

**THE COPYRIGHT LAW OF THE REPUBLIC OF INDONESIA  
CONSOLIDATED TEXT OF LAW NO. 6/1982  
AS AMENDED BY LAW NO. 7/1987 AND LAW NO. 12/1997**

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**ELUCIDATION OF LAW OF THE REPUBLIC OF INDONESIA  
NO. 12 OF 1997  
ON AMENDMENT OF LAW NO. 6 OF 1982 ON COPYRIGHT  
AS AMENDED BY LAW NO. 7 OF 1987**

THE COPYRIGHT LAW  
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CHAPTER I

GENERAL PROVISIONS

Part One

Meaning of Several Terms

Article 1

1. Author means a person or some persons jointly upon whose inspiration a work is produced, based on intellectual ability, imagination, dexterity, skill or expertise manifested in a distinctive form and is of a personal nature.
2. Work means any result of an Author's work in any distinctive form whatsoever which shows originality in the field of science, arts and literature.
3. Copyrights Holder means the author as proprietor of the copyright, or any person who receives the right from the Author, or any other person who subsequently receives the right from the aforesaid person.
4. Publication means the reading, voicing, broadcasting, or distribution of a work, by utilising whatever means and in such manner that such work is capable of being read, heard or seen by any other person.
5. Reproduction means to increase the number of a work, by making the same, closely similar or resemble work using

- either the same or different materials, including to change the form or mode of a work.
6. Portrait means any picture taken by whatever means and with whatsoever equipment portraying the face of a person together with or without other parts of the body.
  7. Computer program means a program which is specially created to enable a computer to carry out certain functions.
  8. Performer means an actor/actress, singer, musician, dancer or a person who performs, acts, shows, sings, communicates, recites, or plays a music composition, drama, dance, literary work or other kinds of artistic works.
  9. Producer of phonogram means a person or legal corporate body that in the first time records or has the initiative to finance the activity of recording voice or sound of a performance as well as other kinds of voice or sound.
  10. Broadcasting organisation means an organisation which runs broadcasting, either a Government Broadcasting Agency or Private Broadcasting Agency being a legal body that broadcasts a broadcasting work through wire or wireless transmissions or other electronic systems.
  11. Copyright Office means an organisation within the Department which undertakes the tasks and assignment in the field of copyrights.

## Part Two

### Function and Nature of Copyrights

#### Article 2

- (1) Copyright means an exclusive right of an author or a recipient of the right to publish or reproduce a work, or to give permission therefore without prejudice to restrictions pursuant to the prevailing laws and regulations.

- (2) An author and or a recipient of a copyright on cinematographic work or computer program shall have the right to give permission or to prevent another person whom without his approval rents out the work concerned for commercial purposes.
- (3) Provisions concerning the right to give permission or to prevent the rental referred to in paragraph (2) shall also apply to the producer of phonogram.

### Article 3

- (1) A copyright shall be deemed to be a movable good.
- (2) A copyright may move or be transferred either in whole or in part by:
  - a. inheritance;
  - b. donation;
  - c. testaments;
  - d. expropriation;
  - e. agreement, which must be made in a written deed, provided that the agreement only concerns the authority stated in the deed.

### Article 4

A copyright that is owned by the author, and likewise a copyright that has not been published which after the death of its author becomes the property of his heirs or legates, may not be confiscated.

### Part Three

#### Author

### Article 5

- (1) Unless proven otherwise, the person deemed to be the author is:

- a. the person whose name is registered in the General Register of Works and the official announcement of registration referred to in Article 29.
  - b. the person whose name is mentioned in a work or announced as the author of a work.
- (2) Unless proven otherwise, the person giving a lecture shall be deemed to be the author of a lecturer that is not written and for which there is no notification of the identity of the author.

#### Article 6

If a work consists of several separate parts that were created by two or more persons, the author shall be deemed to be the person who led and supervised the completion of the entire work, or if there is no such person, the person who compiled it, without prejudice to individual copyrights to parts of the work.

#### Article 7

If a work designed by someone is realised and worked out by other persons under his guidance and supervision, the author shall be the person who designed the work.

#### Article 8

- (1) If a work is made within an official service for another person in the scope of employment, the other party for whom and whose service the work was made, within that other party's official scope of authority, shall be the copyright holder, unless there has been another arrangement between the two parties, without prejudice to the right of the maker as the author if the use of the work is expanded beyond the official service.
- (1a) The provision referred to in paragraph (1) shall also apply to a work made by another party based on an order which is carried out within an official relationship.

- (2) If a work is made within the scope of employment or based on an order, a party who makes such a work shall be deemed as the author and the copyright holder, unless otherwise agreed by the two parties.

#### Article 9

If a legal entity announces that a work has originated from it without mentioning a person as the author, then the legal entity shall be deemed to be the author, unless proven otherwise.

#### Part Four

#### Copyright to Works of Unknown Authors

#### Article 10

- (1) The State shall hold the copyright for works from prehistoric remains, historical and other national cultural objects.
- (2)
  - a. Works of popular culture which are commonly owned, such as stories, legends, folk tales, epics, songs, handicrafts, choreography, dances, and other artistic works shall be maintained and protected by the State.
  - b. The State shall hold the copyright to works referred to in paragraph (2)a outside the country.
- (3) Further provisions on copyrights held by the State referred to in this Article shall be regulated further in a Government Regulation.

#### Article 10A

- (1) If the author of a work is unknown and the work has not been published, the State shall hold the copyright on such a work for the sake of the author.
- (2) If a work has been published and the author of which is unknown or the name printed on such work is only a

pseudonym, the publisher shall hold the copyright on the work for the sake of the author.

## Part Five

### Works Protected under Copyright

#### Article 11

- (1) In this Act, a protected work shall be the work in the field of science, arts and literature which includes:
  - a. books, computer programs, pamphlets, typographical arrangement of published works, and all other written works;
  - b. sermons, lectures, addresses and other works of utterance;
  - c. visual aid made for educational and scientific purpose;
  - d. songs or music with or without lyrics, including arts of karawitan and phonograms;
  - e. dramatic works, dances (choreographic works), puppet shows, pantomimes;
  - f. performances;
  - g. broadcasting works;
  - h. all forms of art, such as paintings, drawings, engravings, calligraphy, carvings, sculptures, collage, applied arts in the form of handy-crafting;
  - i. architecture;
  - j. maps;
  - k. batik art;
  - l. photography;
  - m. cinematographic works;
  - n. translations, interpretations, adaptations, anthologies, and other works as a result of changing of form of mode.
- (2) Works referred to in paragraph (1) letter n are protected as a work of its own without prejudice to the copyright over the original work.

- (3) The protection referred to in paragraphs (1) and (2) shall include any work that is not or has not yet been published, but which has already been in an obvious form which would enable its reproduction.

## Article 12

There shall be no copyright to:

- a. any result of open meetings of the Highest State Institutions and High State Institutions and other constitutional institution;
- b. laws and regulations;
- c. court decisions and judicial orders;
- d. state addresses and government official speeches;
- e. awards of arbitration boards.

## Part Six

### Copyright Restrictions

## Article 13

There shall be no infringement of copyright for:

- a. publication and reproduction of the symbol of the State and the national anthem in accordance with their original nature;
- b. publication and reproduction of anything which is published by or on behalf of the Government, except if the copyright is declared to be protected by law or regulation or by a statement on the work itself or at the time the work is published;
- c. repetition, either in whole or in part, of news from a news agency, radio or television broadcaster, and newspaper not less than 1 x 24 (one times twenty four) hours counted from the initial publication of such news, and the source thereof shall be fully cited.



## Article 14

Provided that the sources are fully cited, the following shall not be deemed as copyright infringement:

- a. the use of a work of another party for the purpose of education, research, scientific thesis, report writing, criticising or reviewing an issue, provided that it does not prejudice the normal interest of the author;
- b. the excerpt of a work of another party, in whole or in part, for the purposes of advocacy within or outside the court;
- c. the excerpt of a work of another party, in whole or in part, for the purposes of:
  1. lectures of which the purpose is solely for education and science;
  2. free-of-charge exhibitions or performances, provided that it does not prejudice the normal interests of the author.
- d. reproduction of scientific, artistic and literary works in Braille for the purposes of the blind, unless such reproduction is of a commercial purpose;
- e. limited reproduction of a work other than computer program, in any manner, by using any means whatsoever or by employing a similar process, which is done by a public library, scientific or educational institution and documentation centre of non-commercial nature, solely for the purpose of conducting their activities;
- f. modification of any architectural works, such as building construction, based on consideration of technical implementation;
- g. making of a back-up copy of a computer program by the owner of the computer solely for his own use.

## Article 15

- (1) In the interest of education, science and research and development activities, a work that is protected by copyright and within 3 (three) years of its publication has

not been translated into Indonesian language or reproduced in the territory of the Republic of Indonesia, the Government after hearing the considerations of the Copyright Council may:

- a. obligate the Copyright Holder to himself carry out the translation and or reproduction of such work in the territory of the Republic of Indonesia within a stipulated period of time;
  - b. obligate the Copyright Holder concerned to grant a license to other persons to translate and or to reproduce such work in the territory of the Republic of Indonesia within a stipulated period of time, where the Copyright Holder concerned does not himself carry out the obligations referred to in letter a;
  - c. itself carry out the translation and or reproduction of such work, where the Copyright Holder does not carry out the obligations referred to in letter b.
- (2) The implementation of the provisions as paragraph (1) letter b and letter c shall be accompanied by the granting of a fee the amount of which shall be stipulated by the Government.
- (3) Further implementation of the provisions of paragraphs (1) and (2) shall be regulated in a Government Regulation.

#### Article 16

The Government, after hearing the considerations of the Copyright Council, may prohibit the publication of any work which is contrary to government policy in the field of defence and state security, morals and public order.

#### Article 17

- (1) The publication of a work by a radio or television broadcast conducted by the Government in the national interest may be carried out without need of prior permission from the

- Copyright Holder, provided that reasonable compensation is given to the Copyright Holder.
- (2) The radio or television broadcasting station competent to publish the work referred to in paragraph (1) shall have the authority to preserve the work by using its own equipment and solely for its own radio or television broadcast, provided that for subsequent broadcasts said station shall give reasonable compensation to the Copyright Holder concerned.

#### Article 18

- (1) The holder of a copyright to the portrait of a person must obtain the prior permission of the person portrayed to reproduce or to publish his work,  
person's heirs during the period of 10 (ten) years after the death of the person portrayed.
- (2) If a portrait contains two or more persons, the copyright holder must obtain the permission of each person in the portrait to reproduce or to publish each one portrayed, if the publication or reproduction also contains other people in the portrait, or the permission of each such person's heirs during the period of 10 (ten) years after the death of the person portrayed.
- (3) This Article shall only be applicable to a portrait made:
  - a. at the request of the person portrayed;
  - b. upon a request made on behalf of the person portrayed;
  - c. in the interest of the person portrayed.

#### Article 19

- In the event that a portrait is made:
- a. without the consent of the person portrayed;
  - b. without the consent of another person on behalf of the person portrayed;
  - c. not in the interest of the person portrayed,

the holder of the copyright to the portrait shall not be allowed to publish it, if the publication is contrary to the reasonable interest of the person portrayed, or if that person has died, the reasonable interest of one of his heirs.

#### Article 20

Photographing in order to publicise one or more actors in a public performance, even though commercial in nature, shall not be deemed to be an infringement of copyright, except if stated otherwise by the person concerned.

#### Article 21

In the interest of the public security and or for the purposes of the criminal justice process, a portrait of a person in any condition whatsoever, may be reproduced and published by the competent agency.

#### Article 22

Unless agreed otherwise between the Copyright Holder and the owner of a creative work in the form of a photograph, painting, drawing, architectural work, sculpture and other artworks, the owner shall be entitled to without the consent of the Copyright Holder to display the work in a public exhibition or to reproduce it in a catalogue, with detracting from the provisions of Article 18 and Article 19 if said work of art is in the form of a portrait.

#### Article 23

Unless agreed otherwise between the author and the copyright holder, the author of a work in the form of a sculpture or a painting shall remain entitled to make the same work, even though the author has transferred his copyright to another person.

## Article 24

- (1) An author or his heir shall be entitled to require that the copyright holder place the name of the author on his work.
- (2)
  - a. It is forbidden to make changes to a work except with the consent of the author or his heir;
  - b. Where an author has transferred his copyright to another person, his consent shall be required during his lifetime to make such changes and if he is deceased, the permission of his heirs shall be required.
- (3) The provision referred to in paragraph (2) shall also be applicable to changes in the title and subtitle of a work, inclusion and changes in the name or pen-name of the author.
- (4) The author shall remain entitled to make changes to his work in accordance with social propriety.

## Article 25

- (1) The copyright of a work shall remain in the hands of the author as long as the entire copyright is not transferred to the purchaser of the work.
- (2) A copyright which is sold in whole or in part may not be sold again in whole or in part sold by the same seller.
- (3) Where disputes arise between the purchasers of the same copyright to a work, protection shall be granted to the purchaser who first obtained the copyright.

## CHAPTER II

### COPYRIGHT VALIDITY

## Article 26

- (1) *The copyright on:*

- a. books, computer program, pamphlets, typographical arrangement of published works, and all other written works;
- b. sermons, lectures, addresses and other works of utterance;
- c. visual aids for educational and scientific purposes;
- d. songs or music with or without lyrics, including arts of karawitan and phonograms;
- e. dramatic works, dances (choreographic works), puppet shows, pantomimes;
- f. all forms of arts, such as paintings, drawings, engravings, calligraphy, carving, sculptures, collages, applied arts in the form of handy crafting;
- g. architecture;
- h. maps;
- i. batik art;
- j. translations, interpretations, adaptations, anthologies, and other works as a result of changing of form or mode

shall be protected for the life of the author and 50 (fifty) years after his death.

- (2) When a work referred to in paragraph (1) is jointly owned by 2 (two) persons or more, the term of protection on such work shall be for the life of the longest surviving author and shall continue until 50 (fifty) years after the death of the said longest surviving author.

## Article 27

- (1) The copyright on:
  - a. computer programs;
  - b. cinematographic works;
  - c. phonograms;
  - d. performances;
  - e. broadcasting works;
 shall be for 50 (fifty) years as from the first publication.

- (2) The copyright on a photographic work shall be for 25 (twenty five) years as from the first publication of the work.
- (2a) The copyright on typographical arrangement of a published work shall be for 25 (twenty five) years as from the first publication of the work.
- (3) The copyright on works referred to in paragraph (1) and Article 26 paragraph (1) which are owned or held by a legal body, shall be for 50 (fifty) years as from the first publication, whereas copyright referred to in paragraphs (2) and (3) shall be for 25 (twenty five) years.

#### Article 27A

- (1) The copyright on works which are held or exercised by the State pursuant to:
  - a. provisions of Article 10 paragraph (2) letter b, shall be without any time limit;
  - b. provisions of Article 10A paragraph (1) shall be for 50 (fifty) years as from the first time the work is known to the public.
- (2) The copyright on works which are exercised by publishers pursuant to provisions of Article 10A paragraph (2) shall be for 50 (fifty) years as from its first publication.

#### Article 28

- (1) The period of validity of a copyright to a work that is published part by part shall be computed from the date of publication of the final part.
- (2) In determining the period of validity of a copyright to a work consisting of 2 (two) or more volumes, likewise summaries and news published by printing and not at the same time, each such volume or summary and news shall be respectively deemed to be a separate work.

#### Article 28A

The term of protection for the right of an author referred to in:

- a. Article 24 paragraph (1) shall be without any time limit;
- b. Article 24 paragraphs (2) and (3) shall be for the period of copyright on the work concerned, except for the mentioning and changing of name or pseudonym of the author.

### Article 28B

Without prejudice to the right of an author over a term of copyright protection which is computed from the date of a work comes into existence, the computation of the term of protection on a work which enjoys a protection shall be for:

- a. 25 (twenty) five years;
- b. 50 (fifty) years;
- c. the life time of an author and 50 (fifty) years after his death

computed from 1 January of the following year after the work concerned has been published, or the work has become known by the public, or after the author died.

## CHAPTER III

### REGISTRATION OF WORKS

#### Article 29

- (1) The Department of Justice shall conduct the registration of works in the General Register of Works and make official announcement of such registrations.
- (2) Said General Register of Works can be seen by anyone without any charge at the office of Department of Justice.
- (3) Everyone may obtain for his own use an excerpt of said General Register of Works by paying the charge stipulated by the Minister of Justice.
- (4) Provisions on registration referred to in paragraph (1) shall not be an obligation to obtain a copyright.



### Article 30

The registration of a work in the General Register of Works shall not be construed to mean validation of the content, meaning or form of a registered work.

### Article 31

- (1) The registration of a work in the General Register of Works shall be conducted on the basis of an application submitted by the author or by the copyright holder.
- (2) An application for registration of a work shall be addressed to the Minister of Justice in two copies written in the Indonesian language accompanied by:
  - a. the registration fee as determined by the Minister of Justice;
  - b. a sample of the work or a substitute.
- (3) Further provisions on applications shall be stipulated by the Minister of Justice.

### Article 32

An application for registration of a work conducted on behalf of more than one person and or legal entity shall be permitted if the persons or legal entities are jointly entitled to or declared by a written agreement that they shall jointly be entitled to said work and submit to the Department of Justice, which conducts the registration, an official copy of the written explanation or deed evidencing said fact.

### Article 33

- The General Register of Works shall include among other things:
- a. the date of receipt of the application;
  - b. the date of completion of the requirements in accordance with the provisions of Article 31.
  - c. the number of registration of the work.

#### Article 34

- (1) The registration of a work shall be deemed to have been made at the time the Department of Justice has received the complete application for registration in accordance with the provisions of Article 31 or the complete application for registration in accordance with the provisions of Articles 31 and 32 if the application for registration is submitted by more than one person or entities referred to in Article 32.
- (2) The registration referred to in paragraph (1) shall be announced by the Department of Justice in the Supplement of State Gazette of the Republic of Indonesia.
- (3) If the application for registration is submitted completely referred to in paragraph (1) within 1 (one) year after the initial publication of a work, the application for registration shall be deemed to have been proposed at the time of such initial publication.

#### Article 35

- (1) The transfer of rights to the registration of a work registered according to Article 33 registered under one number, shall only be permitted if the rights to the entire work that is registered are transferred to the recipient of the rights.
- (2) Said transfer of rights shall be recorded in the General Register of Works upon a written request of both parties or the recipient of the rights.
- (3) The Minister of Justice shall determine the charge for recording such transfers of rights.
- (4) The recording of said transfers of rights shall be announced by the Copyright Office in the Supplement of State Gazette of the Republic of Indonesia.

#### Article 36

- (1) If a work registered according to Articles 31 and 32 is not in accordance with the provisions of Articles 13, 14 letters a,

b, c, e, f and g, 19, 20, 21, and 23, then other persons who according to Article 2 are entitled to a copyright may file a claim with the District Court of Central Jakarta by a petition signed by the applicant himself or his proxy, requesting that the registration of said work be cancelled.

- (2) Said claim must be made by the claimant within 9 (nine) months after the announcement in the Supplement of State Gazette referred to in Article 34 has been published.
- (3) After the grace period referred to in paragraph (2), a claim for cancellation of the registration of a work may still also be filed if the rights of the claimant are proven by a court decision which has become final and binding.

#### Article 37

- (1) Changes in the name or address of a person or legal entity the name of which is recorded in the General Register of Works as the author or the copyright holder, shall be recorded in the General Register of Works upon a written request of the author or the copyright holder having that name and address, by paying the fee determined by the Minister of Justice.
- (2) Said change of name or address shall be announced in the Supplement of State Gazette of the Republic of Indonesia by the Department of Justice.

#### Article 38

The legal force of the registration of a work shall become void due to:

- a. cancellation upon the request of a person or legal entity the name of which is recorded as the author or the copyright holder;
- b. expiry, referred to in Article 26 in view of Articles 27 and 28;
- c. invalidation by a court decision which has become final and binding.

## CHAPTER IIIA

### LICENCE

#### Article 38A

- (1) The copyright holder shall have the right to license to another party based on a licensing agreement to carry out activities referred to in Article 2.
- (2) Unless otherwise agreed, the scope of licence referred to in paragraph (1) shall cover all activities referred to in Article 2, for a period of the licensing agreement and exercisable within the entire territory of the Republic of Indonesia.

#### Article 38B

Unless otherwise agreed, the copyright holder shall reserve the right to exercise or to give further licences to other third parties to carry out activities referred to in Article 2.

#### Article 38C

- (1) A licensing agreement shall not contain clauses which may directly or indirectly cause detrimental effect on the economy of Indonesia.
- (2) In order to have legal consequences against a third party, a licensing agreement shall be recorded at the Copyright Office.
- (3) Application for registration of a licensing agreement which contains clauses referred to in paragraph (1) shall be refused by the Copyright Office.
- (4) Further provisions concerning licensing agreement, including procedures of its recording shall be regulated in a Government Regulation.

CHAPTER IV  
COPYRIGHT COUNCIL

Article 39

- (1) In order to assist the Government in providing public information and guidance as well as the promotion of copyright, a Copyright Council shall be established.
- (2) The membership of the Copyright Council shall consist of representatives from related government departments or agencies, as well as representatives from organisations in related field of expertise and professions.
- (3) The requirements for organisations of authors, which may send their representatives to the Copyright Council, the number of members and their requirements, shall be stipulated in a Government Regulation.
- (4) The designation of expert members or representatives of profession in the field of copyright and the increase in membership shall be decided by the Government together with members representing their organisations.

Article 40

- (1) Chairman, vice-chairman, secretary, vice-secretary and other members of the Copyright Council shall be appointed and dismissed by the President upon the recommendation of the Minister.
- (2) Further provisions on the duties, functions, structure, working procedures, financing and procedures for replacing vacancies in the Copyright Council shall be stipulated in a Government Regulation.
- (3) The expenses of the Copyright Council referred to in paragraph (2) shall be borne by the expenditure budget of the Department of Justice.

CHAPTER V  
RIGHTS AND AUTHORITY TO BRING LAWSUIT

Article 41

The transfer of copyright on all works to another person or entity shall not prejudice the right of the author or his beneficiaries to bring lawsuit against any person who without his consent:

- a. deletes the name of the author on the work;
- b. signs up a name as an author of the work;
- c. replaces or changes the title of the work; and or
- d. changes the content of the work.

Article 42

- (1) The copyright holder shall have the right to claim for damages to the District Court against copyright infringement and request confiscation of the published goods or the reproduction of such goods.
- (2) In the event that there is a claim to submit goods referred to in paragraph (1), a judge may order that the delivery shall be done on payment of the value of the goods by the copyright holder to a party who acted in good faith.
- (3) The copyright holder shall also have the right to request to the District Court to order delivery of the whole amount or part of income earned through conducting sermons and other scientific events, or performances or exhibitions of works resulting from copyright infringement or which is conducted in a manner infringing the copyright concerned.
- (4) To avoid further damage to the party whom the right has been infringed, a judge may order the infringer to stop any activities of making, reproducing, broadcasting, distributing, and selling works or goods resulting from copyright infringement.

### Article 43

The right of a copyright holder referred to in Article 42 shall not apply to goods held by a person who does not trade such goods and has acquired it for his own use.

### Article 43A

An author of a work or his beneficiary may bring a claim for damages against violation of the provisions of Article 24.

### Article 43B

The right to bring a civil action referred to in Article 42 shall not prejudice the right of the State to prosecute copyright infringement.

## CHAPTER VA

### NEIGHBOURING RIGHTS

#### Article 43C

- (1) A performer shall have an exclusive right to give consent to or prevent another person who without his consent makes, reproduces and broadcasts a phonogram and or a visual picture of his performance.
- (2) A producer of phonogram shall have an exclusive right to give consent or to prevent any other person who without his consent reproduces a phonogram or other recorded voice.
- (3) A broadcasting organisation shall have an exclusive right to give consent or to prevent any other person who without his consent makes, reproduces, and rebroadcasts his broadcasting work through transmission with or without wire, or through any other electromagnetic system

## Article 43D

- (1) The term of protection for:
  - a. a performer who produces performance work shall be for 50 (fifty) years after the work is subsisted or performed;
  - b. a producer of phonogram who produces a phonogram shall be for 50 (fifty) years after the completion of the work.
  - c. a broadcasting organisation which produces broadcasting work shall be for 20 (twenty) years after the work is firstly broadcast.
- (2) The computation of the term of protection referred to in paragraph (1) shall be from 1 January of the following year after:
  - a. a performance is completely formed or performed;
  - b. a phonogram is completely recorded;
  - c. a broadcasting work is broadcast for the first time.

## Article 43E

Provisions referred to in Articles 3, 4, 5, 8, 9, 13, 14, 15, 16, 17, 24, 25, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 38A, 38B, 38C, 39, 41, 42, 43, 44, 45, 46 and 47 shall also be applicable to the owner of right referred to in Article 43C.

## CHAPTER VI

### CRIMINAL PROVISIONS

#### Article 44

- (1) Any person who deliberately and without right publishes or reproduces a work or gives permission for this purpose shall be sentenced to imprisonment of at most 7 (seven) years and/or a fine of at most Rp. 100,000,000.- (one hundred million rupiah).



- (2) any person who deliberately broadcasts, exhibits, distributes, or sells to the public a work or goods resulting from a copyright infringement referred to in paragraph (1) shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp. 50,000,000.- (fifty million rupiah).
- (3) Any person who deliberately violates the provisions of Article 16 shall be sentenced to imprisonment of at most 3 (three) years and/or a fine of at most Rp. 25,000,000.- (twenty five million rupiah).
- (4) Any person who deliberately violates the provisions of Article 18 shall be sentenced to imprisonment of at most 2 (two) years and/ or a fine of at most Rp. 15,000,000.- (fifteen million rupiah).

#### Article 45

A work or goods resulting from a copyright infringement, upon a court decision, may:

- a. be seized for the State to be destroyed;
- b. be delivered to the copyright holder, provided that the copyright holder concerned has brought a civil action against the case of infringement of the copyright concerned, based on the provisions referred to in Article 42.

#### Article 46

The criminal offences referred to in Article 44 shall be felonies.

### CHAPTER VI A INVESTIGATION

#### Article 47

- (1) In addition to investigating officers at the State Police of the Republic of Indonesia, certain civil servants from the

department whose scope of duties and responsibilities include the promotion of copyrights shall be granted special authority as investigators referred to in Act No. 8 of 1981 on Criminal Proceedings, to conduct investigations on criminal offences in the field of copyrights.

- (2) The civil servant investigator referred to in paragraph (1) shall be authorised
  - a. to conduct examination of the truth of reports or information relating to criminal offences in the field of copyrights;
  - b. to conduct examination of a person or legal entity suspected of committing criminal offences in the field of copyrights;
  - c. to collect information and evidence from persons or legal entities in connection with incidents of criminal offences in the field of copyrights;
  - d. to conduct examination of the books, records and other documents relating to criminal offences in the field of copyrights;
  - e. to inspect locations on which evidence, books, records, and other documents to be found, as well as to confiscate materials and goods resulting from infringements which can be used as evidence in the criminal trials in the field of copyrights;
  - f. to request expert assistance in the scope of carrying out the duties of investigation of criminal offences in the field of copyrights;
- (3) The civil servant investigator referred to in paragraph (1) shall inform the investigating officers at the State Police of the Republic of Indonesia about the initiating and the result of an investigation.
- (4) The civil servant investigator referred to in paragraph (1) shall forward the results of an investigation to the Public Prosecutor through the investigating officers at the State Police of the Republic of Indonesia in view of Act No. 8 of 1981 on Criminal Proceedings.

CHAPTER VII  
CONCLUDING PROVISIONS

Article 48

This Act shall apply to all works and Neighbouring rights belonging to:

- a. any Indonesian citizens, residents, and legal entities;
- b. non-Indonesian citizens, non-Indonesian residents and non-Indonesian legal entities that are published for the first time in Indonesia or published in Indonesia within 30 (thirty) days after the first publication outside Indonesia;
- c. non-Indonesian citizens, non-Indonesian residents, and non-Indonesian legal entities, provided that:
  - 1) their country has bilateral agreements on the protection of copyright and neighbouring rights with the Republic of Indonesia;
  - 2) their country and the Republic of Indonesia are parties or member countries of the same multilateral agreement on the protection of copyright and neighbouring rights.

ELUCIDATION  
OF  
LAW OF THE REPUBLIC OF INDONESIA NO. 12 OF 1997  
ON AMENDMENT OF LAW NO. 6 OF 1982 ON COPYRIGHT  
AS AMENDED BY LAW NO. 7 OF 1987

GENERAL

The decree of People's Consultative Assembly of the Republic of Indonesia No.II/MPR/1993 on the Guidelines of State Policy stipulates, among others, that world's development which brings opportunities capable of supporting and increasing the growth of national development should be employed to the most. In line with the direction of the Guidelines of State Policy, therefore, all global developments, changes, and inclinations that might presumably influence the National Stability and the achievement of national objectives need to be carefully observed, in order to be able to take the anticipating steps.

One of the significant and closely monitored developments during the last decade, which is still going to be the inclination in the future, is the ever growing flow of globalization in social life, economy, culture and in other sides of life. In the field of trade, the development of, in particular, information technology and transportation has rapidly driven activities in this sector and has even merged the world into a single common market. Having considered such facts and inclinations, it is then quite reasonable when there is an urge toward regulating for a more appropriate legal protection. Moreover, there is a number of countries which are getting more relying their economic and trading activities on products being a result of human intellectuals, such as works in the field of science, arts and literature.

The General Agreement on Tariff and Trade (GATT) as a multilateral agreement on trade basically aimed to create a free trade and equal treatment as well as to help create economic growth and progress, in order to achieve human prosperity.

In the framework of the Agreement, in April 1994 in Marakesh, Morocco, a package of trade negotiation deals has been agreed, and it became the most comprehensive agreement GATT has ever achieved. The negotiation which had begun in 1986 in Punta del Este, Uruguay, and known as Uruguay Round contains, among others, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

The TRIPS Agreement established norms and standards of protection for human intellectuals and laid the international agreement on Intellectual Property Rights as its foundation. In addition, the agreement also regulates strict implementing rules of legal enforcement in the field of Intellectual Property Rights.

As a signatory to the Uruguay Round Agreement Indonesia has ratified the agreement package with Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. In line with the policy, to support national development activities, particularly after considering the various changes and development, Indonesia, which had adopted a national Copyright Law since 1982 which was then amended with Law No. 7 of 1987, views that it is necessary to make perfection on the Law concerned.

In addition to the perfection of some provisions considered as providing inadequate legal protection on Authors, it is also considered necessary to make adjustment to conform to the TRIPS Agreement. The goal is to eliminate various barriers, in particular, to facilitate efforts that promote the economic growth as well as national and international trade.

With such background and considerations, therefore, the general area and course of amendment on Law No. 6 of 1982 as

amended with Law No. 7 of 1987 concerning Copyrights covers, among others:

1. Perfection

In this Law, the perfection covers the provisions concerning the protection on works of which the Authors are unknown, exceptional provision concerning the infringement of copyrights, the term of protection of works, right and authority to bring lawsuit, and provisions concerning Civil Servant Investigator (PPNS).

2. Addition

Some changes to add provisions concerning:

- a. Rental Rights of the holder of copyrights concerning video records, movies, and computer programs;
- b. Neighboring Rights which cover protection, for performers, phonogram producers, and broadcasting agency; and
- c. copyright license

## ARTICLE BY ARTICLE

### Figure 1

The amendment on provision of Article 1 figure 2 is meant to affirm the required element of originality of work to qualify for copyright protection. A work has to be in a distinctive form and shows the originality as a creation of person based on ability and creativity of a personal nature. "In a distinctive form" means that the work has to be completely realized, so that it is capable of being seen, heard or read. To include in the definition of "capable of being read" is Braille reading. Since a work has to be in a distinctive form, the protection of copyright shall not then

be granted to a mere idea. In accordance with this concept, an idea does not basically qualify for a copyright protection because an idea has no form that enables it to be seen, heard or read. The addition of provisions concerning the definition of performer, phonogram producer, and broadcasting agency is necessary in relation to the addition of new provisions concerning Neighboring Rights. In the definition of performer, the mentioning of actor, singer, musician, and dancer is to show the professions of performers, which are basically only to mention some of those whose activities are to perform, show, act, sing, communicate, recite, or play a piece of work.

Meanwhile, the definition of phonogram producers includes those who carry out activities of direct recording on objects which produce voice or sound, including those who record voice or sound in different musical arrangements, and not just multiply or reproduce existing recordings. As of the meaning of "broadcasting works" in the definition of "broadcasting organization" covers, among others, pictures or pictures and voice. The requirement that it should take the form of legal body only applies to Private Broadcasting Organization.

Furthermore, see the elucidation of the previous Article 1.

## Figure 2

This amendment is meant to affirm the recognition on the existence of rights belonging to Authors or copyright holders of cinematographic works and computer programs, in the form of rights to prevent or to give consent to the commercial rental of cinematographic works or computer programs.

Similar rights may apply to producers of phonograms.

Furthermore, see the elucidation of the previous Article 2.

### Figure 3

The addition of provision in paragraph (1) A is meant to clarify the principle that the copyright on a work made by a person on work order, for instance, within a Government office, unless otherwise agreed, is held by the office concerned, as the party who gave the job order. This provision does not prejudice the right of the person who makes the work, as the Author, if such work is used beyond the official relationship. Meanwhile, the amendment in paragraph (2) is meant to clarify the existence of copyrights on works made beyond an official service or works made on a work order. This means that the work is made within a work service in private sector or is made on a work order between a private institution and another party or between individuals.

Furthermore, see the elucidation of the previous Article 8.

### Figure 4

This amendment is meant to affirm the status of copyright in the event that the author of a work is unknown and the work is not or not yet published in its appropriate form. For example, in the case of a written work or music, the work has not been published in the form of book or has not been recorded. In that case, to protect the rights of the Author, the State holds the copyright for the Author. In the event that the work is in the form of a written work and has been published, then the publisher holds the copyright on such work.

A publisher is also deemed as holding the copyright of a work that is published under a pseudonym of the Author. Therefore, upon a published work of which the Author is



unknown or the name printed on it is only a pseudonym, the publisher whose name appears on the work and which, based on presented evidence, is the first publishing the work, represents the Author. However, this does not apply when the Author subsequently reveals his identity and is able to prove that he is the Author of the work.

Furthermore, see the elucidation of the previous Article 10 A.

## Figure 5

This amendment is actually only to re-arrange the order of kinds of works within the scope of copyright by classifying them according to the kinds and nature of the works. Moreover, some kinds of works need an explanation as follows:

A typographical arrangement means the art or aesthetic aspect of the writing arrangement and shape of a written work. This is to include the format, decoration, color, and arrangement or layout of letters that as a totality constitutes a distinctive form. As of drawings cover, among others, technical drawings, patterns, diagrams, sketches, logos, and shapes of characters. A collage is an artistic composition made of various materials, such as clothes, paper, wood attached on the surface of a picture.

As of applied art, it is basically handcrafting art that can be produced in great numbers. For example, jewels or accessories, furniture, decorative paper or wall ornaments, and clothes design. Visual aids that are granted protection are devices for the purpose of science, including education.

Architecture includes construction art, miniatures or construction models. Batik, as an artwork, is granted protection by this Law as a distinct work. In this Law "Batik" means a new creation which is not a traditional or contemporary one. Such works are granted protection

because they have artistic values, on the creation of patterns, drawings as well as color composition. The protection on traditional batiks is granted against any foreign party or party from abroad. The term of protection on traditional batik works such as Parang Rusak, Sidomukti, Truntum and others have elapsed and become public domain. Therefore, basically, Indonesian nationals are free to use them. Furthermore, cinematographic work as a communication medium of moving images and voices is to include documentary films, news, reportage, or movies made on scenario and cartoon movies. Cinematographic works may be made on celluloid tape, video tape, video disc, and or other media which make them possible to be shown at movie theatre, on wide screen, or television.

An anthology includes works in the form of book of which the content is a compilation of assorted written works, collection of assorted songs recorded in a single cassette, or composition of assorted choreographs.

## Figure 6

The amendment in this Article is made by omitting the 10 percents limitation in the provision concerning the use that is not considered as a copyright infringement. The omission is necessary because it is difficult to apply a quantitative measure to establish an infringement. In this case, a qualitative measure would be more appropriate. For instance, taking the most important or distinctive part or distinctive feature of the work, even though it does not amount to 10 percents. Such use substantively qualifies an infringement of copyrights. Furthermore, the use of copyright does not constitute an infringement if such use clearly mentions the source, whereas the use itself is limited for a non-commercial purpose, including social activities. For instance, activities in the scope of

education, research and development, the use in the scope of science is precluded provided that it does not harm the normal interests of the Author. To include within this definition is taking the excerpt of a work to be used in a free-of-charge show or performance. On taking excerpt of a written work, the full identity of the source work has to be mentioned. It means that it has to mention at least the name of the Author, the title or name of the work, and the name of the publisher, if any. The measure of normal interests of an Author has to be appraised by the rights of the Author, in particular, to enjoy economic benefit from the work concerned. If a dispute emerges, the issue shall be settled by a decision of the Court.

Besides that, the amendment is also made on the restriction for reproducing works other than computer program. The purpose is to affirm that the reproduction of a work may not exceed the needed number of copies as to meet the purpose of reproducing the work concerned. In relation to computer program, it is necessary to assert that the owner of this kind of work may only make one copy of the work, used solely as a reserve of the work concerned. This provision also applies to public libraries, science or education institutions and documentation centers, used solely for conducting their activities.

Furthermore, see the elucidation of the previous Article 14.

## Figure 7

The amendment is meant to conform to the amendment made on provision of Article 11 that classifies the kinds of works based on form and field of works. The rest is the classification of kinds of works based on the term of protection.

Furthermore, see the elucidation of the previous Article 26.

## Figure 8

See the elucidation of Figure 7.

## Figure 9

The addition of new provision here is to clarify the provision concerning the protection period of copyright that is held by the State. By principle, a work of which the copyright is held by the State under Article 10 paragraph (2) letter b shall be granted an unlimited period of protection. Meanwhile, upon a work the copyright of which is exercised by the State under Article 10 A paragraph (1) shall be granted protection for 50 (fifty) years as from the work is known by members of the public. This provision applies to a work of which the Author is absolutely unknown. If the identity of the Author is subsequently revealed, or the Author himself subsequently discloses his identity within a period of 50 (fifty) years after the work has been known by the public, then the provision of Article 26 applies. This means that the protection period continues for 50 (fifty) years after the death of the Author.

Upon works of which the copyrights are held by the publishers in pursuant of Article 10 A paragraph (2), the protection period is for 50 (fifty) years from the first time the work was published.

## Figure 10

The new provision of Article 28A here is meant to affirm that the right of an Author to have his name or identity mentioned including his pseudonym be endless or for an unlimited period of protection. Meanwhile, the protection period for an Author against any action by another party to make any change upon his work is of the same period of protection as on the work itself.

The provision of Article 28B which affirms the date of 1 January as the base to compute the protection period of a copyright is merely to ease in computing the end of protection. The starting point is 1 January of the following or current year after the work is made eligible to the public, known to the public, published or after the death of the Author.

This is an adjustment to conform to the international agreement applicable to copyrights.

This method of computation does not prejudice the principle that the computation of the protection period shall be based on the time the work is created, in the event that the actual date is clearly known.

An example of the application: a cinematographic work that was published for the first time on 20 July 1995 will be protected from 20 July 1995 until 31 December 2045.

## Figure 11

The addition of a new Chapter is meant to provide a legal foundation for licensing practices in the field of copyrights. Basically, the nature of a licensing agreement is only an authorization or conferring of rights set up in a deed of agreement, for certain period of time under certain conditions, to enjoy the economic benefit of a work protected by copyright. A licensing agreement is not usually closed as an exclusive agreement. This means that the holder of copyright still maintain his right to exercise the copyright or to give a similar license to a third party. A licensing agreement may also be closed as an exclusive one, meaning that the right is exclusively given solely to the licensee. An exclusive license is capable of being abused to monopolize the market, or to eliminate the healthy competition in the market. As an example, such thing may happen when a licensee does not use

deliberately or exploit the licensed work. Such action is taken in order to control the market through the use of another product or product of his own. Such method clearly will impair the right of the Author and even may hamper the growth of Indonesian economy. Considering such possibility, therefore, this Law lays down a directive that a license may be exercised provided it does not cause detrimental effect on the economy of Indonesia.

Furthermore, it is also asserted that to effect legal consequences against a third party, a licensing agreement has to be recorded at the Copyright Office.

#### Figure 12

The amendment of Article 42 paragraph (1) is meant to simplify the wordings and to affirm the right of an Author to claim for indemnity if there is an infringement of copyright.

If a confiscation is requested as referred to in this paragraph, it has to be carried out in pursuant to the provisions concerning forfeiting of movable goods as regulated in Law of Civil Proceedings.

With this amendment, thus, the provisions of the previous Article 43 paragraph (2) are not needed anymore. The provision of Article 43 paragraph (1) becomes the new Article 43 with amendment.

Moreover, the addition of new provision designated as Article 43A is meant to affirm the right of an Author or his beneficiary to claim for indemnity against any violation of the provision in Article 24, that is the provision concerning the moral right of an Author.

The addition of provision in Article 43B is actually an improvement and to remove the content of the previous Article 42 paragraph (3).

#### Figure 13

The addition of a new Chapter is meant provide a legal foundation for rights related to copyrights known as

Neighboring Rights. The owner of such rights includes performers who created performances, producers of phonogram who produce phonograms and broadcasting organizations which produce broadcasting works. In addition to provisions concerning the content of the rights, it also sets out the term of protection and other provisions applicable to those rights.

The legal sanctions applicable against infringement of these rights are of the same sanctions as those applicable against the infringement of copyright. This is taken upon considerations that the possible economical damage and other losses arising from infringement of these rights are basically the same as of against copyright.

#### Figure 14

The amendment on Article 45 here is basically meant to provide options to the Court to decide whether or not the goods resulting from a copyright infringement which has been forfeited shall be seized for the State and subsequently destroyed or delivered to the lawful holder of the copyright. These options enable the holder of copyright to pursue legal actions in order to acquire the forfeited goods as referred to in Article 42.

From the angle of Law concerning Criminal Proceedings, this principle is still in line with provision in Article 46 of the Law (KUHAP).

#### Figure 15

This amendment is made to clarify the authority of Civil Servant Investigator and the procedures on the implementation of the task as well as his inter-relation with Investigator of the State Police of the Republic of Indonesia and the Public Prosecutor.

A clear provision regarding investigation is important for investigative apparatus in carrying out their tasks.

Therefore, it is necessary to clarify that even though Civil Servant Investigators within the Ministry, of which the task and responsibility includes the management of copyrights, are vested with a special authority to be an investigator, this does not eliminate the function of Investigator of the State Police of the Republic of Indonesia as the Main Investigator. In carrying out their tasks, Civil Servant Investigators are under the coordination and supervision of Investigators of the State Police of the Republic of Indonesia. Therefore, during the process of an investigation a Civil Servant Investigator needs to consult with Investigators of the State Police of the Republic of Indonesia. It is in this stage of investigation that Investigators of the State Police of the Republic of Indonesia give technical directions concerning the format and the content of Deed of Investigation and at the same time check the truth of the content of the Deed. After the investigation is over, the result of investigation shall be submitted by the Civil servant Investigator to the Investigator of the State Police of the Republic of Indonesia, who in turns shall proceed it immediately to the Public Prosecutor. This is in accordance with the principle laid down in Article 6, Article 7 and Article 107 of Law No 8 of 1981 concerning Criminal Proceedings.

Bearing in mind this principle, thus the word "through" in paragraph (4) is not necessarily understood as stating that Investigator of the State Police of the Republic of Indonesia may or shall undertake reinvestigation. For, any technical assistance on investigation as well as on the booking of result of the investigation, basically, has been given during a period in which Civil Servant Investigator carrying his investigation. As a result, the principle of fast and effective procedures as prescribed by Criminal Proceedings Law can be implemented.



## Figure 16

This amendment is meant to adjust to international rules concerning, in particular, Neighboring Rights. This constitutes an anticipation toward the possibility for the accession of the Republic of Indonesia into bilateral/multilateral agreements concerning the rights.

## Article II

Self- explanatory

SUPPLEMENTARY STATE GAZETTE OF THE REPUBLIC  
OF INDONESIA.  
NUMBER 3679