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The Copyright Protection System Through the Art Community Paradigm in Indonesia

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Abstract*: The copyright protection system born from developed countries with the philosophy of 'individualism' dominates the dynamics of legal regulation in the world. No exception in Indonesia, arrangements regarding Intellectual Property Rights cannot be avoided since the entry into force of the Trade Related Aspect of Intellectual Property Right (TRIPs). Various instruments of copyright law are taken for granted in Indonesia, which then present problems because of their incompatibility with the Indonesian context which philosophically adheres to the principle of collectivity and mutual cooperation. As a result, Indonesian artists feel that the presence of a system of copyright protection is actually considered a burden on their creative work. With research carried out in the qualitative tradition and constructivism paradigm, this paper will discuss the study of legal philosophy regarding the problematic system of copyright protection in the midst of the life of the arts community in Indonesia. Efforts to protect copyright that are in line with the philosophy and needs of artists in Indonesia should be of concern to the current government.

***Keywords*: copyright, paradigm, art society, legal philosophy.**

I. INTRODUCTION

The presence of the concept of Intellectual Property Rights (hereinafter referred to as IPR) as an intangible individual property and its specific elaboration in a positive legal order especially in economic life is a new thing in Indonesia. This is a development of international dynamics in which each country has accommodated rules that have been ratified multilaterally, including norms underlying international rules such as the World Trade Organization (WTO), General Agreement on Tariff and Trade, World Intellectual Property Organization (WIPO), Trade Related Aspect of Intellectual Property Right (TRIPs), and others (Roisah et al., 2018). From the point of view of IPR born in western society, regulations regarding IPR are needed as protection and appreciation, which will provide a sense of security and create a climate conducive to increasing enthusiasm or passion to produce innovative, inventive and productive works. In western societies, the appreciation of every outcome of individual thought and intellectual property rights has long been implemented which is then realized in legislation. IPR for western people is not just a legal instrument that is used only for the protection of one's intellectual work, but is a business tool and strategy.

Based on the concept of IPR which was born in western society, when inventions are commercialized or become intellectual property, it allows the creator or inventor to exploit his creation / invention economically. The results of the commercialization of the invention allow the creator of intellectual work to continue to work and improve the quality of his work and become an example for individuals or other parties, so that there will be the desire of other parties to work better so productive competition arises. It is different from Indonesia which traditionally upholds the principle of mutual cooperation or collectivity. The presence of IPR arrangements that are in line with the principles of individualism cannot just be accepted by Indonesian society. In the context of copyright, for example, not a few creators allow copyright infringement on their work. Anne Avantie for example, in a previous study by the author, Anne Avantie did not even object to the plagiarism of the copyright kebaya work modified by her creation. He actually believes that through plagiarism or imitation of his work, he has shared happiness and fortune with kebaya tailors, because they get many orders to imitate Anne Avantie's kebaya (Sulistyawan, 2008). Another finding, Ni Wayan Masyuni Sujayanti stated that most Balinese artists do not register copyrights for the artwork they produce. Even one of the findings, stated that one of the causes of the low registration of copyright according to local artists is that they adhere to the principle of the work of art that they create is collective, social, and for community service (Sujayanthi, 2017). Regarding this matter, it can be understood that the presence of national law in social spaces, especially in the local community, is often a burden on the recipients. Local law and culture, not always compatible. Law as a centrally-nationally-designed formal-modern system is present in local, informal-local culture. Both are not only social construction products from different worlds, but also have different logic and basic concern (Tanya, 2006). An understanding of the acceptance of the system of copyright protection by the art community in Indonesia is an interesting matter to be discussed in the study of legal philosophy, especially in paradigmatic studies. Therefore, this paper will discuss two issues, namely: a) how is the acceptance of the copyright protection system by the art community in Indonesia?; and b) how does the study of legal philosophy (through paradigmatic study) explain the acceptance of the copyright protection system in the paradigm of the art community in Indonesia?

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II. RESEARCH METHODS

The research tradition used by researchers in this study is a qualitative tradition. Denzin and Lincoln state that qualitative research is research that uses a scientific setting, with the intention of interpreting phenomena that occur and are carried out by involving various methods. Then according to Jane Richie, qualitative research is an attempt to present the social world, and its perspective in the world, in terms of concepts, behaviors, perceptions, and problems about the human being studied (Moleong, 2005).

Based on the ideas of the Guba and Lincoln paradigm, in this study, researchers used the constructivism paradigm as 'analytical knife'. Meanwhile this research applies data collection methods which include: a) Research literature; b) Field research in the qualitative tradition, in the form of: observation and in depth interviews.

In carrying out interpretations in this study, researchers do not refer to any theory. The researcher only attempts to interpret the findings in the research with existing constructions and continues to develop in the mentality of researchers during the research process. In the constructivism paradigm, the results of this study are also very subjective, because they are based on the researchers' own interpretations of the various constructions that exist. The final results of the interpretation of the results of the research are further stated in a writing.

III. RESULT

A. Acceptance Of The Copyright Protection System By The Art Society In Indonesia.

In formal juridical terms, Indonesia was introduced to copyright issues in 1912, namely when the Auteurswet was promulgated (Wet van September 23, 1912, Staatblad 1912 Number 600), which took effect September 23, 1912 (Usman, 2003). After Indonesia's independence, this Auteurswet 1912 provision was still declared valid in accordance with the transitional provisions contained in Article II of the Transitional Rules of the 1945 Constitution, Article 192 of the Provisional Constitution of the Republic of Indonesia and Article 142 of the Provisional Constitution 1950.

In 1958, Prime Minister Djuanda stated that Indonesia was out of the Bern Convention and stated that all legal provisions regarding copyright were no longer valid, so that Indonesian intellectuals could use the work, inventions and foreign works without paying royalties. With the consideration that it would not complicate Indonesia in the international community, this attitude was revisited after the New Order came to power. The old Dutch provisions regarding copyright, namely Auteurswet 1912 apply again (Munandar and Sitanggang, 2008).

After 37 years of independent Indonesia, Indonesia as a sovereign state promulgated a national law on Copyright, precisely on 12 April 1982, the Indonesian government decided to revoke Auteurswet 1912 Staatsblad Number 600 of 1912 and at the same time enacted Law Number 6 of 1982 concerning Rights Copyright which was published in the Republic of Indonesia State Gazette of 1982 Number 15. This law was in principle the same regulation as the Auteurswet 1912 but was adjusted to the condition of Indonesia at that time.

In fulfilling the demand for improvement of the 1982 Copyright Law, on September 23, 1987 the Government, with the approval of the House of Representatives, promulgated Law Number 7 of 1987 concerning amendments to Law Number 6 of 1982 concerning Copyright.

After running for ten years, Law Number 6 of 1982 joins Law Number 7 of 1987 amended by Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning copyright that has been amended by Law Number 7 of 1987. The amendment to this law is due to Indonesia participates in the Agreement on the Aspects of Intellectual Property Rights (Agreement on Trade Related Aspect of Intellectual Property Rights, Including Trade Counterfeit Goods / TRIPs) which are part of the Agreement Establishing the World Trade Organization.

Indonesia has ratified Law Number 7 of 1994 and has continued to implement in law one of which is the Copyright Law. In addition, Indonesia also ratified the Berne Convention for the Protection of Architecture and Literary Works (Berne Convention on the Protection of Artwork and Literature) through Presidential Decree No. 18 of 1997 and the World Intellectual Property Organization Copyrights Treaty (WIPO Copyright Agreement) by Presidential Decree Number 19 of 1997 (Busro et al., 2018).

In its development later, Act No. was born. 19 of 2002 concerning Copyright which is the momentum of law enforcement of copyright infringement in Indonesia. Until then in 2014 a new copyright law was passed, namely Law Number 28 of 2014 concerning Copyright. Various developments surrounding the regulation of copyright protection in Indonesia do not have a significant effect on the acceptance of the arts community in Indonesia which considers the philosophy of copyright regulation originating from western culture that upholds individualism and liberalism not in accordance with the philosophy of Indonesian society that upholds collectivity. Even according to Dijan Widijowati (2017), society has gotten used to share files that are based on economic or commercial reasons. The Society just wants to share with others and can take benefit and enjoy the files without understanding the true copyright protection.

In the context of copyright protection, several studies that have been conducted have revealed surprising results regarding artists' perceptions of the copyright protection system. According to the artist's perception, "the creative choices of constrain the copyright can of a new author. Similarly, they consider that the application of copyright law is not only third party users, but also those involved in the traditional artistic system itself. In other words, in their view, copyright systems can potentially constrain traditional arts, although it may also potentially support their activities" (Sardjono, 2011). In the perspective of copyright law enforcement, Triyanto (2017) through his research stated that Indonesian people have low legal awareness and assume that copyright infringement is not a violation of law.

The acceptance of the system of copyright protection by Indonesian artists as outlined in the examples above shows that the Indonesian art community has not yet received the presence of an optimal system of copyright protection, because it is not in accordance with their paradigm that promotes the spirit of sharing and benefiting widely.

B. Acceptance Of The Copyright Protection System In The Paradigm Of The Art Society In Indonesia: A Study Of Legal Philosophy In The Paradigmatic Study

In this section, the author will discuss the acceptance of the copyright protection system in the paradigm of the art community in Indonesia through the study of legal philosophy in paradigmatic studies. So before the author will begin to explain with an understanding of the paradigm. Paradigm is part of philosophy, because it is the main philosophy, parent, or 'umbrella' as N.K. Denzin and Y.S. Lincoln in the sense of a paradigm. Of the many experts who offer the following understanding of paradigm classifications, the authors tend to adopt the opinions of Guba and Lincoln, which, according to Erlyn Indarti (2010), cover more at the same time systematic, solid, and rational. They, which are basically more inclined to the global understanding of the paradigm, distinguish paradigms based on the answers of each of the 3 (three) 'fundamental questions' that concern:

a. The shape and nature of reality, what follows can be known about this [referred to as 'ontological' question];
b. The nature of the relationship or relationship between an individual or a group of people and the environment or everything that is outside themselves, including what can be known about this [referred to as an 'epistemological' question, into which includes the 'axiological' question]; and
c. The way in which individuals or community groups [of course including researchers] get answers to what they want to know [is called a 'methodological' question].

In the context of the notion of this paradigm, Guba and Lincoln offer 4 (four) main paradigms. The four paradigms in question are: positivist; post-positivism critical theory et al; and constructivism. The four paradigms are distinguished from each other through responses to 3 (three) basic questions; which includes "ontological" questions, "epistemological", and "methodological". The following is the 'Basic Belief Set' of the four main paradigms offered by Guba and Lincoln.

Table 1. Basic Belief Set of 4 Main Paradigms

Question	Positivism	Postpositivism	Critical Theory et al	Constructivism
Ontology	Naive realism: external, objective, real, and understandable reality.	Critical Realism: external, objective, and real reality that is understood to be imperfect.	Historical Realism: 'virtual' reality that is formed by social, political, cultural, economic, ethnic, and 'gender' factors.	Relativism: multiple & diverse reality, based on social-individual, local, and specific experiences.
Epistemology	Dualist / Objectivist: researchers and investigative objects are two independent entities; value free.	Modification Dualist / Objectivist: dualism recedes and objectivity becomes the determining criteria; external objectivity.	Transactional / Subjectivist: researcher and object of investigation related to interactive; the findings are 'mediated' by values held by all parties.	Transactional / Subjectivist: researchers and objects of investigation related interactively; the findings are 'created' / 'constructed' together.
Methodology	Experimental / Manipulative: empirical test and verification of research questions and hypotheses; manipulation and control of opposite conditions; mainly quantitative methods.	Experimental / Manipulative Modifications: falsification by means of critical multiplism or modification of 'triangulation'; qualitative technique utilization: more natural settings, more situational information, and emic viewpoints.	Dialogical / Dialectical: there is a 'dialogue' between researchers and the object of investigation, which is dialectical: 'transformation' kemasa-bodohan and misunderstandings become awareness to break down.	Hermeneutical / Dialectical: 'Construction' is traced through interaction between the researcher and the object of investigation; with hermeneutical techniques and dialectical exchanges "construction" is interpreted; goal: distillation / consensus / resultant.

Source: Guba and Lincoln (1994)

Based on these four main paradigms, it is clear that the legal nature is interpreted differently in each paradigm according to its ontology. The paradigm of positivism for example, the law is interpreted as naive reality, namely external reality, objective, real, and can be understood. In such ontological meanings, the law is nothing but written rules, such as the Law and so on in the form of text. The truth of reality in this paradigm is objectively positioned on the subject as its 'dualist / objectivist' epistemology. In this case the reality of the copyright protection system in question is the legal instrument of the Copyright Act, in this case Law No. 28 of 2014 concerning Copyright as the current regulation. The system of copyright protection provided by law is a real and objective truth that must be upheld in the context of copyright protection in Indonesia, from Sabang to Merauke - from Miangas to Rote Island. This means that there is no other choice, every act of copyright infringement in Indonesia must be acted on according to the law, after there is a report or complaint from the owner / copyright holder. The Copyright Act which was born in the philosophy of Western society that promotes individualism and liberalism, since it was declared adopted through national regulations into copyright law, must be declared to be definite and objective in the Indonesian context.

Such is the ontological understanding of reality regarding the system of copyright protection according to the positivism paradigm.

The provisions of the Copyright Law must be implemented by the parties involved, including the art community in Indonesia whose work is vulnerable to imitation or diplomacy by other parties. Regulations concerning the registration of copyright and others specified in the Act must also be carried out as an effort to protect the copyrighted works of the Indonesian art community, from threats and potential plagiarism and copyright claims by other parties or other countries.

The problem is that the copyright protection system in force according to Law No. 28 of 2014 concerning Copyright is actually a burden for the Indonesian art community. The law's recommendation for artists to register copyright for each copyrighted work in order to avoid legal problems regarding later copyright ownership, is a burden on the art community. So at least the comments that Anne Avantie conveyed to researchers. According to him, if designers like Anne Avantie had to register their works every time, they might not have the time to work and produce new works (Sulistyawan, 2008).

In the context of the art community in Indonesia, an understanding of copyright protection should pay attention to the aspirations and perceptions of the people involved, for example artists. In this case, the constructivism paradigm understands that the reality of the life of the arts community in Indonesia is local and specific. Because the Indonesian nation is a nation rich in culture that has a lot of works of art that are the wealth of the nation from the end of Sabang to Merake, or from Miangas to Rote Island, the specifications of the artwork produced are very diverse with very high numbers and artistic values. All of them are wealth which until now is still being preserved, for example the works of art of the artist community in Bali which until now still exist and become a tourist attraction.

Seeing the peculiarities of the work of the art community in Indonesia, the safeguards should be carried out relatively by the government through the implementation of the constructivism paradigm. Reality according to the ontology of the constructivism paradigm is relativism. Reality is something that is plural and diverse, based on social-individual, local, and specific experiences. In this case, the understanding of the arts community in Indonesia is very local based on their experience, so that to accept the legal instruments of copyright protection that were born from the West, is something that is not "fit-in".

The ideal copyright protection system as the context of the Indonesian art community is a system of protection that is constructed by hermeneutical/dialectical methodology as understood by the art community itself. This protection effort should be facilitated by the state by involving many stakeholders, various stakeholders, including artists to agree on an adequate system of copyright protection, along with agreements on imitation in the context of copyrighted works according to the distinctive Indonesian philosophy with collectivity and mutual cooperation -the project.

IV. CONCLUSION

The study concluded that the system of copyright protection provided by various instruments of positive law, namely Law No. 28 of 2014 which is currently in effect has not been fully accepted by the arts community in Indonesia. The system of copyright protection incompatibility is more due to the philosophy of the Indonesian art community which tends to uphold collectivity compared to the philosophy of individualism carried out by the system. The ideal copyright protection system as the context of the diverse and diverse Indonesian art community should be built on the constructivism paradigm. This protection effort should be facilitated by the state by involving many stakeholders, various stakeholders, including artists to make an agreement on the copyright protection system that is adequate in accordance with the Indonesian context.

REFERENCES

1. Busro, A., Sulistianingsih, D., & Adhi, Y. P. (2018). Quo Vadis Copyright as Fiduciary Guarantee in Indonesian Legal Arrangement. Journal of Legal, Ethical and Regulatory Issues, 21(2), 1-11.
2. Guba, E. G., & Lincoln, Y. S. (1994). Competing paradigms in qualitative research. Handbook of qualitative research, 2(163-194), 105.
3. Indarti, E. (2010). Diskresi dan Paradigma: Suatu Telaah Filsafat Hukum, Pidato Pengukuhan Guru Besar Universitas Diponegoro. Semarang: Badan Penerbit Undip.
4. Law No. 19 of 2002 concerning Copyright
5. Law No. 28 of 2014 concerning Copyright
6. Moleong, L. J. (2005). Metodologi Penelitian Kualitatif Cet. XXI. Bandung: PT Remaja Rosda Karya.
7. Munandar, H., & Sitanggang, S. (2008). Mengenal HAKI, hak kekayaan intelektual: hak cipta, paten, merek dan seluk-beluknya. Esensi.
8. Roisah, K., Utama, Y. J., Saraswati, R., & Whidari, Y. (2018). Status and contemporary development of employee inventions ownership in G-20 countries. European Research Studies Journal, 21(2), 214-224.
9. Sardjono, A. (2011). Culture and intellectual property development in Indonesia. Indon. L. Rev., 1, 237.
10. Sujayanthi, N. W. M. (2017). Faktor Penyebab Tidak Didaftarkannya Hak Cipta Oleh Seniman Akademik Penghasil Karya Seni di Fakultas Seni Pertunjukan Institut Seni Indonesia Denpasar. Jurnal Hasil-Hasil Penelitian Institut Seni Indonesia Denpasar, 5.
11. Sulistyawan, A. Y. (2008). Perlindungan Karya Cipta Kebaya Sebagai Aset Nasional Yang Bernilai Tinggi (Studi Kasus Perlindungan Hak Cipta Terhadap Karya Cipta Kebaya Modifikasi Anne Avantie) (Doctoral dissertation, Program Pascasarjana Universitas Diponegoro).
12. Tanya, B. L. (2006). Hukum dalam Ruang sosial. Srikandi.
13. Triyanto. (2017). Copyright law enforcement: an Indonesia case study. Journal of Intellectual Property Rights, 22.
14. Usman, R. (2003). Hukum hak atas kekayaan intelektual: perlindungan dan dimensi hukumnya di Indonesia. Alumni.
15. Widijowati, D. (2017). Flexibility Protection of Copyright in Indonesia. The Southeast Asia Law Journal, 1(2), 55-62.