

## **The Concept of IPR Ownership in the Context of the Copyright Legal System and Indonesian Society's Cosmology**



**Sukron Mahmud<sup>1</sup>, Kholis Roisah<sup>2</sup>**

<sup>1,2</sup>Diponegoro University, Jl. Imam Bardjo, S.H. No. 1-3 Pleburan, Semarang City, Indonesia

**ABSTRACT:** Ownership is conceptualized as a human right that gives the authority to order something that is owned. As a legal state, Indonesia regulates intellectual property rights, including copyright. In this study, normative legal research is used, which is descriptive-analytical. Copyright is an exclusive right or right owned by the creator of certain information and ideas to reproduce and regulate his work. The concept of ownership in copyright gives creators economic and moral rights automatically protected by the state through copyright law. In contrast, the principle of customary law is the concept of communal ownership. Customary law is more concerned with the interests of society than individual interests. In the cosmology of Indonesian society, most do not recognize individual ownership, but the concept of ownership in the culture of society only recognizes communal property rights or shared property, so the concept of IPR is not known in the culture of Indonesian society.

**KEYWORDS:** ownership concept; Copyright; communal ownership

### **I. INTRODUCTION**

In this modern era, technological advances in the digital field certainly positively impact getting speedy access to information and transportation in developing the global economic sector. This technological advancement has positive and negative impacts on recognizing ownership of a work, piracy, and mutual claims to get an economic commission generated from work. This speed of technology and information has an impact on industrial development and investment to control the development of single market movements; in the 21st century, several countries have used it to make agreements or conventions on an international scale; from the agreements contained in the agreement, every country that joins the agreement must comply with international agreements whether they like it or not. The World Trade Organization (WTO) in TRIPS has agreed on the development of several types of intellectual property rights, which include norms, regulations, and standardization of protection of intellectual property rights, both copyrights and other rights included in IPR protection.<sup>1</sup>

The concept of ownership cannot be separated from the legal theory put forward by Thomas Aquinas, saying that the natural mind is God's revealed law so that every intelligent person will certainly distinguish between good and evil. In this case, humans are said to be God's law to other human lives. In the Utilitarian Doctrine, trying to maximize the welfare of the group thereby, IPR compensates those who produce intellectual work because, without any rules, intellectual property rights will impact the innovation of creators due to piracy of the works made. Ownership is based on the concept of human rights, as stated by John Lock, in the naturalistic position that ownership is a moral obligation for human behavior towards other humans imposed by God so that there is no rule of positive law that divides one's authority.

The development of this globalization era is closely related to trade, industry, and the world of investment. With this, there is a need for legal protection for intellectual property rights, thus demanding that all countries protect intellectual property rights, especially copyright. Because intellectual property rights are rights that arise from a person's creative results in the fields of science, technology, or literary arts that have an economic value, which is then expressed to the public.<sup>2</sup> Based on the constitutional mandate in Indonesia, one of the goals of the state is to participate in maintaining world order. As a rule of law, Indonesia realizes the country's goals in the latest copyright laws related to trade and other international provisions.

The development of copyright regulations continues to develop; initially regulated in Law No. 6 of 1982 concerning copyright, changes to this copyright law require improvements to legal protection and efforts to promote works originating from cultural diversity, especially in the arts and several fields of intellectual property rights that need to be utilized. Changes in Regulation No. 6 of 1982 to Law No. 7 of 1978, then the regulation was changed to Law No. 19 of 2002. The amendment to the law aims to emphasize the protection of copyrighted works and the copyright status of one party to another.

<sup>1</sup> Ratna Ayu Widiaswari, "Protection of Traditional Balinese Cakes in the Perspective of Intellectual Property," Udayana Master Law Journal, 9.3 (2020), 575 <<https://doi.org/10.24843/jmhu.2020.v09.i03.p09>>.

<sup>2</sup> Shafirainan Zahida and Budi Santoso, *Copyright Protection of Images Uploaded on Instagram Social Media*, 2021, v.5. 107-120

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The Indonesian government provides legal protection to anyone who is a creative or copyright holder; this can be seen from the government's actions, which has ratified copyright through international agreements such as the Berne Convention. The copyright holder or creator is not attached to one person alone, but the copyright holder is jointly by a group of people who produce a unique creation or that is new. Copyright protection is not only attached to the field of science, but in the policy of Law Number 28 of 2014 concerning copyright, it also protects works in the form of art and literature.

Many constructions of Western law are not used in customary law, especially about tangible and intangible objects. So that this makes it difficult to have legal recognition of intellectual property rights that are inherent in the concept of Western legal construction, especially IPR in the view of society does not reflect tangible and visible justice, therefore the sale of intangible objects is not recognized by society.<sup>3</sup> Communal ownership is a fundamental concept in the principle of ownership in Indonesian culture, where the interests of the community take precedence over individual interests.

### II. FORMULATION OF THE PROBLEM

Based on the background above, two problems can be drawn, namely:

1. How is the Concept of Ownership of Intellectual Property Rights in Copyright Regulations?
2. What is the Position of Intellectual Property Rights in the Indonesian Society's Concept of Cosmological Ownership?

### III. RESEARCH PURPOSES

This article aims to:

1. To find out and describe the concept of ownership of intellectual property rights in copyright regulations
2. Analyzing the Position of Intellectual Property Rights in the Concept of Ownership of Indonesian Society's Cosmology

### IV. RESEARCH METHODS

In this research, the researcher uses normative legal research, which is analytical and descriptive, using secondary data obtained from reading results which are then analyzed qualitatively.<sup>4</sup> Therefore, in this research, the law is interpreted as a written value or norm which is used as an analysis of the concept of ownership of intellectual property rights in copyright regulations and analyzes related to the concept of ownership in the cosmology of Indonesian society from the laws and regulations that regulate it. As well as making copyright rules a reference for protecting a work.

### V. DISCUSSION

#### 1. Concept of Ownership of intellectual property rights In Copyright Regulations

Understanding ownership, the theory of natural law is closely related to the concept of ownership, especially that put forward by Hugo De Groot, which is closely related to the assessment of good and evil in human behavior. Therefore there are four basic principles in natural law such as the principle of mine and yours which means protecting the work of others; the principle of obedience to an agreement; the principle of compensation; and the principle of punishment for every violation.<sup>5</sup> Basically, ownership is based on the concept of human rights (human rights), as stated by John Lock, in a naturalistic position that ownership is a moral obligation for human behavior towards other human beings that have been imposed by God so that there are no favorable legal rules that divide one's authority.<sup>6</sup>

With the power of reason, every human being has an idea to make something; from that idea and creativity, a creation is created. Creations originating from the creativity of an idea are wholly owned by the owner of the idea or known as the creator, as expressed in John Lock's Labor Theory, as follows:

- a. Creators should be rewarded with ownership rights as consideration for efforts to produce creations.
- b. The work agreement will determine the extent to which workers have rights to work on other people's assets
- c. Claims to collective property rights are subject to similar provisions, all designed with the aim of reconciling individual creator rights with broader societal claims.

Copyright protection is explained by several leading doctrines, in this case, the understanding utilitarianism doctrine, which says that monopoly restrictions must undoubtedly spur innovation. These limitations include time restrictions on exclusive rights and are developed based on the economic appreciation of the rights holders. In Labor Theory, John Locke explained that before being used as public property, giving awards for the results of one's efforts is a natural thing for the sake of giving persistence to innovate; giving this award by giving rights in the form of intellectual property rights. From the above explanation that the Right of Personality

<sup>3</sup> Ni Ketut Supasti Dharmawan, *Intellectual Property Rights (HKI)*, Yogyakarta: Deepublish, 2016. P. 14

<sup>4</sup> Jonaedi Efendi; Johnny Ibrahim, *Normative and Empirical Legal Research Methods*, Depok: Pranadamedia Group, 2018. P. 129.

<sup>5</sup> Rahmah Fitri, *intellectual property rights*, West Sumatra: PT. Global Executive, 2022. P. 18

<sup>6</sup> Rahmi Jened Parinduri Nasution, *Interface of Intellectual Property Law and Business Competition Law (IPR Misuse)* Depok: RajaGrafindo Persada, 2017. P. 24.

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is a self-creator, and it is crucial to provide satisfaction for some human needs by being protected by specific policies with legal protection.<sup>7</sup>

In Indonesia, Sultan Mohammad Syah was the first to propose the term "copyright," which was adopted by the Bandung Cultural Congress in 1951 to replace the term author's rights, which were considered less in-depth in scope. Therefore, the meaning of the author's rights seems narrower than copyright. The term author's rights only include the rights of the creator or something related to the author, but this is not the case. The term copyright itself is more appropriate to interpret the term Auteurs Right than the author's rights.

Defining copyright is a basis for the right to use and regulate the results of a particular work that is only owned by the creator or right holder. The right to regulate the work is called the creator's exclusive right. Copyright is the right to legally enjoy and copy works so others do not necessarily use them. The existence of copyright is an exclusive right closely related to economic rights; therefore, the copyright law defines a time limit for protection aimed at making the work enjoyed by others without paying royalties.

Mckeough and Stewart say that copyright protection is the right to take advantage of the results of a work of creation by providing restrictions for others to imitate the results of their creation. Meanwhile, according to Patrician Loughan, copyright is an ownership right to use and exploit an idea or intellectual creation. As for what is protected by copyright in the form of art and recordings, literature, drama, radio broadcast films, and provisions justified by law.<sup>8</sup>

Therefore, Law Number 28 of 2014 defines *copyright* as an exclusive right of the creator where this right arises in a declarative principle after creation is realized in the form of actual work without reducing restrictions by statutory provisions. Based on the explanation above, copyright is an immaterial right closely related to expressing an idea, a thought which is then embodied in a work. For example, such as music, novels, as well as works of literature and other arts. Legal protection for a copyrighted work must be in the form of a real work (fixation) and is the main requirement for protection.<sup>9</sup> As a right protected by copyright law, several basic principles limit protection, namely:

1) What is protected by copyright is an idea that has been realized and is original (original).

Protection of a work in copyright lies in the expression of an idea in the form of a real work and has originality value, so that when a person has an idea or notion but it is not realized, the idea is not protected by copyright law. To be considered originality, there is no need for significant changes to the original work, but it must address the originality of personal creativity.

2) Automatic copyright grant

3) There is a distinction between physical control and the owner of the rights because copyright is a legal right

4) Copyright does not include absolute rights

Based on the explanation above, the concept of ownership contained in copyright is individual ownership; copyright is born from expressing an idea that is embodied in a tangible form and has originality value. In terms of copyright, there is a difference between controlling the physical creation and controlling the rights; for example, someone buying a book does not mean that they are said to own the rights, but that someone is said to be in control of the physical and may only borrow and borrow books, physical possession does not have the authority to reproduce and modify creations. Unlike the case with the mastery of rights or the owner of the rights, they have the right to reproduce and change the work of creation.

Determination of ownership status is crucial to provide economic rights and moral rights to the copyright owner and protect their interests. Therefore, the subject of copyright has been determined in Law Number 28 of 2014 concerning copyright because the creator is the main thing in copyright that must be given ownership rights. Elyta Ras Ginting stated that copyright holders in the concept of ownership of intellectual property rights are divided into two, which include:

a) The concept of ownership based on the law. Covering countries or legal entities, for example, a publishing institution or producer of a recording, is said to be the copyright holder by law. It is regulated in Articles 37-39 of the Copyright Act.

b) Owner of rights based on legal events. The owner of the rights is based on this legal event which includes the transfer of rights in the form of written agreements, grants, trusts, and endowments. Alternatively, there is another reason justified by laws and regulations.

Based on the explanation above, ownership in intellectual property rights, when viewed from the provisions of copyright law, is only owned by a few people who are usually said to be individual owners who only provide legal rights and protection intending to give credit to creators to remain productive in innovating a work. Every creator has special rights over an intellectual creation. Therefore, the creator is given several rights attached to his creation in the form of granting the right to obtain economic benefits, which include the right to use, publish and reproduce creations. In Indonesia, economic rights in copyright are granted when a work has been registered. Economic rights granted to creators are rights to benefit from using other people's works of creation or by granting licenses to other people because transferring and licensing is one of the characteristics of economic rights. The granting of economic rights in various countries has several types, as stated by Djumhana, which include the right to procure works, the right

<sup>7</sup> Inan Zahida and Santoso, v. 5.

<sup>8</sup> Eddy Damian, *Copyright Law*, Bandung: Alumni, 2014. P.37.

<sup>9</sup> Kholis Roisah, "Protection of Traditional Cultural Expressions in the Intellectual Property Legal System," *Legal Issues*, 43.3 (2014), 4678 <<https://ejournal.undip.ac.id/index.php/mmh/article/view/9313/7539>>.

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to announce works, distribute works, the right to broadcast in the form of transmitting a work, the right to distribute works to others, the right to license and the right to translate into other languages.

Copyright not only gives economic rights but gives moral rights to a work. The granting of this moral right becomes very important in protecting another person's creation. The granting of this moral right aims to respect and respect the creation of other people by not necessarily changing the creation. In Indonesia, the provision of moral rights is not like economic rights, which must be registered first and then given legal protection; the legal system in Indonesia gives moral rights automatically after the work is done. Protection of this moral right is very attached to the creator so that it has characteristics that cannot be removed because it is the creator's personality. In this case, Harkade and Komen explained that the moral rights attached to the creator consist of the right not to change the creation.<sup>10</sup>

As a personality right in copyright has a time limit, this is stated by the doctrine of utilitarianism, which says that there must be a monopoly restriction that will undoubtedly spur innovation. These limitations include time restrictions on exclusive rights and are developed based on the economic appreciation of the rights holders. Therefore, based on the note about the copyright protection limitation period, the French state was the first to implement it. In the natural law theory, protection for the results of creation is only as long as the creator lives. In this case, France provides an additional period of protection of 50 years after the creator's death, and then this provision was adopted by many countries.

As a rule-of-law country, Indonesia recognizes copyright as one of the areas of IPR. Therefore, it provides legal protection to creators. This is stipulated in Law Number 28 of 2014 concerning copyright, with the provision that the protection of moral rights for creators does not have a time limit or for any reason. Meanwhile, the protection of the economic rights of creators is recorded in Article 57, paragraph (1) of the Copyright Law, with the provision that protection of economic rights, starting from creation, is registered up to 70 years after the creator's death. Provisions for copyright protection for legal entities are determined for 50 years from the time the work was published. To provide guarantees of legal protection.<sup>11</sup> At the same time, as a form of seriousness in respecting intellectual work, in the Indonesian legal system, an agency has been formed which is victorious in managing intellectual property rights under the auspices of the Ministry of Law and Human Rights, namely the Directorate of Information Technology under the Directorate General of Intellectual Property Rights.<sup>12</sup>

### 2. The Position of Intellectual Property Rights in the Indonesian Society's Concept of Cosmological Ownership

The culture of Indonesian society is still attached to traditional culture; this traditional culture is understood as an event passed down from generation to generation by today's society for an event that occurred in the past. This hereditary event continues community activities encompassing beliefs, values, morals, culture or customs, and other forms. This traditional society tends to uphold the values passed down by their ancestors. In cosmology, Indonesian society is better known as customary law society because social phenomena are closely related to tribal life patterns, which, in his view, are an objective cultural experience. Empirical and concrete to awaken the values of nationalism consciousness that has nine shades of life as described by Hilman Hadikusuma, such as traditional shades, religion, togetherness, deliberation, and consensus, can be changed and Adjusted, not codified and open and straightforward.<sup>13</sup>

The nature of traditional society upholds the value of togetherness so that if there is a deviation from a culture, it is more likely to cause significant changes, and it is believed that disharmony will occur during social life. Traditional communities highly respect the values of social and cultural harmony. Hence, if in carrying out the tradition, there is a discrepancy with the culture of the community, it is confident that changes and disharmony will occur. The culture of traditional society assumes that every change in the pattern of people's life is based on disharmony, which creates complications in society.<sup>14</sup> The logic of traditional society is to maintain a culture that has been passed down from generation to generation rather than adopting a new culture that is not rooted in its traditions. Traditional culture lately, various types of local wisdom have been destroyed because they are not in demand, including the following:<sup>15</sup>

- a. Traditional dances are typical dances that prioritize religious, social interests and respect.
- b. Typical clothing is clothing that differentiates between tribes and regions
- c. Traditional music functioned to accompany traditional dances and traditional ceremonies.
- d. Traditional stories are stories that have been passed down from generation to generation
- e. Traditional weapons are used for rituals and determine the symbolism of specific areas.
- f. Traditional language is speech that is used to communicate.
- g. Traditional art.

<sup>10</sup> Ujang Badru Jaman, Galuh Ratna Putri, and Tiara Azzahra Anzani, "The Urgency of Legal Protection of Copyright for Digital Works," *Rechten Journal: Legal Research and Human Rights*, 3.1 (2021), 9–17 <<https://doi.org/10.52005/rechten.v3i1.22>>.

<sup>11</sup> Khwarizmi Maulana Simatupang, "Juridical Review of Copyright Protection in the Digital Sector," *Scientific Journal of Legal Policy*, 15.1 (2021), 67–80.

<sup>12</sup> Eman Suparman et al., "Protection of Intellectual Property of Traditional Communities," *Unpd Community Service*, 2.1410–5610 (2018), 7.

<sup>13</sup> Sylvana Murni D Hutabarat, "The Development and Protection of Traditional Knowledge and Traditional Cultural Expressions From the Perspective of Intellectual Property Rights," *Juridical Journal*, 2.2 (2015), 202–19.

<sup>14</sup> Hutabarat.

<sup>15</sup> I Nyoman Lodra, *Intellectual Property Rights (IPR) in Balinese Civilization*, Unipress Unesa, 2016. P.78.

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The creation of traditional works in the cosmology of Indonesian society is not done individually but in groups by contributing thoughts and energy to work. Working with gotong-royong is a principle that is very attached to the concept of the governance of traditional society. Hence, the existence of the concept of ownership of intellectual property rights in copyright law tends to prioritize the interests of individual rights or the protection of one's rights is in stark contrast to the concept of traditional community ownership, which is social and public property. The concept of intellectual property rights in the view of traditional society is felt to interfere with local cultural values, which are upheld over traditional values. Thus creators in traditional societies for their works do not want to be given individual rights as offered by the concept of intellectual property rights.

Concepts in intellectual property rights (IPR) culture, which are ideas from capitalists, then spread to countries whose goal is to protect their intellectual property results. As a free and active country, Indonesia adopts international agreements related to IPR to balance the economy and international trade. Therefore, the existence of copyright is regulated in the country's constitution. The concept of communal ownership in traditional society means that for the works owned, a community trustee is assigned to hold and control on behalf of the community, even if the ownership is not usually given individually as required by non-traditional legal systems.

Holders of the results of work in the concept of ownership of the cosmology of Indonesian society are everyone who innovates a work by developing and practicing this knowledge permanently attached to the concept of traditional culture; WIPO determines this regarding the ownership of traditional knowledge. So that the holder of ownership of traditional knowledge is attached to the population where a work was created. The nature of ownership in community culture is attached to the concept of shared ownership or communal ownership, which is very different from the concept of ownership protected by intellectual property rights; this communal ownership functions to maintain harmony during community life.<sup>16</sup> Philosophically, this communal ownership right is naturally attached and becomes a part of the social identity of a particular society, from this natural right for a group of people it becomes a tradition that has been passed down from generation to generation.<sup>17</sup>

Communal ownership within the scope of traditional society tends to be more conspicuous and stereotypical for intellectual property because it is considered a capitalist culture originating from an understanding of Western culture; people think that foreign culture will damage the morals and civilization of traditional society. Suppose there is a violation of existing norms. In that case, the traditional community control system that upholds kinship values will get a strong reaction from a group of people and even usually get customary punishment from the local community. The fundamental difference between the concept of ownership of intellectual property rights offered by copyright laws so that their rights are protected from recognition by others but in contrast to traditional community ownership, which prioritizes high social ties with collective work, imitation, and cooperation. The strength of this social bond is that intellectual work is shared property with the goals that other people can use and enjoy.<sup>18</sup> Protection of intellectual property rights in Indonesia, primarily copyright law, has yet to be maximized to protect intellectual works; there are many violations of rights to works, such as book piracy and using songs without a license. The many violations that occur on copyrighted works are based on the culture of our society, which is not ready to accept intellectual property rights and still tends to understand the concept of ownership that has been passed down from generation to generation, namely the concept of communal ownership.

## VI. CONCLUSION

The theory of natural law is the basic foundation of the concept of ownership, especially that put forward by Hugo de Groot, which is closely related to the assessment of good and evil in human behavior. So that in the utilitarian doctrine, trying to maximize group welfare, thus IPR provides compensation to those who produce intellectual work because, without any rules, intellectual property rights will impact creator innovation due to piracy of the works made. The concept of ownership in copyright is that the creator is given exclusive rights to express an idea to announce and reproduce the work as well as obtain economic rights and moral rights protected by copyright law.

The concept of ownership of intellectual property rights in Indonesian culture is not widely known, so the existence of IPR is felt unnecessary because the concept of ownership given to work is individual ownership in nature, which is very different from the principles of ownership of Indonesian indigenous peoples. The cosmology of Indonesian society is based on the values of *gotong royong*, or joint work so that ownership of innovation will be shared or communal.

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<sup>17</sup> Purnama Hadi Kusuma and Kholis Roisah, *Protection of Traditional Cultural Expressions and Geographical Indications: An Intellectual Property With Communal Ownership*, 2022, V. 4. 107-120.

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