

Protection of Communal Copyrights through Sui Generis Law

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Abstract

The purpose of this study is to find answers to why the value of local wisdom is the basis for building Copyright law and how the construction of Copyright law based on the value of local wisdom provides creative freedom and can improve people's welfare. The paradigm in this research is Legal Constructivism, with a socio-legal research approach. The social setting is the written batik community. Primary data was obtained by interview and observation, while secondary data was obtained by document study. Primary data were analyzed using the four-step model of Mathew B. Miles and A. Michel Huberman. Secondary data were analyzed using hermeneutics. The results of the study show that if copyright law is not based on local wisdom values, it has the consequence that copyright law does not work well, because the legal values do not match the values of local wisdom and are unable to protect communal copyrights. Society becomes ambiguous, and people are not prosperous because they do not have the freedom to be creative in their work. The values of local wisdom are the basis for building copyright law. The value of local wisdom can protect copyrighted works that are communal. Local wisdom can improve the welfare of the community. The ideal construction of copyright law reconstructs its structure, substance, and culture. The principles of supporting new copyrights are the principles of justice, economy, culture, social, communal ownership, availability of access, and an integrated strategy.

Keywords

legal protection; copyright;
local wisdom; community
welfare



I. Introduction

The concept of ownership of rights according to the recognized copyright law regime is individual ownership (Hesse, 2002). Copyright is an exclusive right, namely an economic right and a moral right (Fadilla, 2021). As an economic right, copyright only belongs to the creator or rights holder (Watt, 2004). As a moral right, the name of the creator must be included in the creation even though the rights have changed hands (Yunus, et al, 2020); (Violinda, et al, 2021). The existence of copyright protection, especially its exclusive protection, individually causes no freedom for other parties to take advantage of work (Geiger, 2006). Other parties who use a work must have the permission of the creator or rights holder (Sharfina, et al, 2021). This condition makes people not free to use creation. Individual copyright ownership makes original items expensive (Williams & Cothrel, 2009). This condition will change the nature of the community in obtaining the goods they want (Trauger, et al, 2010). Original goods are expensive, people are looking for affordable goods even though they are not original. The exclusiveness of work causes copyright infringement, such as piracy (Ang, et al, 2001).

In reality, some copyrights are individual and some are communal (Hietanen, 2008). For individual copyrights, there is no problem with their protection, it is regulated in the Copyright law (Hietanen, 2008). But for communal copyrights belonging to the

community, there will be problems, because it is not regulated in Copyright Act (Carroll, 2015). As stated in Article 1 point (1) that Copyright is an exclusive right for the creator or right holder to use the work or grant permission without reducing the restrictions according to the applicable law (Dalimunthe, Pujawati, & Sitorus, 2022). These provisions illustrate that the Copyright Law only protects individual copyrights and does not protect communal copyrights (Brown & Nicholas, 2012). In reality, the legal protection of communal copyright has not been accommodated and is not regulated in the Copyright Law (Kasih, et al, 2021). For communal copyright to obtain legal protection, it is necessary to have other laws outside the Copyright Law that can protect it (sui generis law). With the sui generis law, communal copyrights can get protection like individual copyrights (Kameri-Mbote, 2003).

Based on the description above, it is very open to studying communal copyright protection through sui generis law. In developing Copyright law, local wisdom values are needed as a basis, with the hope that the law can be accepted by the wider community because the legal values are rooted, and grounded, and in the end, the law will function properly. In reconstructing copyright law, it must be based on the value of local wisdom, so that the law is harmonious, the law reflects the values of the community and does not conflict with the law at the national or international level.

The purpose of this study is to uncover arguments and evidence through interpretive exploration of the text and explore the basic principles and values that underlie copyright law that does not protect communal copyrights and explain that communal copyrights can be protected through law outside the law copyright (Sui Generis).

II. Research Method

The paradigm in this research is constructivism, which sees that reality exists in the form of various mental, based on social experience, local and specific, so that the research carried out emphasizes empathy and dialectical interaction between researchers and those being studied. The results are used to reconstruct the law through qualitative methods.

The social setting in this research is the written batik community in Laweyan Solo, Pekalongan, Lasem, Bakaran Pati and Banjarnegara. In collecting data, in-depth interviews involved observation, and document studies were used. Data validation using Source Triangulation. Primary data were analyzed by Mathew B. Miles and A. Michel Huberman Data Analysis Model and secondary data were analyzed by hermeneutic interpretation.

III. Discussion

3.1 Copyright Law Can't Work Well

Copyright Law is a copyright law that is constructed under western law, which protects individual rights and prioritizes economic interests (profit-oriented), its values are individual-monopolistic. The individualistic and monopolistic nature can be seen in Article 1 paragraph (1) of the Copyright Law that copyright is an exclusive right, which means that only the creator has the right to use a work for his or her interests. Exclusive rights in the form are economic rights and moral rights. Economic rights are the rights to use a work to obtain economic benefits, such as copying and then selling, selling the work, or receiving a fee from a license agreement. The values of the Copyright Law are not compatible with customary law and community habits based on local wisdom values.

The application of the Copyright Law creates a clash, namely a clash of values between individual-monopolist and communal-social. According to the Copyright Law, it

is an exclusive right where only the creator can take advantage of work. The individual and monopolistic nature of copyright law are not sufficient to protect copyright based on local wisdom values, because no article regulates it. Articles of copyright only protect the interests of creators who are individualistic and monopolistic, less able to protect the interests of groups/communities that are social in nature.

Actually, in the Copyright Law, there are traditional copyrights that can be utilized by the public such as folklore or Traditional Cultural Expressions. Both traditional cultures are owned by the State. Whereas in reality there is a traditional culture owned by the community, such as written batik. Examples are Laweyan batik owned by the Laweyan batik community, Bakaran batik owned by the Bakaran community, Mbako batik owned by the Temanggung batik community and so on. Written batik as a traditional culture owned by the community has not been protected in the Copyright Act because no article regulates it. The fact is that copyright law only prioritizes individual interests and ignores the interests of the wider community. Reality shows that the Copyright Law is not sufficient to protect the copyright owned by the community, because no article regulates it so if there is a legal dispute over the copyright owned by the community, there will be legal dispute which is a dilemma.

The law can not work properly reinforced by the emergence of ambiguous public attitudes. Copyright Law is a state law that exists as a guide in regulating copyright. Meanwhile, in society, there are copyright arrangements based on customary law and community habits based on local wisdom values. Two laws exist in a society that is used in the regulation of copyright. Existence of these two laws, some people follow the Copyright Law and some persist in using customary law based on local wisdom values because the values are familiar, have been rooted in, and have existed for a long time. In the law, its relation to the regulation of public copyright is ambiguous. An ambiguous attitude towards the law can lead to a legal dispute which is a dilemma. If there is a copyright law dispute that is resolved by the Copyright Law, the justice is formally legal, namely justice based on the articles of the law. The community hopes that if there is a copyright law dispute, substantial justice will be realized, namely justice that is as fair as possible based on the values that develop in society.

From the description above, it can be concluded that the Copyright Law only protects the interests of individuals and is less able to protect the interests of the wider community, as well as giving rise to an attitude of ambiguity indicating that copyright law cannot work properly. The law that is built should be able to protect the interests of all levels of society, both individually and in society at large.

3.2 People are not Prosperous because they are not Free to be Creative

The concept of copyright according to the Copyright Law is an exclusive right, which is individual and monopolistic. Exclusivity causes other parties not to be free to take advantage of work. This will hinder the community from creating creative works. Other parties must use permission from the creator and vice versa if not permission is a copyright infringement.

The construction of copyright law makes people not free to be creative such as innovating or developing existing creations because these actions are copyright infringement. The exclusiveness of copyright makes people not free to work. In the concept of work, it can be done by imitating, duplicating, perfecting, or making new creations based on previous creations. In addition, the principle of originality in a copyrighted work must also be respected. Creating copyrighted works must be original and must not imitate previously copyrighted works. Whereas in reality, the batik community in

their work can imitate, perfect, and combine the previously written batik. The act according to the concept of the Copyright Law is a copyright infringement. This concept limits other parties from being creative in their work, thus affecting their welfare.

The description above shows that the construction of copyright law only protects individual interests and ignores the interests of the wider community. This reality shows that copyright law is not sufficient to protect the interests of the wider community, especially in protecting communal copyrighted works owned by the community. The context is not by the conditions of Indonesian society which is influenced by the cosmology of Indonesian society and customary law. According to Pratiwi (2020) in social life, law and society are two interrelated things that can never be separated. Through instruments, unlawful behavior is prevented and repressive measures are pursued (Tumanggor, 2019). From the aforementioned provisions, it proves the existence of new developments regulated in this Law (Purba, 2019). The cosmology of Indonesian society is that the individual is an inseparable part of the society in which he lives. Individuals in all their activities are always integrated with society. Therefore, creative work is always integrated with the community. What individuals create does not belong to the individual but belongs to the community. Then the construction of copyright law is also not in the context of customary law in ownership.

The concept of ownership in copyright law is individualistic and monopolistic, while the concept of ownership in customary law does not have individual ownership, it is the ownership of indigenous peoples. The concept of copyright ownership in the Copyright Act makes people not free to be creative in their work. Acts according to customary law and based on the cosmology of the Indonesian people, such as imitating, duplicating, and developing previous works are not legal violations, but according to the Copyright Act are violations of the law. The concept of copyright ownership in the Copyright Law makes the public not motivated to work, thus influencing the community in creating new works which in turn affects the welfare of the community. Copyright law does not prosper the community, because it limits the public to work.

3.3 The Values of Local Wisdom are Rooted in People's Lives and Serve as Norms of Life

The value of local wisdom according to Edi Sedyawati, local wisdom is the wisdom contained in traditional culture, namely the culture found in ethnic groups. Local wisdom is not only in the form of cultural norms or values but also in all elements of ideas, including those that have implications for technology, health care, and aesthetics. The existence of local wisdom values has existed in the past until now and is used as the norm of community life. The value of local wisdom as a norm will be upheld by indigenous peoples. The values of local wisdom such as the value of tolerance, cooperation, and cooperation are ingrained in people's lives. This value will be maintained forever because the value has existed in the past across generations from generation to generation. The value of local wisdom lasts a long time because it has characteristics, including being able to withstand outside cultures, having the ability to integrate external cultural elements into the original culture, and being able to give direction to cultural development. With these characteristics, local wisdom can survive despite pressure from outside such as state legal pressure such as the Copyright Act.

The value of local wisdom as mentioned above can be used as material in building copyright law in the future. Based on the value of local wisdom, the copyright law that is built is harmonious, a reflection of people's lives, and does not conflict with the national or international level. Copyright law that is built based on local wisdom values will work well

because it is a reflection of people's lives and their values are rooted in society and can protect all interests, both individual interests, and group/community interests. Based on the characteristics of local wisdom as above, the law that is built based on local wisdom will be able to last a long time, be able to integrate the community, and be able to direct the community. Thus the law can function properly, namely creating public order.

3.4 The Value of Local Wisdom can Protect Copyrighted Works that are Communal

Copyright Law is an exclusive right for the rights owner. With the existence of exclusive rights, it means that the Copyright Law only protects the Creator or the right holder from interference from other parties such as duplication, or unauthorized use of the work, the protection is Individual. People or other parties who use a work must have permission from the creator or rights holder. If you use a work without the permission of the right owner, it is a copyright infringement. This legal construction cannot accommodate and protect communal copyrights. This condition shows that the Copyright Law is not able to protect copyrighted works that are communal. If there is a communal copyright law dispute, it is difficult for the community to obtain justice, because there is no article that regulates it, by the principle of legality. The construction of ownership of rights is different from the construction of ownership in customary law and community habits based on local wisdom values.

In customary law based on local wisdom values, it does not recognize individual rights, what exists is the rights of indigenous peoples. The relation with copyright ownership of the copyright in indigenous peoples is the community/community. Copyright ownership by the community is reinforced by the cosmology of Indonesian society that individuals are an inseparable part of society. Individual creations are the common property of the community. Copyright functions as a right of integrity, meaning that it can unite society. Community copyrighted works are communal, so it can be said that the value of local wisdom can protect communal copyrighted works.

3.5 The Value of Local Wisdom has more Potential in Improving People's Welfare

The values of local wisdom such as transcendentalism, tolerance, cooperation, and cooperation, which give birth to an attitude of wanting to be diverse and not a monopoly, provide freedom for other parties to be creative in utilizing a creation. The attitude of the community is influenced by transcendental values in the saying that the hand above is better than the hand below. The value of local wisdom as mentioned above will encourage people's creativity to work so that people can innovate or develop existing copyrighted works which in turn can improve people's welfare. Copyright is based on local wisdom, ownership is communal-social, and copyright belongs to the community and can be used by the community together.

The concept of communal ownership is influenced by the 'cosmology of Indonesian society, that the individual is an inseparable part. Individuals in society are part of society, so the existence of individuals describes the existence of society. Property rights such as copyright in the cosmological concept of Indonesian society belong to the community. If an individual makes a creation, the creation does not belong to the individual but belongs to the community. Individual work is a service to the community so that creations are made to serve the community. The proof that individual creations do not belong to individuals is that there are no creations whose author's name is listed as a moral right. There is no name of the creator in a work, indicating that the individual in his work can be imitated, duplicated, or used by others freely. This concept is different from the concept of copyright

in the Copyright Act, that copyright is an exclusive right consisting of economic rights and moral rights.

In addition, the concept of communal ownership is influenced by customary law. The concept of ownership in customary law is based on communal and social local wisdom values. Communal ownership means that work belongs to the community and social means that other parties can use work to obtain economic benefits. The existence of freedom because there are no exclusive rights, namely moral rights so that other people can use a creation freely to obtain economic benefits. This will encourage people to work on making a creation. If people are encouraged to work because there are no restrictions, then the community will get economic benefits so that they can improve welfare.

The ideal Copyright law construction that can answer the questions mentioned above is the Copyright Law which is reconstructed in terms of its institutional structure, substance, and culture. Regarding the institutional structure, it is necessary to reconstruct the bureaucratic system of the prosecutor's office and the judicial system. The prosecutor's bureaucratic system with a systemic approach was reconstructed into an independent approach. The centralized prosecutorial bureaucratic system, hierarchical accountability, and command system were reconstructed into an independent system, namely a system of delegation of policy-making authority in all stages of case handling. Then the reconstruction of the judicial system, that judges must and are obliged to hear cases when the case has reached the court is reconstructed to become a judge, it is not necessary and obliged to hear cases even though the case has gone to court.

Regarding the substance of copyright law, it is reconstructed by adding an article on copyright protection owned by the community (communal in nature) in the Copyright Law. With the article on the protection of communal copyright, the community gets protection, so that there is a balance of rights between individual rights and community rights. Then related to community culture, it is necessary to form an association (Paguyuban) for Batik Tulis in the community that maintains traditional culture. To support the implementation of Communal Copyright protection, several principles must be implemented, including principles of justice, economy, culture, social, communal ownership, availability of access, and an integrated strategy.

IV. Conclusion

The theoretical implication is that in substance and philosophically the Copyright Law is not able to protect communal copyrighted works such as written batik, then the copyright law must be reconstructed by adding articles on communal copyright protection. By reconstructing copyright law, it is hoped that communal rights can be protected. Protecting communal copyrights as well as protecting the rights of people who maintain, maintain, and develop copyrighted works such as batik as a traditional cultural heritage that is noble.

Protection of communal copyrighted works can be used as the basis for building copyright law based on local wisdom values. With the addition of articles on communal copyright protection in the Copyright Act and new institutions, communal copyrighted works can be preserved and maintained so that future generations can still enjoy them. Communal rights can provide space for other communities to access, thus encouraging people to be creative in their work so that people's welfare increases. Improving people's welfare is very much needed for economic growth and improving the quality of life of the Indonesian people.

The construction of new copyright law can practically be used as a reference for the Government in making policies for the protection of copyrighted works based on the value of local wisdom. The existing policies in the copyright law system only provide individual copyright protection and do not provide communal copyright protection. Therefore, there needs to be a new policy for reconstructing copyright law, the legal substance of which is to add an article on the protection of communal rights in the Copyright Law. With the construction of the new Copyright Law, communities that maintain traditional culture can be protected and can file complaints if other communities use communal copyrighted works that injure traditional and appropriate values because there is an article that regulates them.

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