

## Legal Aspects of Copyright Protection in the Implementation of Moral Rights

<sup>1</sup>Ranti Fauza Mayana Tanwir. S.H.M.H and <sup>2</sup>S.H.M. Hum. M.Kn. Daniel Hendrawan

<sup>1</sup>Faculty of Law, Padjadjaran University, Bandung, Indonesia

<sup>1</sup>Faculty of Law, Maranatha Christian University, Bandung, Indonesia

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**Abstract:** Industrial development of the creative economy grow very rapidly. This development is also supported by the work and the creation of the driver of the creative industries. Implementation of the results are the creation of an author often face the problem. The problem that faces many parties who publish or use unauthorized creation or even alter either partially or wholly a creation of the creator. Changes or unauthorized use of this makes violation of the moral rights of the creator so that implementation of the creator's moral rights need to be protected. In Indonesia in the implementation of moral rights protection of copyrighted works is already regulated in Law No. 28 Year 2014 regarding copyright.

**Key words:** Moral rights, copyright, creative, industry, implementation

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### INTRODUCTION

Indonesia is a developing country. Indonesia developments occurred in various fields. One is the growing economic problems. Economic developments to improve people's lives. Economic activity is already very much is made of human thinking to develop the economy on things that have not occurred to the layman. Economic development is unique of its integration of creativity and information technology also led to emerging creative economy.

Creative economy is driven because of the level of creativity of high society where people are fed up with economic activity that is mediocre or tend to have a lot of done by the community. The creative economy led to the establishment of creative industries. With the creative industries to make public further enhance economic activity and ultimately lead to increased prosperity.

Creative economy spawned many works good things that already exist and the things which is the development of the works that already exist. The development of these works generate intellectual property rights because these works are developed and produced from one's intellectual work. This intellectual work to generate wealth in the form of material and also in the form of immaterial. In the case of enjoying the fruits of such property, the creators have a right since it is referred to as intellectual property rights.

According to the Directorate General of Intellectual Property that Intellectual Property Rights, referred to as "IPR" or the acronym "IPR" is a synonym used for Intellectual Property Rights (IPR) the rights arising for the

result of a thought that has resulted in a product or process that is useful for humans in essence IPR is the right to enjoy the economical benefits of an intellectual creation. Objects are arranged in IPR are works that arise or be born as a human intellectual abilities (<http://e-tutorial.dgip.go.id/pengertian-hak-kekayaan-intelektual/diakses> 1 November 2016).

Intellectual property rights consist of a variety of forms. One form that will be discussed is the study is copyright. Copyright has two kinds of rights for the creator of a work. Such rights are moral rights and economic rights. On the implementation of these two rights issues arise in which this issue is a violation of both rights. Both economic rights and moral rights of creators in which the creator has given all the effort and thoughts to create a masterpiece but was ignored by the other party.

A party other than the creator of violations in the implementation of the economic rights and moral rights of the creator. This led the creators need legal protection from violations committed by others from using his creation without regard to economic rights and moral rights of creators.

**Literature review:** Creative economy as a form of economic development had the works in which the work is protected by intellectual property rights. Some definitions and limitations Kratif industry experts say ([repository.usu.ac.id/bitstream/123456789/50993/4/Chapter %20II.pdf](http://repository.usu.ac.id/bitstream/123456789/50993/4/Chapter%20II.pdf) diakses 1 November 2016). According to the Ministry of Trade Republic of Indonesia. "The creative industries are industries that are from the use of creativity,

skill and talent of individuals to create prosperity and jobs to produce and empower the creativity and inventiveness of the individual. According to simatupang “creative industries that rely on the talents, skills and creativity which is a basic element of every individual. The main elements of the creative industries is the creativity, expertise and talent that could potentially improve the well-being through prosperity through offering intellectual creations.

According to the UK DCMS task force creatives industries as reviews those roomates have reviews their origin in individual creativity, skill and talent, ad the which have a potential for wealth and job creation through the generation and exploitation of intellectual property and content. According to UNCTAD and UNDP creative economy report. “The creative industries can be defined as a cycle of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs. The creative industry is composed of a set of knowledge-based activities that produce goods of real and intellectual non real or services artistic contains creative composed of a field of heterogeneous interplay of creative activities varied, composed of arts and crafts traditionally, publishing, music, visual arts and the creation of up to intensive use of technology and services-based groups such as movies, television and radio broadcasts as well as new media and design” (Venkatesh and Morris, 2000).

The researchers conclude that the creative economy is the attempt of man to increase economic activity by utilizing the talents, abilities and skills to perform and generate economic activity that will ultimately lead to increased prosperity of creative economic actors.

One aspect of the creative economy is with the protection of intellectual property resulting from the creative economy (Saidin, 2010). The intellectual property rights is the right material, the right thing is something that comes from the work of the brain, the result of the ratio (Sophar, 2012). Intellectual property rights is actually a part of the body that is intangible (immaterial objects). Only those who can afford to hire his brain alone can produce the right material is referred to as intellectual property rights and exclusive (Saidin, 2010).

Intellectual property rights recognized in Indonesia consists of several aspects such as copyrights, patents, plant variety protection, trade secrets, industrial designs, layout designs of integrated circuits. Respectively intellectual property rights have had their own legal protection. Protection of the law is Law No. 28 Year 2014 about the copyright, Act No. 14 of 2001 on Patents, Act No. 15 of 2001 on Trademarks, Law No. 29 of 2000 on plant variety protection, Act No. 30 of 2000 on trade

secrets, Law No. 31 of 2000 on industrial designs and Law No. 32 Year 2000 regarding layout designs of integrated circuits.

Of the overall intellectual property rights associated with the most creative economy is about the copyright. Copyright according to Law No. 28 Year 2014 about the copyright, states that: “copyright is the exclusive right arising creator automatically based on the principle of declarative after a work embodied in a tangible form without reducing restrictions in accordance with the provisions of the legislation.”

Indonesian dictionary bisects the understanding of rights to copyright. Rights is defined as the power to do something (as determined by the laws, rules and so on) and also powers the right to something or to demand anything. Meanwhile if coupled with a reserved word is defined as a copyright as the right person for an invention that is protected by law (such as copyright in composing, composing music). Creative economy is about the copyright. Copyright according to Law No. 28 Year 2014 about the copyright, states that: “copyright is the exclusive right arising Creator automatically based on the principle of declarative after a work embodied in a tangible form without reducing restrictions in accordance with the provisions of the legislation” (<http://kbbi.web.id/hak-diakses> 1 November 2016).

Based on Law No. 28 Year 2014 about the copyright, creator granted economic rights such as the right to publish (performing rights) and the right to reproduce (mechanical rights). Next creators also given moral rights include the right to have his name included in the creator of creation and creator rights to prohibit others from changing his creations, including title or subtitle creation. (Soelistyo, 2011).

According to the Directorate General of Intellectual Property, moral rights are rights inherent to the creators or actors that can not be eliminated or removed for any reason, even if the copyright or related rights have been transferred (<http://e-tutorial.dgip.go.id/hak-moral-dan-hak-ekonomi-atas-suatu-ciptaan/diakases> 1 November 2016). According Hutaauruk there are two important elements contained on the formulation of the terms of the Copyright contained in the provisions of the Copyright Act of Indonesia which rights may be transferred, transferred to another party and moral rights in a state, however and by any means can not be abandoned than (announcing his work, set the title, include the actual name or pseudonym and maintaining the integrity or the integrity of the story) (Hutaauruk, 1982).

Two main moral rights contained in Law No. 19 of 2002 on copyrights already amended by Act No. 28 of 2014 about copyrights are (Anonymous, 2000). The right

to obtain recognition, namely: the right of creators to gain public recognition as the creator of a work in order to prevent others from claiming the work as a result of their work or to prevent others recognize the author of the work to another party without the permission of the creator.

Integrity rights, namely the right to object to the changes made to a work without the knowledge of the creator. Moral rights, the creator of a copyright work has the right to: included the name or pseudonym in the creation or a copy of it in relation to the general use. Prevent other forms of distortion, mutilation or any other changes that include twisting, cutting, destruction, reimbursement relating to copyright works which will eventually damage the reputation of appreciation and creator. Besides, none of these rights can be moved during its creator is still alive, except on the creator's will by legislation.

Moral rights come historically from France and are also sometimes called *droit morale*. In many countries in Europe, it is impossible for an author to give up his or her moral rights by contract. That is if you have a contract with an author that grants you a copyright license and gives you all sorts of rights to do whatever you want with the author's work, the author still retains the moral rights listed above (and others as provided under French law). It doesn't matter what your contract says. The French court will not enforce it if it tries to take away the author's moral rights.

The United States Copyright Act grants moral rights to creators of visual works in Section 106A. US law doesn't grant moral rights to creators of other types of copyrighted works such as literary or musical works. US law doesn't hold moral rights in very high regard and only included moral rights under pressure to conform with certain international treaties (<https://www.wellsiplaw.com/what-are-moral-rights/diakses> tanggal 1 November 2016).

Works often mean more than just the economic value they can generate from their exploitation they can be very special to the person who creates them as they have invested a lot in the work, emotionally and/or intellectually. As a result, copyright works need to be protected in ways that are different to traditional forms of property. Moral rights protect those non-economic interests. Moral rights are only available for literary, dramatic, musical and artistic works and film as well as some performances. Unlike economic rights, moral rights cannot be sold or otherwise transferred. However, the rights holder can choose to waive these rights. There are four moral rights recognised in the United Kingdom: (<https://www.gov.uk/guidance/the-rights-granted-by-copyright> diakses tanggal 1 November 2016).

## MATERIALS AND METHODS

Research is a fundamental tool in the development of science and technology. This is due because the research aims to reveal the truth in a systematic, methodological and consistent. Through the research process conducted analysis and construction of the data that has been collected and processed (Soerjono and Mamudji, 2007).

This study is a juridical or legal research. In this research using normative juridical research method. Normative research is to see and examine the legal issues through studies of the literature. The approach method in this research is normative juridical method, namely legal research done by researching library materials or mere secondary data, it can be called a normative legal research or legal research literature. Normative legal research or library will include.

- Research on the principles of law
- Systematic research on the law
- Research on the level of vertical and horizontal synchronization
- Comparative law
- Legal history

In this study see the enforcement of moral rights in copyright enforcement where data seen is the Law No. 28 Year 2014 about copyrights on their own moral rights and moral rights arrangements in some countries as a comparison.

## RESULTS AND DISCUSSION

**The right to attribution:** This is the right to be recognised as the author of a work. This right needs to be asserted before it applies. For example, in a contract with a publisher, an author may state that they assert their right to be identified as the author of their work.

**The right to object to derogatory treatment of a work:** Derogatory treatment is defined as any addition, deletion, alteration to or adaptation of a work that amounts to a distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author.

**The right to object to false attribution:** This is the right not to be named as the author of a work you did not create. This would prevent, for example, a well-known author being named as the author of a story they did not write.

**The right to privacy of certain photographs and films:** This right enables someone who has commissioned a

photograph or film for private and domestic purposes to prevent it from being made available or exhibited to the public. For example, this would allow you to prevent a photographer from putting your wedding photographs on their website without your permission. In Indonesia alone moral rights protection in copyright under Article 5 of Law No. 28 Year 2014 about the copyright in which moral rights are rights inherent eternally self creator to:

- Continue to say or not to include his name in connection with the use of copies of his work to the public
- Using the alias name or pseudonym
- His research in accordance with the change of decency in society
- Change the title and subtitle of the work
- Defend their rights in the event of a work distortion, mutilation creation, modification of creation or things that are detrimental to the self-respect or reputation

Law No. 28 Year 2014 about the copyright also stated that moral rights can not be transferred as long as the creator is still alive but the implementation of these rights can be transferred by a will or other reason in accordance with the provisions of legislation after his death. In the event of the implementation of the transfer of moral rights, the receiver can release or reject the implementation of the right to the terms of release or rejection of the implementation of the rights expressed in writing.

### **CONCLUSION**

Law No. 28 Year 2014 About Copyrights has been providing legal protection for the creator. It is already seen in Article 5 of Law No. 28 Year 2014 about copyrights in which legal protection has been granted by the absence of legal protection for the provision of moral rights for creators. Moral rights for creators in force in

Indonesia can be said to be similar to that prevailing in other countries. DI where the moral right is more emphasis towards recognition as the creator or the person who made creation. Wherever the copyright in a work is used, the name of its creator should remain there and can not be changed to other people because of moral rights can not be lost.

Where the moral right is also applicable to alter or replace a creation where it is necessary also obtained permission from the creator because this is the moral rights of the creator. Anyone not modify or replace the contents of his creation.

### **REFERENCES**

- Anonymous, 2000. Indonesia Australia Specialised Training Project (IASTP) project phase II, reading material short course in intellectual property right. Asian Law Group Pty Ltd., Australia.
- Hutauruk, M., 1982. [National Copyright Regulations]. Erlangga Publisger, Jakarta, Indonesia, (In Indonesian).
- Saidin, H.O.K., 2010. [Legal Aspects of Intellectual Property Rights (Intellectual Property Rights)]. Rajawali Pers Publisher, Jakarta, Indonesia, (In Indonesian).
- Soelistyo, H., 2011. [Copyright Without Moral Rights]. PT. Raja Grafindo Persada, Jakarta, Indonesia, (In Indonesian).
- Soerjono, S. and S. Mamudji, 2007. [Normative Legal Research Purpose Brief]. Raja Grafindo Persada, Jakarta, Indonesia, (In Indonesian).
- Sopnar, M.H., 2012. [Copyright Status and Role in Development]. Sinar Grafika, Jakarta, Indonesia, (In Indonesian).
- Venkatesh, V. and M.G. Morris, 2000. Why don't men ever stop to ask for directions? Gender, social influence and their role in technology acceptance and usage behavior. MIS Quart., 24: 115-139.