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Utilization Of Intellectual Property Rights In Legal Protection Of Cultural Dance Arts

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Abstract: Copyright is regulated in Law Number 28 of 2014 concerning Copyright. Cultural dance arts are protected by Copyright, in accordance with Article 40 paragraph (1) of the Law. However, there are various complex barriers in protecting these cultural arts. The challenge of IPR is not only limited to legal protection, but also includes its utilization in protecting cultural dance arts. The research method used is normative juridical with data collection through literature study. The statutory approach in this study refers to IPR-related regulations, especially Law Number 28 of 2014 concerning Copyright. The results show two main aspects, namely the legal protection of IPR in cultural dance and the obstacles faced in its implementation. Although the existing legal protection framework is quite effective through copyright law, there are still weaknesses that need attention. The law has not fully elaborated on aspects of traditional cultural expressions, so further socialization efforts are needed regarding how dance art can also be treated with copyright protection as well as traditional cultural expressions. the unique characteristics of traditional cultural arts which are often oral and communal in nature are also an obstacle in the application of copyright. To overcome these obstacles, further efforts are needed in documenting cultural dance arts.

Keywords: Intellectual Property Rights, Legal Protection, Cultural Dance.

INTRODUCTION

Intellectual Property (IP) refers to the results of the thinking process which includes ideas or concepts, which are then realized or expressed in various forms such as inventions, literary works, art, designs, symbols, creation of semiconductor component layouts, and variations of breeding results.¹ It will be transformed

into a legal product and identified as Intellectual Property Rights (IPR), when it goes through a process that is in accordance with applicable regulations and procedures. In other words, IPR is the result of a legal process that establishes rights to the resulting intellectual property. In this case, the work can then be utilized in trade activities, creating economic value for the inventor or creator of the work. Intellectual property rights are rights that protect wealth arising from human

¹ Mujiyono Perianto, 2017, *Memahami dan Cara Memperolek Hak Kekayaan Intelektual*, Yogyakarta: Universitas Negeri Yogyakarta, h.1

creativity and thought, embodied in various forms of work that have value and benefits for human life.²

The forms protected by Intellectual Property Rights are Copyright, Trademark, Patent, Plant Variety Protection, Trade Secret, Industrial Design, and Integrated Circuit Layout Design. Copyright is one of the IPRs that should be protected because it is a copyrighted work resulting from the creation of a person or group of people who create a work of art. Copyright is regulated in Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law). According to Article 1 number 1 of the Copyright Law which provides a definition, namely "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations". Cultural dance is a work of art that is protected by Intellectual Property Rights in the field of Copyright which is regulated in Article 40 paragraph (1) of the Copyright Law. Based on this article outlines the juridical basis of legal protection related to cultural dance in Indonesia. The protection of cultural dance art as copyright is needed so that the resulting cultural dance art works cannot be seized or recognized by people with bad intentions.

Cultural dance is an integral part of Indonesia's cultural heritage, consisting of traditional dances that need to be

developed and maintained.³ Cultural dance is important because it is a philosophical element of culture in every region in Indonesia.⁴ Cultural dance art preserved by the community brings a good contribution to economic growth in the form of creativity.⁵ The form of this contribution is in the form of cultural dance performances that are in the spotlight of visitors and the Indonesian people in areas that bring economic income to each region. Cultural dance, once considered a sacred part of tradition, has now interacted with the tourism industry to provide support and become a source of economic stability.⁶

The form of this contribution is in the form of cultural dance performances that are in the spotlight of visitors and the Indonesian people in areas that bring economic income to each region. Cultural dance, once considered a sacred part of tradition, has now interacted with the tourism industry to provide support and become a source of economic stability.⁷ Cultural dance art that is communal is IPR that is owned together. Cultural dance in

² Ni Ketut Supasti Dharmawan, dkk., 2017, *Hak Kekayaan Intelektual (HKI)*, Yogyakarta: Deepublish, h.10

³ Mira Delviana, Risma M.Sinaga, Marzius Insani, "Eksistensi Tari Pagar Pengantin Pada Adat Masyarakat Palembang di Desa Sukajaya Kabupaten Oku Selatan", *Journal Pendidikan dan Penelitian Sejarah (Pesagi)*, Vol 11 No 2 (2023), Proper No Sps ETS Sp. ETS Sp. ETS

⁴ Sal Murgianto, "Moving between Unity and Diversity: Indonesian Dance in a Changing Perspective", *TDR*, Vol 37 No 2 (2018), 131-160.

⁵ C.J. Hawkesworth et al, "A Matter of Preservation" *Science* 323, No 5910 (2019), 49-50

⁶ Tiffany Strawson, "Dance Training in Bali: Intercultural and Globalised Encounters", *Theatre, Dance and Performance Training*, Vol 5 No 4 (2017), 291-303

⁷ Direktorat Jenderal Kekayaan Intelektual, 2019, *Modul Kekayaan Intelektual Bidang Kekayaan Intelektual Komunal*, h.1

Indonesia is very diverse due to the large number of tribes and the variety of traditions and cultures, it makes the importance of legal protection of traditional indigenous cultural dance. Awareness of the importance of legal protection of cultural dance is very crucial. Because, without realizing it, many cases of traditional cultural dance art have been misused, and have even been registered for IPR by foreign countries or people. One of them is claimed by Malaysia. The Reog Ponorogo Dance is one of the cases that has become a debate, because as we know the Reog Ponorogo Dance is one of the traditional dances from Indonesia. This is known to appear on the website of the Malaysian Ministry of Culture, Arts and Heritage. In addition, there are several cases of claiming Indonesian traditional dances, namely Pandet Dance which is an icon for visit year advertisements, Kuda Lumping Dance, Plate Dance and Tor-Tor Dance which are also claimed to be Malaysian cultural dance arts.

Based on the juridical rules in Indonesia listed in Article 39 of Law Number 28 of 2014 concerning Copyright that copyright on traditional cultural expressions is held by the state. So with the existence of laws governing IPR related to traditional cultural expressions in the form of cultural dance art is one form of legal protection against it. The number of cases of plagiarism and piracy of Indonesian cultural dance is considered because Indonesian people are often indifferent to the use of Intellectual Property Rights for the legal protection of cultural dance in Indonesia. The existence of IPR rules is to prevent the act of

plagiarism or piracy which is an act to seek profit from cultural dance which is an intellectual property. Both private and communal. IPR itself has regulated sanctions against someone who violates legal rules in the form of plagiarism or piracy of cultural dance art belonging to others.⁸

The Indonesian government's move to issue Law Number 28 of 2014 on Copyright is a form of effort from the state in protecting the rights of cultural dance creators in Indonesia. The Copyright Act has regulated copyright protection with a relatively long time, namely throughout the life of the creator of cultural dance art and an additional 70 years after the creator dies. So based on this, the problem of IPR is not only about legal protection, but also related to how the utilization of IPR in the framework of legal protection of cultural dance art. Therefore, it is necessary to further study how Indonesian people utilize the legal protection of IPRs that have been regulated in the Law provided by the Indonesian state with the community or creators of cultural dance arts.

METHODOLOGY

This research uses normative juridical research methods and data collection by literature study.⁹ The materials used are those that have a relation to the title, namely the Utilization of Intellectual Property Rights in the Legal Protection of Cultural Dance Art through

⁸ Budi Agus Riswandi, 2005, *Hak Kekayaan Intelektual dan Budaya Hukum*, Jakarta: PT Raja Grafindo Persada, h.190

⁹ Peter Mahmud Marzuki, 2009, *Penelitian Hukum*, Jakarta: Kencana, h.65

laws, scientific books, articles and so on. In the statutory approach, it will refer to the rules of law relating to Intellectual Property Rights, one of which is Law Number 28 of 2014 concerning Copyright. The method of collecting materials used in this research is through literature studies (library research) which also examines Intellectual Property Rights, books, articles, dictionaries and other research materials related to the Utilization of Intellectual Property Rights in the Legal Protection of Cultural Dance Art.

RESULTS AND DISCUSSION

1. Legal Protection of Intellectual Property Rights in Cultural Dance Arts

As a country rich in cultural heritage, especially in traditional art forms, Indonesia has an obligation to protect traditional cultural knowledge and expressions that exist within its borders from potential recognition by other countries or exploitation by foreign individuals. Traditional knowledge and cultural expressions are an integral part of the social life of Indonesian society. There is a conflict of interest between developed and developing countries such as Indonesia as traditional knowledge and traditional cultural manifestations are state resources with significant economic potential, yet ownership claims are often made by foreign companies without any profit sharing.

Cultural dance art presented by the village community tradition is a form of knowledge and values that grow in the community and the area.¹⁰ Indonesia as a

¹⁰ Matthew Krystal, "Cultural Revitalization and Tourism at the Moreria Nima' K'iche" *Ethnology*, Vol 39 Issue 2 (2010), 149-161

country that respects the principles of law and has adopted the Intellectual Property Rights (IPR) framework, Indonesia needs to protect and secure traditional cultural heritage. This is because cultural heritage in the form of cultural dance is one of the valuable assets that is unique to Indonesia and not owned by other countries. The effort is in the form of legal protection for IPR, namely Indonesian cultural dance. Satjipto Raharjo provides a definition related to legal protection that legal protection is an effort to protect individual interests by establishing or channeling a power.¹¹

One of the main obstacles that often arises today in relation to traditional cultural expressions is the lack of awareness of local communities regarding the true nature of traditional cultural expressions and the process of their legal protection. They often only realize its importance when their traditional cultural works are widely recognized and then subjected to piracy or claims by other parties. In such situations, their perception is that the cultural works they create are of high value if they are used by others and even foreigners. The result is a perception that anyone, including foreign individuals or countries, has the right to study and use the work as they see fit. This issue is common in the evolution of culture in Indonesia, and often leads to the recognition of Indonesian culture by foreign countries.

There are efforts to overcome this, if people understand that Indonesia has legal protection for IPR in cultural dance.

¹¹ Muhammad Syiblunnur, Absori, dan Hari Wujoso, 2017, *Perlindungan Hukum Pada Pelayanan Kesehatan Tingkat Perian Sp. Di Kabupaten Kotawaringin Timur*, Tesis, Universitas Muhammadiyah Surakarta, h.5 Sp. Sp. Sp.

Related to the legal rules of cultural expression is regulated in Article 38 paragraph (1) and (2) of Law Number 28 of 2014 concerning Copyright which states that:

"(1) Copyright over traditional cultural expressions shall be held by the State. (2) The State shall inventory, preserve and maintain traditional cultural expressions as referred to in paragraph (1)."

In fact, the application related to cultural expression is still difficult to implement even though it has been regulated in the Copyright Law. The important function of the state in protecting copyrighted works occurs when there is a claim or plagiarism of a work. On the other hand, the inventory pattern is the main basis used to detect the existence of copyrighted works that have been created. In this context, the inventory must be done proactively to ensure the length of time the work has been created and the identity of the creator can be known. One form of legal protection carried out by the Indonesian state is to create a database of Indonesian cultural artworks.¹² The artwork is listed on the internet so that everyone can access information related to the artwork, including its owner, how to study the artwork and even how to protect it.¹³

¹² Lora Sinta Sulistiorini, "Database Floklora Dalam Undang-Undang Tentang Hak Cipta dan Undang-Undang Tentang Pemajuan Kebudayaan" *Jurnal Hukum & Pembangunan*, Vol 52 No 3 (2022), h.702. *Sp. ETS*

¹³ Abdul Atsar, "Perlindungan Hukum Terhadap Pengetahuan dan Ekspresi Budaya Tradisional untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau dari Undang-Undang Nomor 5 Tahun 2017 tentang Pemajuan Kebudayaan dan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Jurnal Law Reform*, Vol 13 No 2 (2007), h. 294. *Sp. ETS*

In addition to the Copyright Law, there are juridical rules governing the protection of cultural arts, namely Law Number 5 of 2017 concerning the Promotion of Culture. Based on the Law on the Promotion of Culture, in point weighing letter b it is said that with this regulation "that to advance Indonesian national culture, strategic steps are needed to promote culture through protection, development, utilization and guidance in order to realize an Indonesian society that is politically sovereign, economically independent, and has a personality in culture". This means that legal protection efforts are expected to maintain cultural arts.

Although the existing legal protection framework is quite effective through copyright law, there are still weaknesses that need to be considered.¹⁴ The law has not fully outlined aspects of traditional cultural expressions, so further socialization efforts are needed regarding how dance can also be treated with copyright protection as well as traditional cultural expressions. Legal protection for dance is considered adequate through Law No. 5/2017 on the Promotion of Culture because it is covered within the framework of the law.¹⁶

Article 4 in conjunction with Article 5 of the Copyright Law states about two types of sole rights, namely moral rights and rights that remain connected to the Creator throughout his life. This includes rights such as the right to derive financial benefits from the work. Economic privilege has a period of legitimacy as

¹⁴ Trias Palupi Kurnianingrum, "Materi Baru Dalam Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Trias Palupi Kurnianingrum*, Vol 6 No 1 (2015), h.93. *Sp. Missing ", " ETS*

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mentioned in Article 58 paragraph (2) which states that:

"In the event that the Creation as referred to in paragraph (1) is owned by 2 (two) or more persons, the protection of Copyright shall apply during the life of the Creator who dies at the latest and lasts for 70 (seventy) years thereafter, starting from January 1st of the following year."

Then in Article 58 paragraph (3) states "if the right is held by a Legal Entity, the privilege is valid for 50 years from the date of the first release. For copyright infringement, the criminal law in CHAPTER XVII Article 112 provides for a maximum prison sentence of two years and/or a fine of Rp. 300,000,000.00". CHAPTER XIV specifically regulates the settlement of disputes through the high court, starting from the procedure for lawsuits as stipulated in Article 100 and legal remedies as stipulated in Article 102. Based on these rules, there are no specific rules related to cultural dance. Thus, in granting exclusive rights and regulating the law is the same for all copyrighted works and/or related rights products.

2. Obstacles in the Implementation of Legal Protection of Intellectual Property Rights in Cultural Dance Art

The implementation of legal protection of Intellectual Property Rights (IPR) is often faced with a variety of complex obstacles. From the challenges of defining and identifying Copyright in cultural dance to the constraints of enforcing rights violations, understanding and overcoming these barriers is key to ensuring the sustainability and respect of the rich and diverse dance heritage. One of the characteristics and purposes of law is

to provide protection to the public.¹⁵ Therefore, legal protection efforts for the community must be reflected in the existence of legal certainty.

Generally, the public's knowledge of copyright, in particular, and intellectual property in general, including the laws governing it, is still very limited. Even those who are directly involved in protected works, such as creators and related rights holders, often have a poor understanding of copyright. In general, awareness of the importance of copyright protection for cultural development, enhancement of creativity, and economic growth is still low among the public.¹⁶ This is one of the obstacles to the legal protection of intellectual property rights in cultural dance.

Obstacles in the legal protection of Intellectual Property Rights in cultural dance are categorized into 2 (two) parts, namely: internal barriers and external barriers.¹⁷ In internal obstacles, there is no good documentation or archiving for cultural dance, but only an inventory. Limited funds in documenting and archiving are the background for this to happen. While external obstacles in the form of lack of awareness and lack of socialization of the importance of legal protection of cultural dance. There is a situation where some artists often do not have adequate knowledge and understanding of Intellectual Property

¹⁵ Satjipto Raharjo, 2000, *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti, h.54

¹⁶ Devi Rahayu, "Perlindungan Hukum Terhadap Hak Cipta Motif Batik Tanjungbumi Madura", *Mimbar Hukum*, Vol 23 No 1 (2011), h.128

¹⁷ Douglas Pollak T. Napitulu, Muaz Zul, "Perlindungan Hak Cipta Kesenian Daerah Tari Tor-Tor Dan Gordang Sembilan", *Jurnal Mecatoria*, Vol 6 No 1 (2013), h.99

Rights (IPR) issues related to regional art and copyright law. Although they actively perform in various art performances, they rarely register their work as copyright. This situation poses a challenge for stakeholders, who seek to implement national rights protection as stipulated in the Copyright Law.

The main obstacle encountered in the application of Article 38 of the Copyright Law of 2014 related to Copyright for communities is the absence of regulations from the government, both central and local, which regulate procedures and steps in the development of *peresean* dance, such as inventory, maintenance, and safeguarding. Although there is no official regulation, at the local level, activities in the field of folklore continue to grow and develop independently due to the efforts that have been made by preservationist communities in maintaining and caring for their traditional cultural expressions.

The requirement that a work must be in material form is a challenge when applied to the protection of Traditional Cultural Expressions.¹⁸ This is because most works derived from traditional cultures are often oral in transmission, such as dances or oral stories. In other words, the copyright law system cannot provide comprehensive protection to cultural dance works, except for the category of Traditional Cultural Expressions that are not oral in nature. However, in reality, creativity that still relies on the oral tradition still exists and develops in traditional societies.

¹⁸ Dorvino, Bonanta, Simarmata, "Perlindungan Hukum Karakteristik Ekspresi Budaya Tradisional Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Private Law*, Vol 9 No 2 (2021), h.313

Under the Copyright Act, the protection of traditional cultural expressions is different from the protection given to other types of copyright such as books, music or paintings.¹⁹ This difference arises because ownership of Traditional Cultural Expressions is not individualized like ownership of other copyrighted works such as books, music or paintings. Instead, ownership of Traditional Cultural Expressions is communal, which means that traditional cultural expressions are owned by a group of indigenous people in a particular area or location. Therefore, it is very difficult to apply individualized legal protection.²⁰

To safeguard Indonesia's cultural heritage, the government must do more than just create legal regulations. The process of documenting and collecting data on local cultures and Indonesian Traditional Knowledge is very important in cultural preservation efforts to prevent their extinction. If the local cultural heritage disappears because it is no longer practiced by the community, then the protection of Intellectual Property Rights (IPR) for the culture will also be lost, so that the culture can become public property. Local Culture and Traditional Knowledge can become extinct if the community or people who are the custodians of the culture abandon or no

¹⁹ Kadek Sukadana Putra, Gusti Ayu Putu Nia Priyantini, "Perlindungan Hak Cipta Terhadap Ekspresi Budaya Tradisional Geguritan Bali Di Indonesia", *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan*, Vol.3, No. 2 (2021), h.130

²⁰ Dyah Permata Budi Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Journal of Intellectual Property*, Vol 1 No 1 (2018), h.18

longer practice the culture. The local culture may therefore lose its inherent 'traditional' nature, which is an integral part of the tradition of the community or country that developed it in the first place. Data collection and documentation are very important in anticipating Intellectual Property Rights (IPR) claims from other countries.

In terms of legal protection of cultural arts, there are a complex set of obstacles that need to be overcome. These include lack of clarity in government regulations regarding procedures and steps in the development of dance, lack of funding for documentation and archiving, and low public awareness of the importance of copyright protection. In addition, the unique characteristics of traditional cultural arts that are often oral and communal are also an obstacle in the application of copyright. To overcome these obstacles, further efforts are needed in the documentation of local culture and Indonesian Traditional Knowledge as a key in maintaining the sustainability of cultural heritage and countering Intellectual Property Rights claims from other countries.

CONCLUSION

Indonesia has a responsibility to protect its traditional cultural heritage from the risk of recognition by foreign countries or exploitation. However, there are a number of complex barriers to the implementation of such legal protection. Such challenges include a lack of public awareness of copyright, a lack of government regulations related to dance, limited funding for documentation, and the unique oral and communal characteristics of traditional cultural arts. While the

Copyright Law and Cultural Promotion Law already cover this aspect of protection, further efforts are needed to address weaknesses in regulation, raise public awareness, and strengthen documentation of local culture and Indonesian Traditional Knowledge. Effective legal protection can thus ensure sustainability and respect for Indonesia's rich and diverse cultural dance heritage.

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