

Legal Protection of the Exclusive Rights of Painting Works

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ABSTRACT

The purpose of this study is to examine how artists' exclusive rights are protected by law. The empirical legal method was used for the research. The study found that if a law or regulation regulates the protection of a creation's exclusive rights, it is certain that there will also be legal remedies for violations of the problem of using other people's creations without permission. These legal remedies can be taken in either litigation or non-litigation. If the effort is made through litigation, namely by filing a lawsuit to the commercial court or can be prosecuted criminally, this is already included in the Copyright Law, or by a resolving. In light of the conversation above with respect to legitimate security of the select privileges of makers of compositions, the public authority ought to have the option to make sense of additional explicitly in the items in the Intellectual property Regulation in regards to canvases that poor person has been made sense of top to bottom, and there ought to be more effort to the public so that individuals are all the more endlessly figure out the presence of lawful security for work or creation.

Keywords: legal protection; exclusive rights; painting works

ABSTRAK

Perlindungan Hukum Hak Eksklusif Karya Lukis. Tujuan dari penelitian ini adalah untuk mengkaji bagaimana hak eksklusif seniman dilindungi oleh hukum. Metode hukum empiris digunakan untuk penelitian ini. Kajian ini menemukan bahwa jika suatu peraturan perundang-undangan mengatur tentang perlindungan terhadap hak eksklusif suatu ciptaan, maka dapat dipastikan juga akan ada upaya hukum atas pelanggaran terhadap masalah penggunaan ciptaan orang lain tanpa izin. Upaya hukum ini dapat ditempuh baik secara litigasi maupun non litigasi. Apabila upaya tersebut dilakukan melalui litigasi, yaitu dengan mengajukan gugatan ke pengadilan niaga atau dapat dituntut secara pidana, hal tersebut sudah termasuk dalam Undang-Undang Hak Cipta, atau dengan cara penyelesaian. Sehubungan dengan percakapan di atas sehubungan dengan keamanan yang sah dari hak pilih pembuat komposisi, otoritas publik harus memiliki pilihan untuk menjelaskan secara lebih eksplisit dalam item dalam Peraturan Kekayaan Intelektual tentang kanvas yang dibuat oleh orang miskin. dimaklumi dari atas ke bawah, dan harus ada upaya yang lebih kepada masyarakat agar setiap individu semakin mengetahui adanya jaminan hukum atas suatu karya atau ciptaan.

Kata kunci: perlindungan hukum; hak eksklusif; pencipta karya seni lukis

Introduction

Copyright as a right according to law is classified into the type of movable intangible

property (moveable intangible property). Intangible objects are objects that cannot be digested by the five senses. Intangible objects cannot be seen, touched, heard, smelled or felt. As an immovable

object, Copyright is not the same as the right to land or other objects which are fixed objects.

The nature of the intangible movable object can only be recognized if it is realized by law. The law manifests intangible movable objects, for example by means (juridical epistemology) called registration. In the old copyright law, the legal way to realize the intangible movable object was through the concept of registration. Currently, according to the applicable Copyright Law (UU-Hak Kekayaan Intelektual), the old epistemology is no longer used. Registration has been replaced by recording according to the Copyright Law.

So, just like the right to a four-wheeled motorized vehicle for example, in the old law Copyright can also be recognized as an intangible movable object because there is a juridical engineering registration of ownership of a four-wheel motorized vehicle, for example. Through the Motor Vehicle Ownership Book given at the end of the registration process, people can see the form of rights as abstract moving objects as if they can be digested through the human senses. Through legal assistance in realizing intangible movable objects with registration, humans are assisted or get protection against such objects. Currently, the registration system is no longer valid.

Copyright Law, particularly Article 16 paragraph 1 of Law No. 28 of 2014 on Copyright (Copyright Law), contains strict regulations defining Copyright as a type of intangible movable object that does not require registration. The formulation proves that Copyright is an object created by law. Copyright thus can also be referred to as a rule (norm) of law which is the target of study in legal science. In legal science, the rule of law can usually be referred to as legal regulations or legislation (legislation). Or, as previously stated, a norm, or more precisely, a law. In such manner, Copyright can be alluded to as an organization of the law. Copyright requires comprehensive legal protection as a legal institution.

At the level of values, Copyright discourse can be seen at the level of philosophical, legal, and social values. Because it has a commodity value that can ensure the creator's survival, it must be protected at the copyright level. At the juridical level: The

Copyright Law's Article 4 contains ambiguous rules regarding exclusive rights that require further explanation. When copyright infringement occurs, moral and financial harm will result from unclear norms. As a result, a form of ongoing, repressive legal protection is required.

In such manner, it is formed in Article 4 of Regulation Number 28 of 2014 concerning Copyright that Copyright is a select right. In the Elucidation of Article 4 of the Copyright Law, it is stated that: what is implied by an elite right is a right that is just expected for the Creator, so no other party can exploit the right without the Creator's consent. Non-creators who hold copyright only have economic rights, which represent a portion of the exclusive rights.

As a select right, Copyright as a right or an item as per the law comprises of moral privileges and monetary freedoms. Copyright, also known as an exclusive right or an exclusive object, is a legal right that only belongs to the creator. This means that copyright cannot be used by anyone else without the Creator's permission. It also means that other parties, such as the Copyright Holder, are not the Author. This legal relationship contains the issue of determining when a Copyright, in which there is an Exclusive Right, is no longer the property of the Author and has become the property of the Copyright Holder. Copyright holders only have part of the exclusive rights, namely economic rights, on objects or property. As an economic right, it is natural.

The guarantee of legal protection is appropriate or should be formulated clearly and completely, without blemish in its formulation in the law. Currently, in the Copyright Law, various means of legal protection have been provided in the formulation of articles.

Copyright is the exclusive right of the creator that automatically arises based on declarative principles after a creation is realized in a tangible form without reducing restrictions in accordance with the provisions of the legislation due to the unclear norms regarding exclusive rights. The means of legal protection for copyright are not sufficiently regulated in the Copyright Law Article 1 paragraph 1. The first-to-file principle is that

the party who first applies for registration and has been approved by the Kemenkumham office gets exclusive rights, namely the rights to his creations. On the other hand, the principle of first-to-use is the principle of the first user who has the legal right to the work in question.

For example, legal protection is regulated in the form of dispute resolution facilities (remidium) through courts, such as the Commercial Court. Likewise, the law provides other means such as dispute resolution through Arbitration and Alternative Dispute Resolutions and settlements of state administrative law and criminal courts. It's simply that what sort of Copyright is safeguarded in the Intellectual Property Regulation isn't clear in its definition or detail. Consequently, in Intellectual property regulation in Indonesia, there are as yet fragmented standards in the plan of standards.

For instance, there is still a gap that needs to be filled, and that gap is the focus of this dissertation's research: the law governing a painter's moral rights. The protection of moral rights in general, including the moral rights of artists, through the use of criminal law, in this instance through criminal sanctions, is neither explicitly nor explicitly regulated. Thus it can be said here, in addition to protection through dispute resolution or cases currently existing in the Copyright Law, both in the civil and administrative fields, there is still no firm formulation or construction regarding the protection or regulation of cumulative criminal law.

Literature Review

Research on legal protection of copyright has been carried out by several previous researchers, one of which is about the protection of exclusive rights to digital painting creations in the order of intellectual property rights in Indonesia by Disemadi & Hari (2021). The results of the research and discussion found that legal protection of This digital painting is implicitly regulated in Law Number 28 of 2014 concerning Copyright. Starting from protecting the exclusive rights of creators to legal remedies that can be taken by creators.

The second research was conducted by Awatari (2020). The final results of the study showed that

legal protection was realized by Law Number 28 of 2014 concerning Copyright so that the transformation of sculptural works carried out without permission did not abolish the creator's exclusive rights to obtain rights economics of his creations by taking into account a reasonable royalty fee between the creator and related parties as well as liability in the form of compensation to criminal sanctions as a result of the transformation of sculptural works of art carried out without permission.

When a party violates moral rights as part of Copyright under the Copyright Law, cumulative criminal sanction protection means protection through criminal sanctions that strengthen civil sanctions like compensation or restitution as well as state administrative legal sanctions like revocation of permits and so on. This indicates that the current Copyright Law still requires clarification of its regulations. In the interest of protecting, for instance, Moral Rights—in this instance, the Moral Rights of the Painter—as part of Copyright, there is a need for clear regulation relating to the settlement of cases or disputes in accordance with cumulative criminal law with civil law, state administrative law. Satisfaction of the requirement for legitimate assurance of the Ethical Freedoms which fundamentally stays appended to the Maker might be gotten, then as per the Intellectual property Regulation the Maker can have: (a). Copyright the executive's data; either (b) or Copyright electronic data. Based on this description, this study is interested in analyzing "Legal Protection of the Exclusive Rights of the Creator of Painting".

Research Method

In this study the authors used the normative legal research method, because the normative legal research method is a scientific research procedure that functions to find the truth based on the scientific logic of law from a normative side (Johny Ibrahim, (2011), so as to be able to explain the legal protection of the exclusive rights of creators painting works. Thus this method can answer the legal issues contained in this scientific work,

the author uses a type of statutory approach by relying on secondary data as the main data source. This research can also be said to be descriptive analytical in nature. It is said to be descriptive because it describes the problems that discussed, using analysis because of the legal regulations that will be analyzed to answer the problems raised in this study.

Results and Discussion

Legal Protection Theory

Legal protection is known in English with the meaning when translated into English with legal protection. Dignified Justice Theory understands the meaning of legal protection by comparing the term and looking for the equivalent of its meaning with the term legal protection. In that term there is the meaning of legal protection; another is the existence of certain arrangements or rules (norms/rules and values) in the legislations or regulations in force.

The term legal protection cannot be found as an entry in Black's Law Dictionary. In the famous legal dictionary, there is no explanation of the term legal protection. However, in the Black's Law Dictionary one can find a term with a narrow meaning in legal protection, known as the protection order.

Concerning the importance of the term security orders given by Dark's Regulation Word reference is structure given by court in aggressive behavior at home or abuse (Campbell 1991). This understanding derives from the reasoning presented by judges in American court decisions. A term that describes the meaning of a protection order can be found in the Judgment that Black's Law Dictionary refers to. Because of this, the term "legal protection" can be understood to mean the same thing as "protection order." A protection order that serves as an instrument from the court or judge is what is meant by the term.

Legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive in nature. Preventive Legal Protection is protection provided by the

government with the aim of preventing violations before they occur. This is contained in laws and regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation. Paramisuari, A.A.S and Purwani, S.P (2019).

Legal protection exists because of the urgent need to provide protection to those who in a legal relationship have a weaker position and need more protection. In the context of the legal objectives discussed in the Dignified Justice theory, legal protection is a logical consequence of the existence of law to humanize humans (*nguwongke uwong*) (Kameo and Prasetyo 2021). By law, the countries of the world have agreed on the protection of copyright even decades ago. In the Berne Convention, the main reference for copyright law protection throughout the world, it is stated that there is a Three Step Test concept which contains three exceptions where a copyrighted work may be duplicated. (Ginting, A. R. 2020).

The Copyright Law has provided two legal means which can be used at the same time to take action against perpetrators of copyright infringement, namely criminal law and civil law. Violation of copyright can be prosecuted both criminally and civilly (Muaja E.P, 2018). However, if the term legal protection is to be sought for further meaning, then the term must be placed in a pattern of legal relations. For this reason, it is common to know that a country will have a reciprocal relationship between its own citizens. In the case or legal relationship there are rights and obligations on one party and another in a legal relationship. Legal relations generally occur in the context of relationships, among others, the most common is between the state on the one hand and citizens on the other. Legal protection is usually discussed in legal relations in the context of the rights of each citizen, which can be claimed from his country.

Exclusive Rights

Restrictive Privileges, as expressed behind the scenes of the issue are the qualities of Copyright. Copyright became well-known as part of the idea of intellectual property rights thanks to

Bambang Kesowo (Kesowo, 1995). Copyright is intellectual property in science, art, and literature that supports national development and public welfare in a strategic way, as mandated by the Republic of Indonesia's 1945 Constitution. The issue is security. What kind of law refers to moral rights of the creator that, according to the law, cannot be transferred and remain in the author's possession until 70 years after the author's death.

Exclusive rights under the Copyright Law are rights reserved only for the Author, so that no other party can take advantage of these rights without the Author's permission. Exclusive rights consist of moral rights and economic rights. Copyrighted works that receive legal protection include in the fields of science, art and literature as stipulated in Article 1 number 3 of the Copyright Law. (Wibawa, D and Krisnawati, I. 2019).

Painting

The idea of a composition can't be isolated from the idea of the maker of the work of art, in particular the copyright holder of the canvas. Traditional and contemporary painting coexist in this instance. Traditional painting is characterized by the traditional nature attached to the term painting. That is, the painting that comes from tradition. Tradition refers to an institution, habit or behavior based on certain rules or norms, both written and unwritten, passed down from generation to generation from one generation to the next. Thus, traditional painting comes from the past generation of a society which is passed on to the next generation. Inheritance is closed. That is, it is impossible for a society outside the tradition and the landlady of a society to accept or create paintings that only apply to certain communities (Anonymous [nd-a]).

Legal Protection of Exclusive Rights Against Painting Artwork

In the fields of science, art, and literature, a work that has been realized as a tangible creation and in the form of an expression that can be seen, read, and/or listened to gets legal protection if it

is a human intellectual work that gets copyright protection. The holders of copyright enjoy exclusive rights. According to Article 4 of the Copyright Law of 2014, exclusive rights include economic and moral rights. The moral rights referred to in Article 4 are rights that are eternally attached to the Creator, according to Article 5 paragraph 1 of the Copyright Law.

- a. Whether or not to keep his or her name on the copy in connection with the Work's public use;
- b. Utilizing his nom de plume or pen name;
- c. Changing the Creation as per the legitimacy in the public arena;
- d. Change the Creation's name and child's name; and
- e. Ensure that his rights are upheld in the event that the work is altered, distorted, mutilated, or otherwise altered in a manner that is harmful to his honor or reputation.

In view of Article 8 of Regulation Number 28 of 2014 concerning Copyright, financial freedoms are the selective privileges of the Maker or Copyright Holder to acquire monetary advantages from the Works. As per Article 9 passage (1) of the Intellectual property Regulation, the Maker or Copyright Holder has monetary privileges to:

- a. Distributing Works;
- b. Proliferation of Works in the entirety of its structures;
- c. Creation Interpretation
- d. Variation, plan, or change of Works;
- e. The sale of original works or copies of them;
- f. Show of Creation;
- g. Work list announcement.

This exclusive right is only meant to be used by the owner, so no one else can use it without the owner's permission. To acquire monetary freedoms, the two makers and copyright holders are expected to become individuals from the Aggregate Administration Foundation. The presence of the Aggregate Administration Establishment is extremely useful for makers and holders and recognizes the presence of works that have been made by a resident. According to Article 87 of Law Number 28 of 2014 concerning Copyright, the Collective Management Institute is a non-profit organization that has a legal relationship with

an author. However, its purpose is to ensure that royalty fee obligations between related parties are carried out.

Law Number 28 of 2014 on Copyright defines sculptures as copyrighted objects and imposes clear restrictions on works covered by Article 58 of a quo law. The protection is given for 70 years exclusively but must be administratively re-registered so that it gets protection again. Furthermore, problems that arise after modification of a copyrighted product have been identified in several international articles, including an article compiled by Richard Stim entitled "Fair Use, what is transforming?" which basically explains that without the fair use doctrine, this (transformative intellectual property) would qualify as the copyright infringement by referring to the Codified Federal Law as 17.US Code 107 on Subject Matter and Scope of Copyright. The term as used to refer to a modified copyrighted work is a transformation work.

Although transformation works become a problem that tends to occur within the scope of copyright protection, until this work is formulated, there has not been a clear legal rule limiting the presence of transformation works. While alluding to Regulation Number 28 of 2014 concerning Copyright in the Thought area, letter b decides the lawful governmental issues of introducing the standard to guarantee legitimate sureness for a creator despite the fact that in the domain of training it doesn't completely run by what is politicized. Ni Ketut Supasti Dharmawan et al. explained that the nature of copyright, which is regarded as a movable object in accordance with Article 16 paragraph (2) of Law Number 28 of 2014 Concerning Copyright, has established a proper procedure for the transfer of copyright, including licensing. In response to this question, the authors of the article provided an explanation. In addition, the new license is described in several provisions, including the payment of a royalty fee, in Article 80 of Law No. 28 of 2014 concerning Copyright. In practice, Alinda Yani explains that there is a tendency not to carry out the licensing procedure for transformational works due to the low level of public knowledge about copyright. The impact caused by this lack of understanding

also results in not educating the creators of the economic rights of their own creations.

Regarding the topic of the discussion, Indonesia has a time limit for granting a license or transferring copyright. However, in accordance with Article 80, paragraph 2, of the Copyright Law No. 28 of 2014, the license agreement must not extend beyond the duration of the copyright and related rights. The lawful arrangement formed by this arrangement is to guarantee the re-enlistment of copyrights that have surpassed their assurance period. The transfer of copyright is a form of permission for the acquisition and modification of the created work, not the author's right to receive financial benefits from his or her creation. According to Eris Ostlund's thesis, "Transforming European Copyright, Introducing an Exception for Creative Transformative Works into EU Law," the same policy has actually been implemented in several European nations. In the discussion regarding models for legitimate transformative uses exist on At the national level, Eric explained that overall there are two main aspects in copyright protection, namely the right of author (*droit d'auteur*) and systems which employ a more utilitarian approach. *Droit d'auteur* explains the limitations of the use of the rights of an author and the system which employs explains the purpose of protecting a work. These two elements are basically the main linking point for copyright protection.

In essence, the existence of legal protection of copyright basically means the recognition of the rights to copyrighted works as well as the rights to enjoy the wealth within a certain time, which means that the copyright holder can allow or prohibit others from using his/her creation within the time specified in the law. related laws. According to Article 8 and Article 9 paragraph (2) of Law Number 28 of 2014 concerning Copyrights and transfers, the author's right to receive financial benefits from his creation remains unaffected by the transformation of a copyrighted work into a form of transformation. taking into account the reasonable royalty fee between the creator and related parties and carried out of course on the basis of the license granted by the copyright holder of the sculpture.

Protection of Moral Rights Against Painting Artwork

Moral rights are rights that are inherent in the creator and cannot be removed or deleted without any reason, despite the transfer of copyright or related rights, in addition to exclusive rights to a copyrighted work. Regarding moral rights, it can be seen from Article 5 of the Copyright Law that moral rights are more related to the creator in that the creator can change his or her own creation, change the name or title of the work, use his or her real name or a pseudonym, and include or not include his name in a copy of his work, and he can defend his rights if something hurts his reputation or honor. A watermark is a method of inserting, hiding, or planting certain data or information (whether it's just a general note) in a painting before someone else gets permission to exhibit the original creator's work or before buying a copy of the original creator's work, as we know or secret) into another digital data, but its presence is not known by the human senses (sight and hearing), and is able to deal with the processing process) on the image or its creation. This is done in order to appreciate a creation from the original creator and reduce the risk from theft to the use of a work. Although the inclusion of this name depends on the options of the original creator.

Conclusion

In sum, Copyright Law provides no clear or specific explanation for painting works' protection; rather, it only implies it in an article in Law Number 28 of 2014. As a result, many people are unaware that painting is protected as a work of art. Aside from that, in regards to moral privileges, it very well may be seen beginning from Article 5 of the Intellectual property Regulation where these ethical freedoms are more connected with the individual of the maker, as in the maker can change his/her own work, change the name or title of the creation, utilize his/her genuine name or alias, whether his/her name is in the duplicate of his/her work, and can safeguard his/her freedoms on the off chance that there is something unfavorable to his/her self-honor or notoriety.

In light of the portrayal above, with the presence of a regulation or guideline that directs the security of the select freedoms of a creation, it is sure that there will likewise be legitimate cures that can be taken against infringement that happen in regards to the issue of utilizing others' manifestations without consent, specifically either in suit or non-case, which in the event that the work is made through suit, in particular by recording a claim to the business court or can be arraigned criminally, which is as of now contained in the Intellectual property Regulation, or by settling an issue through non-prosecution, specifically by intercession, exchange, placation, or mediation. In light of the conversation above with respect to legitimate security of the select privileges of makers of compositions, the public authority ought to have the option to make sense of additional explicitly in the items in the Intellectual property Regulation in regards to canvases that poor person been made sense of top to bottom, and there ought to be more effort to the public so that individuals are all the more endlessly figure out the presence of lawful security for a work or creation.

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