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# Comparative Analysis of Indonesia and China on the Copyright Protection Law for Computer Software

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**Keywords**:

China; Computer Software; Copyright; Indonesia; TRIPs Agreement; WIPO.

**Abstract:** This study examines the copyright regulations on computer software in Indonesia and China, focusing on their alignment with international standards such as the TRIPs Agreement, Berne Convention, and WIPO Copyright Treaty. Using a normative legal research method with a comparative law approach, the analysis identifies key similarities and differences in definitions, rights granted, duration of protection, enforcement mechanisms, and sanctions. Findings show that China has advantages in providing specific regulations, clearer definitions, longer protection periods, and proactive enforcement mechanisms, while Indonesia stands out in the application of performance rights and stronger criminal sanctions. However, both countries still face significant challenges: Indonesia's absence of specific regulations and reliance on a complaint-based enforcement system, and China's relatively weak criminal penalties. The study concludes that adopting best practices from each jurisdiction could significantly enhance the effectiveness of copyright protection for computer software, especially in addressing high rates of software piracy. This analysis contributes to the discourse on intellectual property law reform in the digital era by providing policy recommendations for stronger, more comprehensive legal frameworks.

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## Introduction

The protection of computer software under copyright law is a significant indicator of a country's ability to safeguard intellectual property rights in the face of rapid technological developments. As a global issue, software copyright is governed not only by domestic legislation but also by international agreements such as the TRIPs Agreement, the Berne Convention, and the WIPO Copyright Treaty. These instruments set minimum standards while allowing member states to adopt specific provisions suitable to their legal systems.

In the context of Indonesia and China, both jurisdictions recognize computer

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software as a form of literary work under copyright protection. However, their regulatory approaches differ considerably. Indonesia regulates software copyright generally under Law No. 28 of 2014 on Copyright, without enacting specific legislation dedicated to software protection. Conversely, China complements its general copyright law with the Regulations on Computer Software Protection (2013), which provides detailed provisions on definitions, ownership, and enforcement.

This divergence in legal frameworks raises questions about the effectiveness and comprehensiveness of protection in both countries. Indonesia's reliance on a complaint-based (*delik aduan*) system potentially limits proactive enforcement, whereas China's approach, while more detailed, is criticized for imposing relatively light criminal penalties. These differences are particularly relevant in light of the high prevalence of software piracy in both jurisdictions.

## Methods

This article uses a comparative legal method to analyze how Indonesian and Chinese laws protects copyright for computer software. The research focuses in reviewing key legal instruments, including international treaties, national legislation, and regulations related to software protection. The study examines and compares the scope of protection, registration systems, and enforcement mechanisms in each jurisdiction while identifying legal gaps and enforcement challenges through a systematic review of relevant legal texts and policy documents. The findings are then used to highlight best practice and provide recommendations for improving copyright protection for computer software.

## Results and Discussion

The regulations of copyright protection for the computer software are one of the tools to analyze that the country has a strong law or not and also to understand whether the law in the country needs to be strengthened or need to be compatible with international regulation or not. Hence, the analysis in this chapter included the regulation in international and each country (Indonesia and China), then the significant similarities and differences between Indonesia regulation and China regulation for protecting computer software, the problem from the provision under those regulations, and last the good lesson from Indonesia and China regulation for the copyright protection of computer software which could be followed by each country.

### Regulations on Copyright Protection for Computer Software

#### 1. International Regulations

The definition of international regulations in this research is included

international treaty or international convention, which is one of the essential sources of International law (Sefriani, 2010). The international treaty becomes the first instrument for the implementation of international relation in each country and as the tool to improve international cooperation. Hence, the International regulation, especially for the Intellectual Property is vital to be analyzed in this research as the guidance for analyzing the correspondence of both country regulation with those International regulations (Sefriani, 2010).

Intellectual Property is not only a national issue but also international issues. Therefore, Intellectual Property is discussed and agreed upon under International Conventions such as Paris Convention, Berne Convention, Rome Convention, Washington Treaty, GATT (General Agreement on Tariff and Trade) 1994, DSU (Dispute Settlement Understanding), TRIPs Agreement (Sudaryat & Permata, 2010), and WIPO Copyright Treaty. Specifically, the protection of copyright for computer software was regulated under three International Regulations as follows:

a) Trade-Related Aspects of Intellectual Property Rights (TRIPs)

In April 1994, countries in the world concluded the Uruguay Round trade negotiations under GATT, these Uruguay Round Agreement established World Trade Organization (WTO) and included TRIPs Agreement. TRIPs Agreement is an Intellectual Property treaty that significantly strengthens Intellectual Property rights worldwide (Harris, 2004).

Under the TRIPs Agreement, protection on computer program regulated in Article 10 Paragraph (1) stated that computer programs are entitled to protection as literary works under the 1971 revision of Berne Convention TRIPs Agreement states that computer programs in the form of source and object code are protected under copyright law as literary work, which regulated further under the Berne Convention (TRIPs Agreement, 1994).

Further, Article 11 about Rental Rights stated that the author or successor of a computer program has the right to authorize or prohibit the commercial rental unless the computer program is of secondary importance so that the rental right would not be recognized (TRIPs Agreement, 1994).

TRIPs Agreement stated that computer program protected under copyright, however, may also be protected under patent as stipulated under Article 27.1, which stated that a patent must be given for any new invention, whether its a product or a process, in any field of technology, as long as it is new, creative and can be used in industry should follow the rules in paragraphs 2 and 3 (TRIPs Agreement, 1994). The Article not explicitly mentioned a computer program or computer software. However, the Article mention "*in all fields of technology*" this may be included computer program means that computer program may be protected under patent.

Therefore, the TRIPs Agreement provides the freedom to the entire contracting party to choose whether computer programs shall be protected under the copyright or patent even for other Intellectual Property and choose the best Intellectual Property right for their nation in the field of computer programs.

b) Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention was adopted in 1886 that deals with the protection of works and authors right. It provides creators protection by control how their works are used, by whom, and on what terms. According to three basic principles and contains a set of provisions deciding the minimum protection to be granted, and specific provisions available to developing countries that want to use them (WIPO, 2020).

Berne Convention not explicitly mentioned computer program, but as mentioned in the TRIPs Agreement that it should be protected as literary works under the Berne Convention. Therefore, Article 2 of the Berne Convention concerning literary and artistic work shall be deemed valid as protecting computer programs.

Further, Article 2 Paragraph (7) allows each member country to decide how its laws and requirements will apply to works of applied art, industrial designs, and models, including the type of protection they will receive (WIPO, 2020).

c) WIPO Copyright Treaty (WCT)

The WIPO Copyright Treaty (hereinafter referred to as WCT) is a particular agreement under the Berne Convention that accord with the protection of works and the rights of authors in the digital environment. This Treaty also deals with two subject matters that shall be protected by copyright such as computer programs, compilations of data or other materials which called as databases (WIPO, 1996).

Article 4 stated that computer programs are protected as literary works no matter how they are expressed and Article 42 explains that copyright only protects the way ideas are expressed, not the ideas, procedures, methods, or mathematical concepts themselves (WIPO, 1996).

Equivalent with the TRIPs Agreement and Berne Convention, WCT stated that computer program is protected as literary works under copyright. However, it only extends to the expression, not to ideas, methods of operation, or mathematical concept, which means that the algorithms are not copyrightable.

Further, the author of a computer program has a right upon the right of rental as regulated under Article 7 (WIPO, 1996). This means they have the exclusive right to allow or prohibit the rental of the original or copies of their work, except when the program is a virtual object.

Those International Regulations offer flexibility to every member state to decide their legislation in a protected computer program in a specific way. Those Treaties are a benchmark for every contracting party to follow the development of Intellectual Property rights. For instance, Indonesia and China decide to protect computer program under copyright law.

## 2. Indonesian Regulation

The copyright protection for computer software in Indonesia is regulated under Law No. 28 Year 2014 concerning Copyright (referred to as Law 28 of 2014). This regulation promulgated on October 16, 2014, under State Gazette No. 266 Year 2014 consists of 19 Chapters and 126 Articles (Law No. 28 of 2014 on Copyright Law, 2014).

The copyright protection for computer software regulated under several Articles, such as Article 1 Paragraph 9, stated the computer software definition. Indonesia has not stated the definition of computer software precisely. However, computer software is included under the definition of computer program.

Article 11 Paragraph (2) stated the exception of implementing the economic right to rent creation or copy for a computer software. On the other hand, computer software is not the essential object for the rent. Further, Article 40 Paragraph (1) letter s stated that a computer program is a protected creation.

Article 45 about the allowance in copying the computer software only for one time or adapted computer software without permission from the right holder or owner. Otherwise, Article 46 Paragraph (2) letter d stated the prohibition of copying for personal interest. Lastly, Article 59 Paragraph (1) letter e about the protection period of computer software is 50 years since the first announcement. The regulation for computer software is not only under the abovementioned Articles since every Article is related (Law No. 28 of 2014 on Copyright Law, 2014).

Law 28 of 2014 is the only regulation in Indonesia which regulated the copyright protection for computer software. There is no further and specific regulation which regulated the copyright protection for computer software. There is no discussion about whether Indonesia will be enacted specific regulations about the protection of computer software.

## 3. China's Regulation

The fundamental framework of the copyright law system in China consists of laws, administrative regulations, administrative authority rules, normative documents, and others (National Copyright Administration of the People's Republic of China, 2017). Copyright law is one of the fundamental laws in China's copyright law system and plays a significant role in regulating social copyright interest relations and social behaviour tangled in copyright.

China has regulated the protection for computer software under Copyright Law 2010 (referred to as Copyright 2010), and Regulation for Protection of Computer Software 2013 (referred to as Regulation 2013). Copyright Law 2010 is the general regulation for protecting computer software and Regulation 2013 is the specific regulation for protecting computer software. Hence, these regulations are the legal basis for China in handling cases about computer software.

Copyright 2010 adopted on September 7, 1990, by Standing Committee of the seventh National People's Congress and amended for the first time on October 27, 2001, under Decision of 24th Session of the Standing Committee of the ninth National People's Congress, and amended for the second time on February 26, 2010, under the Decision of the 13 Session of the Standing Committee of the Eleventh National People's Congress which consist of 6 Chapters and 61 Articles.

The computer software protection was regulated under Article 3 Paragraph (8) stated that computer software is considered "Works" that are protected under Copyright Law. Then, Article 9 Paragraph (7) stated that the copyright holder of computer software is the right of a lease.

The author of computer software enjoyed the right of authorship under Article 16 Paragraph (1). Further, Article 47 Paragraph (8) stated that every person without permission from the owner or oblige of computer software might be considered infringement.

Article 53 stated that the distributor would bear legal liabilities if they cannot prove the lawful sources of their distribution or lease. Lastly, Article 59 states that China will regulate further for the protection of computer software, and will dissemination will be established separately.

Besides that, Regulations on Computer Software Protection was promulgated by Decree No. 339 of the State Council of the people's Republic of China on December 20, 2001, amended for the first time under the Decision of the State Council on Annulling and Amending Certain Administrative Regulation. This regulation is categorized as the administrative regulation on January 8, 2011 and amended for the second time based on the Decision of the State Council on Amending the Regulations on Computer Software Protection on January 30, 2013 (Regulations on Computer Software Protection, 2013).

Regulation 2013 categorizes as the Administrative Regulation because it is enacted by the State Council and based on the hierarchy of China laws and regulations. There are five hierarchies Constitution, Laws enacted by NPC and SCNPC, Administrative Regulations enacted by State Council, Local's People's Congress Regulation enacted by local people's congress, and their standing committees at the provincial level, and last, there are Rules which including Government Rules and Ministry Rules (Liu, 2011).

The hierarchy is created in order to make the laws and regulation in China is structured. The Constitution is the highest laws and regulation, and every law and regulation under Constitution must be suitable with Constitution, and in case there is a contradiction, the lower laws and regulation must be revised according to the Constitution (Wei, 2020). Regulation 2013 is the administrative regulation in line with the Constitution and Laws (Copyright Law in China). Therefore, it is reliable sources to be analyzed in this research.

**The Significant Similarities and Differences between Indonesia and China's Regulation on Computer Software**

According to the Article 1 Paragraph (1) of Law 28 of 2014 copyright is an exclusive right of the author that automatically embodied to the author based on the declaratory principle after the works embodied in tangible form (Law No. 28 of 2014 on Copyright Law, 2014). The Article defines that the Author may take advantage of their creation, and no other party may take advantage without the Author's permission.

Besides that, China does not regulate the definition of copyright, specifically under its regulation. According to Copyright 2010 directly stated copyright owner and their rights under section 1 without the definition of copyright.

Regulation 2013 only defines the definition of a computer program, software developer, and the software copyright owner. Since this regulation is the specific regulation, therefore the general term may not include under this regulation.

Although, China does not regulate the definition of copyright under their regulation such as Indonesia. However, the both countries' copyright protection is equal with international regulation which is extended to protect expressions, not to ideas, procedures, methods of operation or mathematical concepts as such which may be seen through the type of copyright protected under regulations.

According to Law 28 of 2014, Indonesia's government was not defining the definition of computer software precisely. They only define the definition of computer software that regulated under Article 1 Paragraph (9) which stated that computer program is a set of instruction in the form of languages, codes, schemes, or others that intended for a computer to perform specific functions or to achieve certain outcomes. Indonesia only stated the computer program definition because computer software is defined as the part of a computer program equal with the definition from Black's Law Dictionary (Law No. 28 of 2014 on Copyright Law, 2014).

Instead, according to Article 3 of Regulation 2013, computer program is a set of coded instructions that can be run by devices with information-processing abilities, like computers, or a set of symbolic instructions that can be automatically

turned into coded instructions to achieve specific results (Regulations on Computer Software Protection, 2013).

However, China regulates further that a computer software means computer program and relevant document, as stated under Article 2. This Article makes society understand that computer software is also a computer program.

Hence, the definition of a computer program under Indonesia and China regulation is intended for computer software. However, Indonesian regulation may confuse society since the regulation did not state that computer software is a computer program, unlike China.

A computer program definition under International regulations is not explicitly defined, which means that the member party may define its definition. However, according to Article 10 of the TRIPs Agreement, computer program in the form of source or object code shall be protected under literary works under Berne Convention (1971) (TRIPs Agreement, 1994) that equal with Article 4 of WIPO Copyright Treaty stated that computer program is protected under literary works (WIPO, 1996). Both countries' regulation was in line with the TRIPs Agreement since, under Law 28 of 2014 and Regulation 2013, a computer program is protected as literary works (Law No. 28 of 2014 on Copyright Law, 2014).

According to the Article 1 Paragraph (4) of Law 28 of 2014 the copyright holder of computer software under Indonesian law is the Author as the copyright owner or the party who received right from the Author or other party who obtain subsequent right (Law No. 28 of 2014 on Copyright Law, 2014).

Moreover, Indonesia stated several exceptions for the Author such as stated under Article 33 that the work comprises by two persons or more, the Author is the person who was leading and supervise the completion of the works. If there is no person as abovementioned, the Author will be regarded to the person who compiles the works without prejudice to the respective copyright of each party.

Article 34 stated if the works designed by a person and represent and executed by other persons, the person regarded as the Author us the person who was designing the works. Then, Article 35 stated that if the works produced by Author under the employment of civil service institution, the Author will be regarded to the government agency (Law No. 28 of 2014 on Copyright Law, 2014).

According to China under Article 9 of Regulation 2013 the copyright holder of software is the developer except there are other provisions under Regulation 2013 (Regulations on Computer Software Protection, 2013), for instance Article 10 provide an information that copyright ownership is based on written agreement if it is created jointly by two or more persons, legal entities or other organizations (Regulations on Computer Software Protection, 2013). If there is no agreement and the software can be split into separate parts, each person owns their part but not

the shole program. If it cannot be split, everyone shares the copyright and must agree on its use, no one can unfairly stop others from using it, and profits must be shared fairly. When software is developed on commission, the copyright owner must be decided in a written contract. If there is no contract or no clear agreement, the commissioned party owns the copyright. If software is developed under a government-assigned task, the copyright ownership and usage must be stated in the assignment letter or contract. If not stated, the copyright belongs to the organization that took on the task (Regulations on Computer Software Protection, 2013). If an employee creates software as part of their job, the employer owns the copyright when it was made for a specific work task, natural result of the employee's job, or mainly made using the employer's resources, and the employer can choose to reward the employee.

Both regulations stated that the copyright holder of copyright for computer software is the person who creates the software. However, both regulations stating the different provision for the exception of the copyright holder that China regulation is more providing that the parties may agree with the holder of copyright in the written contract. Instead, Indonesia defines specifically that the copyright holder for comprising works is the person who was leading and supervises the works, and if the works produced by the author with the civil service institution will be regarded to the government agency.

The China regulation was stating the copyright holder in the more specific ways and give freedom to the person to choose their holder by a written agreement, however since the regulation of Indonesia is not a specific regulation regarding the protection of computer software. Therefore, the copyright holder was stating in the general view, not in specific term.

Further, International regulations do not state the provision about who should be the copyright holder of computer software, and the regulations only stated about the Authors which means that Authors is the copyright holder for the computer software. The contracting party may create its own provision for several exceptions to define who is the copyright holder.

According to Article 9 of Law 28 of 2014, the author or copyright holder has the economic rights to publish, reproduce, translate, adapt, arrange, transform, distribute, perform, communicate, and rent their works or copies of them (Law No. 28 of 2014 on Copyright Law, 2014).

Indonesia regulation recognizes nine types of right for the copyright holder, which are publication, reproduction, translation, adaptation, distribution, performance, communication, and rental. The entire rights are granted to the copyright holder, and copyright holder has a right over the entire types of right.

Based on Article 8 of Regulation 2013 stated that the software copyright

owner enjoys the rights to: decide whether to release the software to the public; claim authorship and have their name shown; modify or rearrange the software; make copies; sell or give copies to the public; rent it out for a fee (unless the software is not the main object of the rental); make it available online for public access; translate it into another language; and enjoy any other rights granted to software copyright owners.

Therefore, there are nine rights owned by the copyright holder under China regulation such as divulgation, developers, alteration, reproduction, distribution, rental, communication, translation and other rights. The other rights mean in this regulation that the copyright owner may authorize others party to exploit his copyright and transfer his copyright to other parties.

Inline with each other, both regulations allow the holder of the copyright to conduct publication or divulgation, alteration or transformation, reproduction, distribution, rental, communication, and translation. Both regulations also allow the holder to transfer and authorizes other people to exploit his works.

Both regulations also in accordance with International Regulations, for instance, according to the WCT there are three rights that may be enjoyed by the Author which are right of distribution, right of rental and right of communication. Besides that, the TRIPs Agreement also stated the right of rental (WIPO, 1996).

Article 59 of Law 28 of 2014 stated that the period for the protection of computer software is 50 years (Law No. 28 of 2014 on Copyright Law, 2014). Instead, based on Article 14 of Regulation 2013 stated that the protection of software copyright for a natural person is lifetime and for a legal entity is 50 years (Regulations on Computer Software Protection, 2013).

The Indonesia and China regulation for the protection of computer software have their owned period of protection. Indonesia only allows the holder to be protected upon his software for 50 years than the work becomes open to the public, contrary, the time protection for software copyright in China is lifetime and 50 years after the holder death. Therefore, the China regulation is to provide more protection to the copyright holder than the Indonesia regulation.

According to Article 7 of the Berne Convention and WCT stated the term of protection should be the life of the author and 50 years after his death. Further, the TRIPs Agreement stated that the term of protection is anytime. However, the term of protection is does not allow less than 50 years. Therefore, China regulation for the copyright protection of computer software is equal with the entire International regulations and Indonesia regulation is equal with TRIPs Agreement which is protecting the copyright in 50 years.

**Analyze the Problems from Both Countries Regulations**

According to the similarities and differences between Indonesia and China regulation, both regulations is in accordance with the International regulations. However, there is still an issue that Indonesia and China regulations must be strengthened. This issue occurred because several problems occurred under both country regulations, which are as follows:

**1. The Enactment of Specific Regulation for the Copyright Protection of Computer Software**

The enactment of specific regulation for computer software protection in China is one of the great ways in protecting computer software because with the specific regulation that only regulates about the protection of computer software provide convenience to the legal enforcement in interpreting the regulation.

By the specific regulation, the society can understand every content of the regulation because in the regulation define specifically about the protection of computer software and with a specific explanation. This is also one of the ways to decrease the indifferent of society to the law.

Opposite, Indonesia regulates the protection of computer software under Copyright Law as the general law for every copyright. This is confusing the legal enforcement and also society as well because there is a jumble of the rules. For instance, based on Article 9 of Law 28 of 2014 there are nine types of rights that should be enjoyed by the Author. Since this Article is regulated in a general way, so this Article is also applying for the computer software. It is questioned that the performance of the works under Article 9 of Law 28 of 2014 also apply for the computer software or not since the performance rights are familiar with the music works (Reid et al., 2024). The regulation did not provide further explanation of the meaning of performance rights in this regulation. If the regulation provides a further explanation about performance right for computer software, it could be a great lesson for other countries.

As known, there are many types of works protected under copyright, so it will be impossible to enact one by one the type of works into one specific regulation. However, computer program or computer software is one of the significant issues in Indonesia. Indonesia still cannot settle the problem for copyright protection of computer software which provides many damages to the copyright holder and also the state and one of the significant issues in Indonesia. Therefore, it will be the best suggestion to enact the specific regulation for the protection of computer software in Indonesia in order to follow the current development and satisfy the society needs.

## 2. The Application of Complaint System

Under Article 120 of Law 28 of 2014 stated that copyright protection of Indonesia is applying complaint system (*delik aduan*) which means that the legal enforcement in Indonesia will handle copyright cases if there is someone who complains to the legal enforcement agency in Indonesia (Efendi, 2016).

In the previous regulation, Indonesia applying regular system (*delik biasa*) as stated under Article 66 Law No. 19 Year 2002 concerning Copyright that the State has a right to bring criminal charges against copyright infringement (Law No. 19 of 2002 on Copyright, 2002). This Article is the proof that the previous copyright law of Indonesia is applying *delik biasa* because *delik biasa* can be defined as the system that can be sued without the complaint and impose obligation from the legal enforcement agency to follow up on criminal offences actively (Kurniawati M., 2015).

Further, China regulation does not state the system expressly to prosecute the copyright infringer however under Article 24 stated if the act harm public interest, the legal enforcement institution has a right to cease infringement without the complaint from the aggrieved party, which based on Indonesia system is categorizes as *delik biasa*.

By applying *delik biasa* in ceasing copyright infringement, the government can actively participate in reducing copyright infringement in his country. It is also effective in decreasing the copyright infringement especially for the computer software infringement because when the country is applying *delik aduan* the legal enforcement agency is passive in ceasing copyright infringement and they just waiting for the complaint from other parties. If there is no complaint, no action from the legal enforcement as well, which only make the use of unlicensed computer software is spreading more in their country.

Since the society in Indonesia is lack of understanding of the copyright, the application of *delik aduan* in Indonesia is not effective in reducing unlicensed computer software, and the legal enforcement agency in Indonesia is not conducting their duty to protect the society (Arliman, 2015). The reason is not every author in Indonesia known that his computer software is being used by other people without licensed until there is an activity conducted by the Government in Indonesia in checking every people and office in Indonesia. It means that there should be a participation of legal enforcement agency in finding the case of copyright infringement not only based on a complaint from the author.

In fact, the previous regulation for the protection of copyright in Indonesia has stated *delik biasa* but the copyright infringement cases in Indonesia still high. The problems that occurred is not because of the *delik biasa* application in Indonesia, but because the enforcement of the copyright regulation in Indonesia is still weak. This

statement was equal with the research from Fadia Fitriyanti, the lecturer from law faculty in the University of Muhammadiyah Yogyakarta in the discussion of her book titled "*HaKi: dalam Teori dan Praktek*" stated that "the low legal enforcement is also the problem for the exitance of intellectual property in Indonesia." (Fitriyanti, 2011).

Hence, *delik biasa* under Law No. 19 Year 2002 as the previous regulation for the protection of copyright in Indonesia is not the problem because of the high level of copyright infringement in Indonesia. However, one of the problems in the high level of copyright infringement in Indonesia is because of the enforcement of the copyright itself.

By the amendment from *delik biasa* into *delik aduan* under copyright law in Indonesia is not made the copyright infringement in Indonesia is decreasing. However, the changes in that system made the legal enforcement agency in Indonesia passive or careless about the protection of copyright, especially computer software. Hence, it may be better if the *delik aduan* under Law 24 of 2014 could be amended into *delik biasa* for the better enforcement of copyright law in Indonesia.

### 3. Copyright Infringement Sanctions

According to the Law 28 of 2014 the penalties given to the copyright infringer is considered as weak because, for the criminal prosecution, the infringer will grant forfeit for around IDR 1,000,000,000. to IDR 4,000,000,000. or equal to US$ 68,865.30 to US$ 275,461.20 (1 US$ is 14,521 Rupiah accessed on 5 November 2020 at 12:25 UTC+7) and 4 years to 10 years imprisonment. Further, the regulation also stated that the owner of copyright could propose compensation to the commercial court and the amount of compensation is based on the decision of the court, can be full or partial of the gain from the infringer (Law No. 28 of 2014 on Copyright Law, 2014).

Instead, Regulation 2013 does not state the criminal sanction for the copyright infringement of computer software. However, the criminal sanction for the copyright infringement in China has stated under Article 217 of PRC's Criminal Law stated that the people who conduct copyright infringement would be imprisonment for three years until seven years depending on the circumstances (Law No. 28 of 2014 on Copyright Law, 2014).

Hence, the abovementioned explanation between Indonesia and China regulations. China specific regulation does not provide criminal sanction. The regulation only provides civil sanction and administrative sanction. However, China recognizes the criminal prosecution for copyright infringement.

Based on the sanction provided in China criminal law for copyright infringement, the imprisonment is relatively weak than as provided under

Indonesia and China does not state the fined for criminal sanction. By weak criminal sanction provided under the regulation, it will make the citizen feel that commit infringement is not a big deal since the fined is not genuinely high since the time for imprisonment is around three years until seven years.

Further, China regulates the civil procedure for the computer software infringement with clear explanation and provide a legal effect to the infringer because the regulation stated clearly that the compensation must be the actual losses, the total illegal losses from the infringement or if cannot be decided maximum 500,000 yuan which quite a high price.

Therefore, the criminal procedure in China regulation is feeble than the civil procedure in protecting computer software. China government attempt to consider the compensation for the copyright owner in order to make the owner grant the entire right over his creation.

Instead, Indonesia regulation was more forceful for the criminal procedure than the civil procedure. Indonesia provides high fined and imprisonment to the infringer while the civil procedure is not defined clearly. The compensation decides based on the judge of commercial court and no determination the minimum or maximum of the compensation, which seems to make the owner of the copyright can grant a little compensation from the losses he gets. It will give loses to the owner of computer software than the welfare.

Hence, it will be better if both country regulation provides powerful criminal and civil sanction which may decrease the use of unlicensed computer software since both countries are still considered as the country with high use of unlicensed computer software in Asia. For instance, the U.S Copyright Act provide a relatively high penalty to the infringer with maximum $150,000 per infringed work and in several cases, the infringer would be penalized with imprisonment for up to five years (Khadka, 2015).

**Analyze the Good Lesson from the Both Countries Regulations**

**1. The Good Lesson from Indonesian Regulation**

The good lessons from Indonesia regulation are the provision for performance right for computer software and the powerful criminal sanction for the piracy cases in Indonesia.

As stated under Indonesian regulations, one of the rights grants to the copyright owner for his computer software is performance right. The regulation explained about the moral rights and economic rights of the performers (Law No. 28 of 2014 on Copyright Law, 2014).

Basically, performance is not definite to the physical action of a human being to present the work to another person (Reid et al., 2024). For instance, a singer

singing his song, and orchestra playing a symphony. Therefore, most of the performance right is intended for music, film and stage but is it better to apply performance right for computer software similar to the Indonesia regulation for copyright?

When talking about copyright, there is one word called as a license which based on the Article 1 Paragraph (20) of Law 28/2014 stated that "License means a written permission granted by the copyright holder or related rights owner to other parties to exercise the economic rights over their works or related rights product under certain condition". Therefore, the meaning of license is written permission for the people to exploit the creation from the copyright holder (Law No. 28 of 2014 on Copyright Law, 2014).

In computer software, the person who wants to use the original version of computer software should purchase the license first, which a certain amount of money in order to use the entire function of that computer software. Under the TRIPs Agreement, the software licenses are built under the literary work in copyright as reproduction right (Perry & Watt, 2006).

There is an issue that performance right is excellent for computer software licensing as also stated by Mark Perry and Stephen Watt on their article about "performance rights for software" that performance rights are the better umbrella for Intellectual Property right in order to support software licensing (Perry & Watt, 2006).

Performance rights seizure the nation when and how a work may be performed such as a play or music may be performed in front of a live audience or by radio. The performance right granted to the performer through a contract with the copyright holder and the contract consist of when, how and under what conditions the work could be performed.

To be noted that, every performance is protected and usually could co-exist with other rights. Therefore, the concept of a performance right for computer software is illustrated by the hypothetical family of related works such as a stage play The Dukes of Wrath, the anime version, and the Java program rendering the same cartoon. These related works have abstract work, the physical copy and the performance of the work. Each of them is different and regulated under different legal theory. For instance, a physical copy should be regulated under reproduction right.

The reason that performance right is a better milestone for the country to protect the computer software and the protection of performance right for computer software could be specified that the software may only be performed by the licensee, any employee of the licensee, performed only on a specified computer, and only may be performed for one or for specific times or for unlimited times

during the particular period. Those are the limits of performance rights when it is applying for computer software.

Through protecting computer software under performance rights, the actual value of computer software could be demonstrated that a copy of computer software may consist of literary worth, instructional worth, and artistic worth. By the protection of code performance, the Intellectual Property framework will reflect the nature of computer software. Further, performance rights would provide a more realistic and accurate reflection of the use of the resource with the adoption of utility models, software services center online, and other remote execution of code.

Therefore, performance rights for computer software, as stated under Indonesian regulation, could be a good lesson that may be followed by China in protecting computer software. However, protecting computer software under performance rights would be adequate to protect computer software if the enforcement is entirely conducted.

As explained before, under Indonesia regulation for copyright provides criminal sanction for copyright infringement, particularly for the piracy with a massive amount of fines and an excellent time for imprisonment (Law No. 28 of 2014 on Copyright Law, 2014). This is one of the excellent provisions from the Indonesian regulation in order to reduce copyright infringement. With the massive amount of fines and excellent time imprisonment, the people in Indonesia anticipate conducting copyright infringement. This Article also gives more protection to the copyright owner over his creation.

Therefore, the good lesson from Indonesian regulation for the copyright protection of computer software is applying performance rights and powerful criminal sanctions which could be followed by another country in order to strengthen the copyright protection for computer software in their country.

### 2. The Good Lesson from China's Regulation

There are several good lessons from the China regulation for the protection of computer software which are as follows:

a) Define computer software

The definition of computer software is essential to be defined because there is confusion regarding computer programs and computer software. According to the Ashwin van Rooijen the term computer software and a computer program are used interchangeably (Rooijen, 2010) which means that term computer software can be used for a computer program and computer program can be used for computer software.

Further, there is also statement stated that "the person as software engineering is automatically become programmer, but a programmer is not

necessarily a software engineering" (Bastian, 2019) means that computer software can be a program but a program cannot be a software because the software is a broad term that includes program and program is a narrow term that consists of instructions executed on the computer (Narang, 2017).

Hence, by explaining that computer software is defined as a computer program under China regulation, it eases the reader or society in reading the regulation and gives sense to society that computer software and a computer program can be used interchangeably.

b) Powerful compensation for a copyright infringer

As mentioned before, China regulation provides marvelous provision for the compensation in case there is copyright infringement for computer software. Regulation 2013 stated clearly the compensation that must be granted to the copyright owner for his computer software with actual losses, the entire illegal gain or 500,000 yuan.

This Article is one of the excellent articles form China regulation for the protection of computer software because by defining clearly the compensation and providing quite a significant amount of compensation, the infringers will hesitate to conduct infringement. Further, the computer software owner will realize that if there is infringement over his computer software, the owner will grant serious compensation, and the total losses may be covered up.

c) The Administrative Sanction

The other good lessons from China is the implementation of administrative enforcement for copyright infringement for computer software and the regulation also provide a powerful administrative sanction to the infringer as stated under Article 24 "concurrently be fined 100 yuan for per copy, or not less than one time but not more than five times the value of the product and not more than 200,000 yuan" (Law No. 28 of 2014 on Copyright Law, 2014). This administrative sanction was imposed by NCAC as the central administrative bodies and other administrative bodies in the provincial and/or local.

The administrative sanction provided under regulation grant a relatively the infringer which is fined for 100 yuan or equal to $15,16 (1 US$ is 6,60 Yuan accessed on 11 November 2020 at 11:27 UTC+7) per copy means that for one copy, the infringer would be fined for 100 yuan and if the infringer reproduces the creation for 100 than the infringer would be fined for 1000 yuan (151,60). Further, the regulation also provides that not more than 200,000 yuan means that the infringer would be not fined for more than 200,000 over his infringement.

Hence, the amount of administrative sanction under China regulation is not considered as a high amount. However, the administrative provision stated by China

and administrative enforcement applied in China is the excellent point that can be followed by Indonesia in reducing copyright infringement.

d) Term of protection for computer software

According to the China regulation, the period for protecting computer software in China is lifetime and 50 years after his death. This provision is one of the most advantageous provision for the author of computer software because the author will get an exclusive right for his computer software until passed away and still protected for 50 years after his death.

The author grants many royalties if there are people who want to use his computer software and will be protected if there are people who want to use his computer software without permission. The author gets full protection over his creation which can provide passion to the China citizen in creating a new creation and make the development of computer software more developed.

e) The regulation for the legal enforcement agency for the participation in ceasing computer software infringement

Article 24 of Regulation 2013 stated that the legal enforcement agency in China has a right to cease infringement and impose fine to the infringer if they commit an act of infringement that damages the public interest. The legal enforcement also has a right to confiscate materials, tools and equipment if categorized as a serious circumstance. The activities conducted by the China legal enforcement agency are without permission from the computer software owner.

This is also one of the best points from the China regulation because it proved that the legal enforcement agency has enormously influenced in reducing the use of unlicensed computer software in China and provide enormous impact for the protection of computer software in China. By the interference of the legal enforcement agency, the protection of computer software in China became more effective and strengthened the protection for the computer software developer over his creation.

Therefore, the good lessons from China regulation which could be followed by another country are specific regulation for the computer software protection, the long term in protecting computer software, powerful compensation, and the provision in appointing legal enforcement agencies to participate in protecting computer software.

## Conclusion

Indonesia and China have both aligned their regulations with international copyright standards, particularly in recognizing computer software as a form of literary work. However, key differences remain in terms of legislative structure,

enforcement mechanisms, and the balance between criminal and civil remedies. China's regulatory framework benefits from having specific legislation, clear definitions, longer protection periods, and proactive enforcement measures, whereas Indonesia demonstrates strength in applying performance rights and imposing stronger criminal sanctions. Nonetheless, both countries face challenges: Indonesia in its lack of specific legislation and reliance on complaint-based enforcement, and China in its relatively light criminal penalties.

The study recommends that Indonesia consider enacting specific legislation for computer software protection and adopt more proactive enforcement practices, while China could strengthen its criminal sanctions to match its robust civil remedies. By adopting each other's best practices, both jurisdictions can enhance the protection of software copyright and reduce the prevalence of software piracy, thereby supporting innovation, economic growth, and compliance with international intellectual property standards.

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