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Copyright Protection of Traditional Culture Expression Efforts to Increase the Productivity of Batik Creative Industry in Indonesia

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Abstract:

The study aims to determine the efforts to protect traditional cultural expressions through regional regulations. Specifically, to explain the importance of efforts to protect traditional cultural expressions, explain the position of local regulations on the protection of traditional cultural expressions and explain the content of local regulations on the protection of traditional cultural expressions. The research approach method used in this study is normative juridical method with analytic descriptive specifications. Indonesia has synchronized the regulation in international law contained in Article 38 and 39 of Law Number 28 of 2014 concerning Copyright. Constraints in the protection of traditional cultural expressions in Indonesia is mostly due to understanding ownership of traditional cultural expressions in Indonesia more to communal ownership. So, in order to break the cultural barriers, it is necessary to socialize and civilize the Copyright to the community. Inter-national friction over the recognition of ownership of traditional cultural expressions is largely due to the factor of overriding moral rights and the principle of first to use which is inherent in traditional cultural expressions. The importance of establishing regional regulations for the protection of traditional cultural expressions is as a regional policy that protects intellectual property rights in the field of culture. The position of local regulations on the protection of traditional cultural expressions as a regional policy towards the protection of traditional cultural expressions must still refer to the applicable legal framework for intellectual property rights.

Keywords: International law, copy right, folklore

1. Introduction

The Bern Convention underwent several revisions, the first revision was carried out in Paris on 4 May 1896, then it was revised in Berlin on 13 November 1908. The improvement continued to be made progressively on 24 March 1914 in Bern, then revised in Rome on 2 June 1928, in Brussels on June 26, 1948, in Stockholm on June 14, 1967 and most recently in Paris on June 24, 1971. The 1971 Bern Convention revision resulted in arrangements that could potentially regulate folklore, namely contained in article 15 paragraph (4), which reads in full: "Right to Force Protected Rights: (a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is the national of the country to design the competent authority which shall represent the author and the bearer to protect and enforce his rights in the countries of the union. (b) Countries of The Union which makes such a statement under its terms shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated.

The Director General shall at once communicate this declaration to all other countries of the union. This article regulates the protection of creations that are not known to the author. As many people know, Folklore in Indonesia is unclear, so this rule is the closest to protecting Folklore in the Bern Convention. Folklore is a part of the Copyright scope in which Copyright is one of two fields covered by intellectual property rights other than industrial property. The existence of ownership rights in law is the most powerful and absolute right of nature. And intellectual property rights are different from property rights in generally when viewed from the object, especially for objects that are God's creation like the land.

Because intellectual property rights are born from human creations and intellectuals. The creation of the thought process is only owned by people who are creative in their intellectual use, so it is very possible that it will so bring glory

in terms of its economy (Intellectual Property is the machine of money maker). So intellectual property is something that can be proud of in economic development because its existence is more powerful than natural resources. While the issue regarding protection of Folklore itself began to emerge in the Agreement Trade Related Aspect of Intellectual Property Rights (Trips Agreement) in 1994 and entered into force January 1, 1995. Folklore is a copyrighted work of the nation that has exclusive rights for the creator or holder of the Copyright to regulate the use of the results of the pouring of certain ideas or information. Basically, Copyright is the right to copy a work. Copyright can also allow the rights holder to limit the duplication valid for a work. Copyright has a limited certain validity period. Copyright is a type of intellectual property rights, but Copyright differs significantly from other intellectual property rights, such as patents, which give monopoly rights to the use of inventions. Because Copyright is not a monopoly right to do something, but the right to prevent others from doing it. Copyright recognizes the concept of economic rights and moral rights.

Economic rights are the right to obtain economic benefits from creation, while moral rights are rights inherent in the creator or perpetrator (art, recording, broadcast) which cannot be eliminated for any reason, even though copyright or related rights have been transferred. Examples of the implementation of moral rights are the inclusion of the name of the creator in the creation, although for example the Copyright of the work has been sold to be used by another party. Copyright holders may be people who employ creators and not the creators themselves if the creation is made in relation to official relations. This principle is generally applicable; for example, in British law (Copyright Designs and Patents Act 1988) and Indonesia in Article 8 of Law Number 19 of 2002 concerning Copyright. In the laws that apply in Indonesia, there are differences in the application of these principles between government institutions and private institutions.

Traditional cultural expression is the identity and characteristics of a nation that can distinguish it from other nations. Therefore, the State needs to provide protection for it, because it also shows the authority of a nation. Moreover, the regulation on legal protection for traditional cultural expressions has been firmly regulated in the 1886 Bern Convention and in its revision (Paris Convention) in 1971.

Therefore, it is necessary to have an even understanding for the Indonesian people about the existence of Folklore within the scope of Copyright which in national law has been regulated in Law Number 28 of 2016 concerning Copyright.

The Indonesian government must be more assertive in responding to various Copyright violations especially against traditional cultural expressions (Folklore). There is no reason that Folklore or traditional cultural expressions are difficult to find who the creator is because it has been centuries ago, so the government has difficulty determining its attitude. Because if the creator is unknown to Folklore, then the country should act as the creator. Based on what has been described in the background above, the author makes a study with the title: Copyright Protection Against Traditional Cultural Expressions TO Improve Batik Creative Industry Productivity in Indonesia.

2. Theoretical Framework

There are two theories that are philosophically related to the assumption that intellectual property rights are a system of ownership. The theory was put forward by John Locke and Hegel. Both John Locke and Hegel originated from the Natural Law Theory which originated in morality about what is good and bad. (Mahmud Marzuki, Peter 2005). The Theory of Natural Law with one of its characters, Thomas Aquinas, considered the law to be universal and lived in every person. Law must submit to moral boundaries that are Godlike based on human reason. (Muhammad Djumhana. 2006). John Locke teaches the concept of property in relation to human rights with his statement "Life, Liberty, Property." Locke said that the property of a human being against objects it has been produced since the man was born. Objects in the sense here are not only tangible objects, but also abstract ones, which are called the property of intangible objects, which are the results of human intellect (P.V Valsala G Kutty, 2010).

Hegel developed the concept of "Right, Ethic and State" which essentially is the existence of personality. Hegel's thinking is the basis for justifying intellectual property rights that there is something more in property than just human instinctive behavior (Maya Sofia and Tasya P, 2013). The importance of property as a way to build, develop and understand a person's personality, the expression to be mastered, as well as establish the boundaries between other individuals and other wealth from society. This research is also based on the theory of the formation of legislation proposed by Hans Kelsen and Hans Nawiasky. Hans Kelsen and Stufentheorie stated that the legal norms are tiered and layered in a hierarchy of structures, where lower norms apply, are sourced, and are based on higher norms, higher norms are applicable, sourced and based to a higher norm. (Lutviansori, 2010). In line with Kelsen's thinking about multilayered and tiered norms, Hans Nawiasky stated that in addition to the norms that are layered and tiered, the legal norms of a country also belong to groups consisting of groups. Staatsfundamentalnorm (State Fundamental Norms), Staatsgrundgesetz (Basic State Rules), Formell Gesetz ("formal" law), and Verordnung & Autonome Satzung (implementing rules and autonomous rules) (Saefudin, Achmad Fedyani, 2004.).

3. Research Methods

The research approach method used in this study is normative juridical method with analytic descriptive specifications. This legal writing first examines all provisions of the legislation relating to the protection of intellectual property rights, protection of traditional cultural expressions and the formation of regional regulations. The results of this study will truly be a description of the object that becomes a problem, namely the effort to protect traditional cultural expressions by establishing regional regulations on intellectual property protection.

4. Research Results and Discussion

Results of Focus Group Discussion Sragen District Government paid attention to batik that this batik is a cultural heritage of the ancestors having very high historical and artistic value. Batik also contains philosophical values, local wisdom typical of Indonesian people. At present, the existence of Indonesian batik seems to fade, its prestige begins to be eroded by a large capital-based clothing industry, especially the fashion industry from abroad. Not only that, the ownership rights of our batik have also been claimed by foreign countries. Therefore, the Regional Government of Sragen Regency realizes that it must be involved to encourage the batik industry so that people can continue to exist, develop, and at the same time protect the cultural heritage of our ancestors from claims by foreigners who claim to be the owners of batik handicrafts. There have been many concrete steps taken by the Sragen Regency government: in the licensing sector. The process of taking care of licensing for those who will open a business or who want to complete licensing for those who already have a business is very easy, cheap, fast. Sragen already has an Integrated Service Agency which makes the licensing service enough through one door, fast, easy, cheap, and convenient. The Sragen Regency Government has done a lot of assistance and guidance for batik artisans. Starting from capital, equipment assistance, as well as various training needed to improve the quality of batik. Batik marketing is also assisted through various exhibitions facilitated by the government. Established the Sragen Trade Center which is the door for marketing and trading of superior products of Sragen.

4.1. Copyright Protection against the Expression of Traditional Culture in Indonesia

According to international law relating to copyright protection there are two very important international agreements in the history of legal development concerning the protection of intellectual property in the world, namely: a) The Bern Convention, is an international agreement on the protection of literary and artistic works. The Bern Convention is the oldest agreement on the oldest copyright in the world that is approved on September 9, 1886, and is open to all States to ratify it. There are 133 countries that have participated in signing this convention, and Indonesia has ratified it on September 5, 1997. b) General Agreement on Tariffs and Trade (GATT) which also includes Trips Agreement (Agreement on trade aspects of Intellectual Property).

The Bern Convention in providing protection for Copyright has three main principles, namely: National treatment of works originating from one of the Bern Convention States must be given the same protection for each other Member State. National treatment does not depend on formality, which means that protection is given automatically and does not require registration, deposit or formal notification in connection with publication. Protection of the copyrighted work is independent of the protection requirements in the country of origin of the work produced. The exclusive rights regulated in the Bern Convention are: the right of translation, the right to display drama in front of the public, the work of musical dramas and musical works, the right to broadcast, the right to reproduction in any form, the right to make pictures live from the work, the right to adapt WIPO or an abbreviation of the World Intellectual Property Organization is a UN special agency that handles the issue of Intellectual Property Rights.

WIPO was formed in 1967 which aims to encourage creativity and introduce intellectual property protection throughout the world. This is in line with the purpose of WIPO formation which is a recommendation from the Trips Agreement which states that, "The WIPO has been established to promote the protection of intellectual property." throughout the world through co-operation among states and, where appropriate, in collaboration with other international organizations. "WIPO was formally formed by the Convention on the Establishment of the World Intellectual Property Organization which was signed in Stockholm on July 14, 1967 and fixed on September 28, 1979. In one article, WIPO sought to promote the protection of intellectual property rights to the world. For the time being, WIPO has approximately 184 countries with its headquarters in Geneva Switzerland. And almost all UN member states are members of WIPO. In addition to its 184-member countries, WIPO has produced 23 international agreements.

The Vatican and almost all UN member states are WIPO members. While countries that are not members of WIPO are Kiribati, Marshall Islands, Federated Micronesia, Nauru, Palau, Palestine, Arab Democratic Republic, Solomon Islands, Taiwan, Timor Leste, Tuvalu and Vanuatu. The predecessor of WIPO was named BIRPI (French Bureau of Internationalism Reunion pour la Protection de la Propriété Intellectuelle), which was founded in 1893 to oversee the Bern Convention on the Protection of Art and Literature and the Paris Convention on the Protection of the Right to Industrial Wealth. WIPO was officially formed by the Convention on the Establishment of the World Intellectual Property Rights Organization (signed in Stockholm on July 14, 1967 and corrected on September 28, 1979). Based on Article 3 paragraph (3) of this convention WIPO seeks to promote protection from property intellectuals throughout the world. And in 1974 WIPO became a special representative of the United Nations for this purpose.

4.2. Copyright and Co-Existed Rights

WIPO provides an understanding of Copyright as follows: "Copyright is the legal form of describing right given to creators for their literary and artistic works" or Copyright is a legal terminology that describes the rights given to creators for their works in the field of art and literature. The definition of Copyright is also mentioned in the Copyright, Designs and Patents Act 1988 which states, "Copyright is a property right that subsists in certain specified types of works." In another sense David Vader in his article entitled Some Agnostic Observations on Intellectualism property defines that "Copyright is if one creates a literary, musical, dramatic or artistic work, one

automatically has a copyright on it." From this definition can be explained as follows: a) Literary works. b) Dramatic works. c) Musical works: type and quality. d) Artistic works.

4.3. Economic Rights

Economic rights are rights inherent in the creator or perpetrator who cannot be removed or deleted without any reason, even though the Copyright or related rights (neighboring right) have been transferred. Economic rights are exclusive rights of the creator to obtain economic benefits. Economic rights include the right to reproduce, distribution rights, performance rights and demonstration rights. The moral right is the right inherent in the creator who cannot be lost or deleted without any reason even though the Copyright or related rights have been transferred. As for the provisions regarding this moral right can be seen in The Copyright, Designs and Patents Act 1988, which states that, "There are four rights within the moral right designation, being: the right to be identified as the author or director of work, the paternity right (section 77-79); the right of an author or director of work to object to derogatory treatment of that work, the integrity (section 80-83); a general right that everyone has not to have a work attributed to him (section 84), the commissioner's right of privacy respect for photographs or film made for private and domestic purposes (section 85)."

The Copyright Law provides that the ownership of Copyright by the State, if the copyrighted work is considered as a public domain or owned by the people. Copyright ownership functions by this State are very functional against problems concerning the creation needs of possible violations of works abroad, therefore the State acts as the Copyright holder. Creative works that are considered as common property, for example: fairy tales, saga, people's songs, calligraphy, traditional dances, and so on. The Copyright Law provides an understanding that Copyright is a special right, this means that the understanding of the law stems from the inherent special nature of the creator or the owner of the right is associated with the thought of the need for recognition and respect for the efforts of the creator for all efforts and sacrifices so that an intellectual work can be born. And in Chapter II Article 8 of Law Number 28 of 2014 traditional cultural expressions and creations that are not known to the creator are regulated in new provisions Article 38 of Law Number 28 of 2014, namely: (1) Copyright on traditional cultural expressions held by Country. (2) The State is obliged to inventory, maintain and maintain traditional cultural expressions as referred to in article (1). (3) The use of traditional cultural expressions as referred to in paragraph (1) must pay attention to the values that live in the community of its development. (4) Further provisions concerning Copyright held by the State for traditional cultural expressions as referred to in paragraph (1) shall be regulated by Government Regulation.

Then in Article 39 of Law Number 28 Year 2014 stated that: (1) In the event that the Creator is unknown and the Work has not been made Announcement, the Copyright of the Work is held by the State for the benefit of the Creator. (2) In the event that the Work has been made an Announcement but the Author is not known, or only has the alias or disguise of the Author, the Copyright shall be held by the party making the Announcement for the benefit of the Creator. (3) In the event that the Work has been published but the Author does not know it and the party carrying out the acknowledgment, the Copyright of the Work is held by the State for the benefit of the Creator. (4) Provisions as referred to in paragraph 1, paragraph 2, paragraph 3 do not apply if the author and/or the party making the Announcement can prove ownership of the Work. (5) The interests of the Creator as referred to in paragraph 1 and paragraph 3 shall be carried out by the Minister. The cultural potential of the Indonesian people which has no less than 350 ethnic groups has a uniqueness as well as diversity in the ideals, tastes and expressions of traditional culture (Folklore) respectively. Recognizing this potential, Indonesia actually has enormous power in increasing growth. In such a society the governing law also reflects the transitional period which is described as the face of the law that rests on two feet stepping in a modern law style while the other foot still follows traditional law.

Likewise, with the law that regulates Copyright issues, although normative does not contain many problems to be applied in Indonesia, but culturally there will be many problems in its implementation. This is caused by the philosophical basis behind the legal community is different. Copyright appears in western countries along with the emergence of a society that puts forward the interests or individual rights (private rights) with capitalistic character, while.

5. Conclusion

As part of Copyright, protection of traditional cultural expressions is obtained automatically, meaning that traditional cultural expressions are protected directly by law since it was first announced. Without having to go through registration, in principle intellectual property rights have been attached to the community. Copyright protection for traditional cultural expressions in Indonesia according to international law contained in the Bern Convention and revision is a culture passed down from generation to generation. Therefore, it has become the common property of the Indonesian people. And Indonesia has synchronized these arrangements in its national law contained in article 38 and 39 of Law Number 28 of 2014 concerning Copyright. Constraints in the protection of traditional cultural expressions in Indonesia are mostly due to understanding ownership of traditional cultural expressions in Indonesia more to communal ownership. So, in order to break the cultural barriers, it is necessary to socialize and civilize the Copyright to the community. International friction over the recognition of ownership of traditional cultural expressions is largely due to the factor of overriding moral rights and the principle of first to use which is inherent in traditional cultural expressions.

International law, including the law that regulates the provision of copyright, is basically a good moral invitation, as John Austin said: The International law is not a real law, but just positive morality. Thus, the sanctions for violators at the level of enforcement are also difficult, considering that this is related to the moral awareness of a nation, for example awareness to not claim folklore in other countries to become the country's folklore identity. The international body which

is responsible for such matters as WIPO should be more thorough in conducting historical searches in providing assessments regarding the authenticity of folklore. Law No. 28 of 2014 is a national law on copyright that follows the provisions of international law regarding copyright. In the UUHC, protection of traditional cultural expressions (folklore) has been arranged.

Folklore's preservation efforts so that no extinction can be swallowed up by utilizing formal education pathways by incorporating traditional cultural expressions in each region in the local curriculum, thus young people now and in the future will not only hear their names but also know and love the culture of ancestral heritage this. Saving the nation's culture is the responsibility of the Government. Educational value (education) that can be studied and found in the story the people, among others: (1) the value of moral education, (2) the value of custom/traditional education, (3) the value of religious education (religion), (4) the value of historical education (history), and (5) the value of heroic education (enthusiasm struggle). Besides being able to serve as a collection of regional cultures that are full of a number of values, the folklore of Sragen Regency may support the development of other sectors, namely the education sector. Through the teaching of folklore as a material for teaching literature, efforts can be made to improve and develop teaching appreciation of Indonesian and regional literature in schools. This can be done or applied in schools that are located in the territory of Sragen Regency, Central Java, Indonesia.

6. Acknowledgment To

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