform can also be defined as building blocks that provide essential functions for technology systems and serve as a foundation where products, technologies, or services that complement each other can be developed.⁷⁴ It is undeniable that in this current digital era, digital platform are a necessity for society. Various kinds of digital platform are widely used by almost all circles, for example, social media platform such as Instagram and WhatsApp as a means of entertainment and communication.

Digital platform can also be defined based on a non-technical view that presents platform as commercial networks or markets that enable transactions in the form of business-to-business, business-to-customer, or even customer-to-customer.⁷⁵ Therefore, online shopping platform emerge such as Shopee Indonesia and Tokopedia using digital platform to carry out the sales business, which connects businesses with customers. The definition of an online shop can be interpreted as a process of purchasing goods or services by consumers to sellers in real-time, without waiters, and

⁷³ Dea Nur Zuraidah, *et al.*, 2021, *Exploring Digital Platforms in Programming Language Technology*, Teknois Journal: Academic Journal of Technology-Information & Science, Volume 11 Number 2, 1-6, Information System, Islam Negeri Sunan Ampel University, Surabaya, p. 2.

⁷⁴ Ahmad Asadullah, Isam Faik, and Atreyi Kankanhalli, 2018, *Digital Platform: A Review and Future Directions*, Twenty-Second Pacific Asia Conference on Information Systems, Yokohama, p. 2.

⁷⁵ *Ibid.*

through the internet network. Meanwhile, an online shop is a means to offer goods and services via the internet, where visitors can see the goods in the online shop, either through photos, videos, etc.⁷⁶

Online shopping has proven to be able to support people's lives. If in the past shopping to fulfill needs must go to a place that provides needs, in a current digitalized era it is enough to go through a digital platform that offers goods according to the wishes of consumers. A digital platform that provides facilities in the sales process is divided into 2 (two), namely, E-commerce and Marketplace.

2. General Overview of E-commerce

E-commerce is referred to as electronic commerce. It means electronic media and the internet for transacting goods and services. E-commerce involves companies accessing the internet and also information technology, such as electronic data exchange. E-commerce deals with internet vendor websites, which trade goods or services to users directly from the platform.⁷⁷ E-commerce is an online site that sells products or services by setting up its website that directly finds between sellers and

⁷⁶ Ade Faulina, Rahmi Surya Dewi, and Ernita Arif, 2021, *The Phenomenon of Online Shopping as a Lifestyle and Strategy for the Economic Empowerment of Muslims during the Covid Pandemic 19*, Journal of Islamic Community Development, Volume XII Number 1, 46-59, Andalas University, Padang, p. 47.

⁷⁷ Vipin Jain, Bindoo Malviya and Satyendra Arya, 2021, An Overview of Electronic Commerce (E-commerce), Journal of Contemporary Issues in Business and Government, Volume 27 Number 3, 665-670, Department of Management Teerthanker Mahaveer, Moradabad, p. 665.

consumers of the goods or services provided. E-commerce is also divided into several categories, such as:⁷⁸

- a. B2B (*Business to Business*);
- b. B2C (*Business to Consumer*);
- c. C2C (*Consumer to Consumer*);
- d. C2B (*Consumer to Business*);
- e. B2G (*Business to Government*);
- f. G2C (*Government to Consumer*)

In Indonesia, e-commerce is regulated in several regulations, such as Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as ITE Law) and Law Number 7 of 2014 concerning Trade (hereinafter referred to as Trade Law), and Government Regulation Number 80 of 2019 on the Introduction of Electronic Systems and Transactions. The ITE Law regulates the definition, understanding, legal basis, organizers, legal relationships of electronic transaction actors as well as accurate information, and protection of consumers, while in the Trade Law e-commerce is regulated in Article 65.⁷⁹

3. General Overview of Marketplace

Marketplace can be defined as a place or "forum" that becomes a bridge to interact between sellers who sell products and consumers as

⁷⁸ Mahir Pradana, 2015, *Classification of E-commerce Businesses in Indonesia*, MODUS, Volume 27 Number 2, 163-174, Telkom University, Bandung, p. 170.

⁷⁹ Dewa Gede Ananta Prasetya, Anak Agung Sagung Laksmi Dewi, and Ni Made Puspasutari Ujjanti, 2022, *Juridical Review of the E-commerce Industry in Conducting Online Transaction Activities*, Journal of Legal Construction, Volume 2 Number 2, 365-370, Legal Studies Wamadewa Univeristy, Bali, p. 367.

parties who need products or goods from sellers.⁸⁰ In Regulation of the Minister of Trade Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems, it is stipulated that:

“Marketplace is a facility provider where part or all of the transaction process is in an electronic system in the form of a commercial website or application as a forum for merchants to be able to post offers of goods and/or services”.

Marketplace is an online shopping platform created by a third party to provide a place for sellers to be more easily found by consumers. There are several examples of marketplaces in Indonesia, namely:⁸¹

- a. Shopee Indonesia;
- b. Tokopedia;
- c. Bukalapak;
- d. Lazada; and
- e. Blibli.

Indonesia also regulates sales activities through marketplaces. Regulations related to these activities can be found in the ITE Law, Trade Law, and Government Regulation Number 80 of 2019 concerning the Introduction of Electronic Systems and Transactions.⁸²

⁸⁰ Dyah Ochtorina Susanti, 2022, *The Electronic Market (Marketplace) On Electronic Trade (E-commerce) In Indonesia*, Journal Notariil, Volume 7 Number 1, 24-31, Legal Studies Jember University, Jember, p. 25.

⁸¹ Romindo, *et al.*, 2019, *E-Commerce: Implementation, Strategy, and Innovation*, Jakarta: Yayasan Kita Menulis, p. 23-27.

⁸² Emmy Febriani Thalib, Ni Putu Suci Meinarni, 2019, *Juridical Review of Marketplace Based on Indonesian Legislation*, Journal of Law and Justice IUS, Volume 7 Number 2, 194-205, STMIK STIKOM, Bali, p. 198.