



## Legal Aspect of Copyright Transfer by Early Childhood

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### Abstract

Valuable possessions or inheritances are objects that can be inherited, inheritance in this case is not only about tangible objects such as land, houses, jewelry, and so on, but works of art are also the inheritance rights of the creator that can be inherited. to his family. This article applies normative juridical research methods to analyze the copyright transfer process and identify its implications for Article 1320 of the Civil Code. Research highlights that while copyright is transferable, such actions can violate positive legal provisions. As a result, this study offers a new perspective on the conflict between copyright transfer and existing legal norms, providing a basis for a rethink of relevant regulations. The implications of these findings could impact on further understanding of the relationship between copyright, inheritance, and legal protection of minors.

**Keywords:** *early childhood, copyright transfer, legal aspect*

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### Introduction

Laws and regulations are the main pillars in maintaining the order of society and creating improvements in various aspects of life (Al-Farouqi et al., 2020). The community has witnessed a number of significant improvements that have emerged as a result of efforts to create and update regulations. This regulation has a vital role in ensuring a sense of legal certainty, providing guidelines for the conduct of individuals and business entities, and ensuring the protection of the rights and obligations of all parties (Maha & Harahap, 2023; T. P. B. Putra & Handayani, 2023).

In addition, the development of science and technology has brought profound changes in various sectors of life. These advances not only affect the way we work and interact, but also have a profound impact on the economy, the environment, and society as a whole. National development efforts also play an important role in advancing society, creating jobs, and reducing social inequality (Akbar et al., 2022). None of this may have been achieved without regulations supporting and directing these developments.

In the midst of advances in science and technology, there is an increase in activity in the technology sector marked by the emergence of innovative discoveries. However, ironically, public and market participants' awareness of the importance of protecting Intellectual Property Rights is often minimal. Intellectual Property Rights are the foundation that protects intellectual property rights such as patents, trademarks, copyrights, and others (Arsalova, 2023; Asril et al., 2021). It is an essential element that supports innovation, creation, and development in a variety of fields, including art and literature. Therefore, it is important for the public and market participants to more honestly understand and support the protection

of Intellectual Property Rights in order to continue to create innovation and creativity that can encourage the progress of society as a whole (Awatari & Purwanto, 2020).

Due to the commercial value in individual intellectual property (IPR) and the fact that IPR has been around since the beginning, it is now used in international trade. This is the basis of the Trade Related Intellectual Property Rights Agreement (TRIPs), which requires member countries to harmonize domestic rules with international obligations. In accordance with Law Number 7 of 1994 concerning the Ratification of the Agreement on the Establishment of the World Trade Organization or WTO (The World Trade Organization), Indonesia is one of the countries that signed the agreement (Syamsiah, 2021).

Seven categories make up intellectual property rights, or IPRs, including copyrights, patents, brands, geographical indications, trade secrets, plant variety protection, industrial designs, and integrated circuit layout designs (Puspitasari, 2022; Muh. A. D. Putra, 2021). Seven categories of intellectual property rights (IPR) form the legal basis that provides very important protection for rights holders and innovators in various fields. First, copyright protects creative works such as writing, music, visual arts, and software, giving rights holders exclusive control over the reproduction, distribution, performance, and adaptation of their works. Second, patents are a very important form of protection in science and technology, giving holders exclusive rights to create, use, and sell technical innovations or processes over a period of time. Third, trademark rights protect the brand identity and logo of a product or service, preventing others from using the mark without permission. Fourth, geographical indications protect products originating from certain geographical areas that have a certain reputation or unique characteristics. Trade secrets are confidential information that gives a business a competitive advantage, such as secret recipes or production methods. Sixth, the protection of plant varieties relates to new and innovative plant varieties that have been developed by plant breeders, allowing rights holders to control the distribution and reproduction of such plants. Seventh, industrial design and integrated circuit layout design protect the external appearance of products, such as furniture design or integrated circuit layout design in electronic semiconductors, ensuring that design innovations also get recognition and protection. The importance of IPR lies in the drive for innovation and creativity, rewarding individuals and companies who invest time and resources in creating something new, and fostering economic growth and technological development around the world. Through IP protection, we create an environment that supports innovation and the formation of better products. The objects organized by IPR are creations that are the result of human intellect (Bosio, 2021).

Copyright which is one type of Intellectual Property Rights (IPR) is essentially a private right (civil). In the sense that a person is free to seek registration and protection of his Intellectual Property Rights (IPR) or not (Mahendra & Kartika, 2020).

Copyright is one of the important aspects in the concept of intellectual property rights (IPR) (Zarnuji, 2020). This is an exclusive right granted to the owner of an intellectual work, such as books, music, or other works of art. Copyright gives the owner the right to control and protect the work for a certain period of time. This right is permanent, which means that the owner has full control over the work, including the right to allow or prohibit use by others (Arsadi et al., 2022). With copyright, the owner can regulate the rights related to his work, such as reproduction, distribution, and adaptation. Copyright also protects the work from unauthorized use, and this strengthens the owner's right to take legal action against copyright infringement (Dahen, 2022). In contrast, rights temporarily acquired by third parties with the consent of their owners are another mechanism that can be applied in the context of IPR, such as licenses or contractual agreements, which can give third parties the right to use the work for specific purposes, but within the time frame and limitations specified by the owner.

Result An idea generated by human thought and then brought to life through creativity or innovation. Intellectual Property Rights (IPR) is a concept in the realm of technology that is

tied to intellectual predicates that are abstract in nature, so IPR becomes different from material objects in their physical form. For example, a patent is one example of IPR.

Law Number 28 of 2014 concerning Copyright (Copyright Law) is a legal instrument that provides a legal basis for copyright protection in Indonesia. In the Copyright Law, there is a clear definition of what is considered a copyrighted "work". Creation is described as any work that grows from inspiration, ability, thinking, imagination, dexterity, skill, or expertise of an individual which is then embodied in tangible form (Nofianti & Bustani, 2022). It covers various aspects of science, art, and literature, and includes works created by individuals in various fields (Baskoro, 2021; Dana et al., 2021).

Given such an inclusive definition, works in the humanities, arts, and sciences are expressly included in the scope of copyright protection. This means that writers, artists, scientists, and humanities practitioners have exclusive rights to their works resulting from the creative process, research, or creation. This right provides protection against unauthorized use, reproduction, distribution, and copying of these works by others. This encourages innovation, creation, and further research in various fields, as creators feel secure and recognized for their contributions to the development of science, arts, and humanities (Gultom et al., 2021).

Through careful formulation in the Copyright Law, the government creates a legal framework that supports and promotes the development of culture, art, and science (Shilvia et al., 2022). It also provides incentives for creative individuals to continuously innovate and create new works that can benefit society at large (Endria, 2023). As part of the legal system, copyright protection is an important tool in facilitating cultural and intellectual growth and development in Indonesia (Lalaar et al., 2023).

Copyright is the exclusive right of the creator that develops spontaneously based on the declarative principle when a production becomes tangible without prejudice to limitations in accordance with the law (Destyarini et al., 2022; Zarnuji, 2020). Copyright is an inherent and indefeasible right that is protected as long as the inventor is alive and for a number of years after his death (Achmad & Roisah, 2020; Asmaul et al., 2023; Chandrika & Dewanta, 2019). According to the Copyright Act, this period is 70 years. If a right is absolute, it can essentially be declared to have been infringed by anyone and defended against them (Simatupang, 2021).

## Methods

This legal research is a normative legal research that emphasizes the enforcement of positive legal norms (*ius constitutum*), focusing on the implementation and implementation of law in practice. This research is more oriented to the statutory approach related to the exploration and analysis of legal problem formulations. In this study, researchers examine legal regulations that have been described in certain laws, and then identify and evaluate legal concepts that have been made standards of behavior that can be considered appropriate or inappropriate. This kind of normative legal research covers diverse sectors in the legal system that have been regulated in writing. It includes an exploration of how certain legal concepts have been regulated in the framework of previous legislation, and how their implementation has occurred in real practice. In the process, the study applies descriptive techniques, which allow the researcher to carefully document and explain the legal aspects under investigation. The main objective of normative legal research such as this is to provide deep insight into how law functions in specific contexts and how existing legal concepts impact the behavior and decisions of legal practitioners. The results of this kind of research can be used to understand legal implementation, provide practical guidance, and help formulate policies that are more effective in dealing with legal issues that arise in society.

## Result and Discussion

Creation includes works in art, science, literature, and others are objects of copyright. Article 40 paragraph (1) letter f of the Copyright Law states that protected works include the

fields of science, literature, and art. This includes works of art in all media, such as paintings, drawings, engravings, calligraphy, sculptures, or collages. The definition of "image" in the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright article 40 letter f lists, among others, motifs, schemes, drawings, logos, color components, and beautiful typefaces as referred to by the description of "image". The Copyright Law expressly defines any production of works with the phrases "works of art in all forms, such as paintings, drawings," and "paintings in the form of logos". Images, written words, or a combination of both can serve as logos. Understanding the types and logos makes the visual aspect with the help of logo anatomy.

A creation is an intangible movable object. As stated in Article 499 of the Burgerlijk Wetboek (BW), "things" are things and rights that can be governed by property rights. As stated in Articles 503-505, BW also addresses the qualities or characteristics of matter, including (i) (goods) and intangibles (rights), (ii) movable and immovable objects, and (iii) tangible objects, including consumable and non-consumable commodities.

According to Article 16 Paragraph 2 of Law Number 28 of 2014 concerning Copyright, Copyright can be transferred or transferred in whole or in part due to inheritance, grants, endowments, wills, written agreements, or other causes permitted in accordance with the provisions of laws and regulations. Copyright holders are not only creators but can also be owned by other parties through the transfer of rights. One type of undeniable right owned by the creator of a work is the transfer of copyright.

The most basic distinction relates to the terms of the agreement on which it is based. Waqf, grants, and wills are examples of legal instruments that can transfer ownership of intellectual property without the need for an agreement process. Temporary transfer of rights. The element of agreement between both parties is required for copyright through a written agreement.

Transfer of copyright must be done either without a notarial deed or with clear and good writing. Transfer of copyright can be switched or transferred means only economic rights, while moral rights remain attached to the creator. According to Article 5 Paragraph 2 of the Copyright Act, moral rights can not be transferred as long as the creator is alive, but the exercise of such rights can be transferred by will or for other reasons feasible under the law after the creator dies.

Although oral agreements are not prohibited in the Criminal Code, they do not have the same legal force as written agreements in Indonesia. The agreement is signed in writing before a notary or government official which has perfect evidentiary power. This is due to popular misconceptions about the importance of signing formal agreements. Many people also make written agreements that do not meet the requirements for the validity of an agreement outlined in Article 1320 of the Criminal Code.

In Indonesia, the term of copyright protection is generally the lifetime of the creator plus 50 years, or 50 years after the first announcement, publication, or creation-except broadcasting works, which are protected for 20 years from the first broadcast-or indefinitely for the moral right of inclusion of the creator's name on the work and the copyright held by the state on folklore and cultural products of the community that belong together.

Moral rights cannot be transferred while the creator is alive, but after the creator passes away, the exercise of rights can be transferred by will or for other causes in accordance with the provisions of the law. When moral rights are transferred, the beneficiary has the option to surrender or refuse to exercise them, subject to an affidavit stating their acquiescence or refusal.

Protecting the moral rights of the Creator is a very important principle in copyright law. It includes rights granted to actors, such as writers, artists, scientists, and other creators, who create works in fields such as the arts, sciences, and humanities. This moral right includes the right to be identified as the creator of the work, unless otherwise agreed. In addition, moral rights also include the right to prevent distortion, mutilation, or alteration of their creation, as

well as actions that may harm their honor or good name. It is a way to honor and understand individual contributions in the development of culture, art, and science.

In the digital age, electronic information is becoming increasingly important in protecting copyright. Electronic information includes databases that record copyrights, actors, and agreements and terms related to copyright. The existence of this electronic information facilitates the management, monitoring, and protection of copyrights, including the moral rights of perpetrators. The protection of moral rights and the management of copyright information are integral in maintaining a balance between copyright and the public interest. It also plays a role in motivating creators to continue contributing to culture, art, and science, as their rights are recognized and respected. Thus, protecting the moral rights of the Creator is an important prerequisite for advancing innovation and diversity in society.

Moral Rights, as defined in Article 5 paragraph 1 of the Copyright Law of 2014, are rights that are attached forever to their creators, and these rights cannot be eliminated or lost. It refers to the essential rights that the creator has to his work, which lasts forever. In the context of moral rights, creators have the right to use their name on copies used to share their work with the public, including the right to use pseudonyms or aliases, change products in a publicly appropriate manner, change the title and subtitle of their work, and protect their rights in the event of distortion, mutilation, alteration, or other actions that may damage their honor or reputation. This moral right belongs to the creator himself and is not transferable to third parties.

Conversely, the economic rights associated with copyright will pass to a third party if the copyright is transferred. This means that when a copyright holder decides to transfer his or her copyright to another person or entity, the economic rights associated with the work belong to that party. This is the principle stipulated in Article 16 paragraph 2 of the Copyright Law. It is important to understand the difference between these moral rights and economic rights, as copyright transfers have different legal consequences depending on the type of transfer made. Thus, the Copyright Law provides a clear framework for regulating moral rights and economic rights in order to provide appropriate protection for creators and copyright holders.

The transfer of economic rights in the context of copyright can occur through two different modes of action, namely through endowments, grants, and wills or through written agreements (Yusra et al., 2022). These two modes have different legal consequences, especially in terms of the transfer of economic rights.

First, if the transfer of economic rights occurs through endowments, grants, or wills, then the economic rights to the work fully pass to the copyright holder. In this case, the copyright owner has full control over all economic rights related to his work, which includes the obligation to reward the creator in the form of royalties. The legal consequences arising from the transfer of economic rights in this context are based on legal regulations governing endowments, grants, or wills.

Second, if the transfer of economic rights occurs through a written agreement, then the economic rights will transfer to the copyright holder based on the agreement contained in the agreement. In this case, each party involved in the agreement must comply with the agreed rights, obligations and conditions. This agreement usually has a predetermined period of time, and the copyright holder is entitled to receive payment according to the terms agreed in the agreement. It creates a clear legal framework for regulating the economic rights and obligations of the parties involved in the transfer of copyright through written agreements.

Given these differences, the legal system creates a solid basis for safeguarding the rights of creators and copyright holders, and provides a transparent framework for the transfer of economic rights in a variety of contexts and situations involving copyright.

The UUHC regulations, however, only outline the process of transferring copyright. Any transfer of copyright is seen as the result of a contract, and interpretation, such as this greatly affects the ability of the copyright holder to manage economic rights. The legal

relationship that develops in theory begins with various legal activities that culminate in various legal outcomes. The amount of control granted to a non-creator under copyright depends on the type of activity undertaken to transfer it. In terms of economic rights, viz. As a giver of wakaf, hibah, and zakat, the copyright holder can fully or partially according to the creator's wishes, And, if the right is transferred by agreement, it can also be based on the agreement reached between the inventor and the transferee of the right.

In the inheritance system, the conditions listed in Article 2 of the Civil Code are called *rechtsfictie* (basic things). Another interpretation that can be taken from the provisions of Article 2 of the Civil Code states that a child has subjective rights from birth until death, although it should be noted that not every child has the power to give consent or perform legal acts. The preceding descriptions and explanations should be debated for legal clarity. What is the typical age limit for children to be considered adults capable of performing legal acts?

In almost every topic of law, there is a law of authority, although not all legal subjects have prowess. The ability to do the right thing in accordance with the law is referred to as competence. With respect to the competence of an act, the law does not regulate it definitively. The law only partially regulates which is only claimed Incompetence in Chapter 1330 of the Civil Code (Al-Farouqi et al., 2020).

The concept of legal competence is recognized by positive law. According to MM Djojodigono, the ability to perform legal acts is the single factor that distinguishes between adults and immature people. People who are unable to assess and enforce their own interests are those who have not been able to enforce the law. Legally capable persons are those who can analyze risks and protect their own interests. Actions that give rise to rights and obligations are referred to as legal actions themselves. There are two kinds of legal actions, namely unilateral legal actions and two-party legal actions (Awatari & Purwanto, 2020).

Positive law sets an age limit for a person to be considered legally competent to protect the rights of many people. The finesse of positive law includes a number of provisions. This may be due to societal factors at the time the regulation was enacted. As is well known, there are various rules that state that a child is someone under the age of eighteen. These regulations indicate that an adult is a person over the age of eighteen.

The rule in the Compilation of Islamic Law is another rule that regulates the age of majority. According to the Compilation of Islamic Law, a person can be considered an adult at the age of 21 years. This applies to everyone who is not physically or mentally disabled and has never been married. According to the Civil Code, a person is considered an adult when he or she reaches the age of 21. If a person is married, the person is considered an adult according to the Civil Code. Legal capacity does not apply if the individual has an impaired memory, is deaf, or is wasteful. The size of the waste is determined by the judge's approval.

The ability to become a legal subject, especially as a supporter of rights and obligations. In theory, everyone has subjective rights from the womb until death, as stipulated in article 2 of the Civil Code, but not all legal subjects have the ability and competence to perform legal acts. When a child has legal capacity, he/she has the ability to have subjective rights, including the ability to perform legal activities and give or not give permission (Fetum, 2021).

A different right is granted by the provisions of article 2 paragraphs (1) and (2) of the Civil Code, which states that a child in the womb of a woman is deemed to have been born if it is in the child's interest and the child in the womb dies at birth or is deemed to have never existed before or dies when born, which means that the child already has the rights of a legal subject. It is clear from the previous article that what is regulated in the Civil Code, especially article 2, provides legal protection to children still in the womb of their biological mother, as well as the rights that will be enjoyed when the child is born.

Article 1320 of the Civil Code regulates the essential requirements that must be met in order for an agreement to be considered valid (Lalaar et al., 2023; Sari & Kusuma, 2020). There are four main conditions that must be met. The agreement of the parties to the agreement is the first condition. All parties involved must agree with the content of the agreement and enter

into a voluntary agreement. Then, the condition of the capacity to enter into an agreement emphasizes that the parties involved must have legal capacity, namely reaching the age of majority in accordance with applicable law and have adequate mental abilities. In addition, an agreement must have a clear and specific object. The object of the agreement should be easily identifiable, and all parties involved should understand well what the object of the agreement is. Finally, the cause or purpose of the agreement must be lawful. This means that the purpose of the agreement must not involve activities that are illegal, unethical, or violate applicable law. Article 1320 of the Civil Code also limits the ability of certain individuals to enter into agreements. This includes those who have not reached the age of majority, individuals who have been subject to legal sanctions, and in some cases, women in a legal context. This regulation aims to protect individuals who may not have the capacity to make legal decisions independently, while ensuring that all agreements made are valid and in accordance with applicable law.

According to the description above, the difference in age limit as a condition for being categorized as capable of acting according to the law or can be said to be capable of performing legal acts has implications and has juridical consequences for whether or not a person who has the status of a legal subject as a bearer of legal rights and obligations, as well as the validity of all legal actions.

## **Conclusion**

Because copyright is regulated *sui generis* by separate laws, so now Copyright Law No. 28 Year 2014, can not be said that the nature of copyright property is the same as the property according to BW. The procedure for transferring copyright is not entirely based on BW regulations because it is *sui generis*. Even the contractual independence that is regulated by Book III BW has its limitations. One of these restrictions is the prohibition of freedom that clashes with the law, in this case the Copyright Act. The transfer of copyright can be transferred or transferred means only economic rights, while moral rights remain attached to the creator. As long as the creator is alive moral rights can not be transferred, but in its implementation can be transferred by other reasons in accordance with the provisions of the Act which is contained in Article 5 paragraph (2) of the Copyright Act. Copyright can be transferred due to: inheritance, grants, endowments, wills, written agreements, and other causes justified by law in accordance with the provisions of Article 16 paragraph (2) of the Copyright Act. Transfer of Copyright to be stronger and follow then there must be an agreement in it, so that all parties can perform their obligations and get their rights. Regarding the transfer of copyright by early childhood, early childhood is seen as not a legal subject so that it is not yet capable of performing legal acts, therefore in the process of transferring the child guardianship is required by the court. When viewed from the Civil Code Article 1320 transfer of Copyright to early childhood implications violate Article 1320 of the Civil Code which explains that the transfer must be made by legal subjects who are capable, this means that children are classified as subjects who are not yet capable so violate the subjective elements of the agreement. The agreement can be canceled, but it is still considered valid if there is no determination of nullity from the judge.

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