

# Legal Protection Against The Dance Creator In Indonesia

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**Abstract:** This research aimed to find out and to analyze the ideal legal protection so it can encourage the creator of dance in developing a creation in the field of dance and to find out and to analyze and to get the concept of legal protection of copyright in the field of dance after the enactment of Act No. 28 of 2014 concerns Copyright. This research is empirical juridical. The technique of collecting legal material is conducted through interviews, questionnaires to respondents and literature study, i.e by collecting various documents in the form of primary, secondary and tertiary legal materials. The results of research showed that: (1). Dance is a part of copyright associated with diverse art and culture owned by the Indonesian, certainly dance produced by consume energy, thoughts, time, and cost by Dance Creator, with regard to the creation, the state has given protection of dance creator for art as stipulated in Article 40 letter e of Act No. 28 of 2014 as an expression of respect and appreciation to the Dance Creator; (2) In association with the regulation on the protection of creative works of art dance regulated in Act No. 28 of 2014, the creator of dance argues is very important to give the protection of dance creator for their copyrighted works, particularly their rights as a creator of dance i.e moral and economic rights. Giving moral and economic rights cannot be felt fully by the creator of dance, this is due to the creator of dance does not have an institutions that will accommodate the creativity of creators that useful for their welfare.

**Index Terms:** Copyright, Dance, Legal Protection

## 1 INTRODUCTION

The development of Indonesian people is increasingly, especially in the fields of economy, industry and technology. This makes humans think to create an innovative work. This phenomenon can be proved by the discovery of a person or group that is a result of intellectual work and requires a legal protection. The provision of legal protection effectively for Intellectual Property Rights (IPR) that it contains the exploitation rights (economic rights) and moral rights should be improved. Intellectual property rights are property rights arising from the birth of the human intellectual because it works in the field of technology or science, art and literature are produced by human who have a high intellectual ability through creativity, taste and work. It is important because as a sovereign nation, not just rely on natural resources to build a welfare and prosperous nation, but also human resources. In addition, intellectual property rights as a result of human creativity and innovation will be able to be a source of economic power which may be a source of foreign exchange for Indonesia. Indonesia is known as an island country that administratively consist of 34 provinces, 245 districts, 65 municipalities, 4,000 sub-districts and 67.900 villages, with a population of approximately 207 million which occupies about 6000 islands from a total of about 14,000 islands, Indonesia is the richest country in biodiversity both in land and sea, so each region has different strengths in terms of natural resources, human resources and industrial.

Various strength causes each region has a major sector of each to produce a superior product. In the era with the development of knowledge and technology, creating some form of work in various forms. One of them is the Dance (Indonesian: *Seni Tari*). Each individual in various people much like the diverse dances owned by the Indonesian, it is shown by the frequent of people to watch a dance performance through various media. The art of dance is a branch of performing arts that get legal protection by copyright. It can be seen in Article 40 paragraph (1) letter e of Act No. 28 of 2014 concerns Copyright. It is a branch of art that has a historical and cultural background is very strong in the development of Indonesian culture. The art of dance is part of traditional cultural expression and creation is protected as an explanation of Act No. 28 of 2014 concerns Copyright. In relation to the copyright ownership, a law act and ensure the creators to master and to enjoy exclusively the result of their work, and if necessary with the assistance of state for law enforcement. This shows that legal protection is the interests of copyright owners, both individually and collectively as a subject of rights. To restrict the protrusion of the interests of individuals, the law guarantees the preservation of public interest. This guarantee is reflected in the Intellectual Property Rights system that developed with balancing between the two interests, i.e the owner of copyright and public needs.

## 2 IDENTIFICATION OF THE ISSUE

As the phenomena described above that appear related to the reality of protection of Intellectual Property Rights, the creator of art of dance is still often the losers as a result of copyright works are often altered and used by others to gain economic benefits and reduce the value of originality of their work. For that, this research tried to raise an issue of research is legal protection for the creators of art of dance in Indonesia has not run optimally in accordance with the purpose of establishment of legislation in the field of intellectual property.

## 3 METHOD OF RESEARCH

A research on "Legal Protection against the Creator of Art of Dance in Indonesia" using juridical-empirical research method. This means that empirical juridical is still rests on the normative premise in which its operational definition can be

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obtained from legislation to then look at the fact that occur in the field. This is a descriptive study, aiming to describe accurately the properties of individual, circumstances, symptoms, or a particular group, or to specify the deployment, a symptom, or to determine whether there is a relationship between symptoms with other in the community. Data collection techniques consist of a literature study, observation, interview and questionnaire. In this research, data collection techniques used was in-depth interviews for informant of literature study. For that, there are two stages to be performed in conducting this research i.e literature study and field research by conducting interviews with experts or legal experts in the field of Intellectual Property Rights and in this case Directorate General of HaKI and also interview with the Creators of Dance, Coach and Dancers.

## 4 RESULTS AND DISCUSSION

### 4.1 The Position of Art of Dance in Copyright Law Regime

An art of dance is a part of human life since the first. It is closely related to the culture. According to Kunjara-ninggrat, culture is the result of a process to think that comes from creativity, taste, human initiative. All that is the result of human creativity whether it was an object that is visible and invisible something are result of culture, including dance. The definition above has the same meaning as the definition of Intellectual Property Rights (IPR). When compared to definition of Intellectual Property Rights by David Brigde, are property rights derived from intellectual work of man, the rights comes from the creative ability of think are expressed in various forms of work that are beneficial and useful to support human life and has economic value. The difference between the notions of culture with IPR is object in which IPR as a result of human work that has economic value, but in nearly all human work that comes from a good think power, has economic value or not is a culture. Understanding the culture when compared with the Intellectual Property Rights (IPR), the object is similar, as a result of work that comes from the human think power are derived from reason, which has the same meaning with taste, work, human creativity, as well as the art of dance is one of the results of human intellectual work. In Act No. 28 of 2014 concerns copyrights, dance as an object of copyright protection is stipulated in Article 40 letter e. Based on interviews with Sherly Fatmarita, the creator of dance and the owner of dance studio "Budaya Nusantara" argues, "a creator of dance if want to create a dance work as copyright, must master the knowledge related to the art of dance, thus creating dance movements, we must material-rich, and certainly do a lot of research pre-creation." According to Didi Nini Thowok, a creator of dance and as a lecturer of STSI Yogyakarta and Director of Lembaga Pendidikan Kejuruan Tari Natya Laksita argues that the creator of dance in terms of creating a dance work requires time and in-depth contemplation so that a work produced truly satisfactory. The process for creating a dance work by the creator of dance is very draining energy, thoughts, time, and cost. Based on interviews with the creator of dance above, to create a dance work that highly cost, time, energy, then the creator of dance is suitable to get respect and protection of copyright. As the results of research by researcher that the legal protection of dance works cannot be perceived by the creator of dance. This is due to many disputes that occur in the field, where a creator of dance to

create a work that then the work is used by others studio for commercial either through the performing arts and education are still obtained changes in the form of original work. A reality which is very detrimental to the creator of dance that makes the work hard, but the work is changed without the permission of its creator. To overcome this problem, a lot of dance creator who do not know, where they have to report on these problem, which in the end the problems experienced by the creator of dance was never resolved and ultimately only get a warning from the creator of dance and certainly it is not a deterrent effect and always reoccur. Art of dance is a part of traditional cultural expressions according to the Copyright Act, but its implementation is still far from the expected. The results of interview with Agung Damarsasongko, as Head of Section of Copyright at Directorate General of Intellectual Property Rights, Department of Legal and Human Right argue that the government has prepared a plan of Act concern the Protection and Use of Intellectual Property of Traditional Knowledge and Traditional Cultural Expressions. In this draft are described general notions. Traditional knowledge is the intellectual work in the field of science and technology which contains elements of traditional heritage produced, developed, and maintained by a community or a particular community. While the Traditional Cultural Expressions is defined as intellectual work in the arts, including literary expression that contains elements of traditional heritage produced, developed, and maintained by a community or a particular community. Protection against the development of traditional knowledge should be supported through strict legal protection, because huge numbers of traditional knowledge, if not given legal protection against such knowledge will lead to the destruction of people's creativity to develop their knowledge. The emergence of protection of traditional knowledge caused by the growing awareness within the community are beginning to understand the importance of respect for the creative works derived from traditional knowledge development. In the past, people thought that traditional knowledge is public-owned knowledge and in its use is free or can be used free of charge. But now, people have a new paradigm in assessing creative works derived from traditional knowledge that is traditionally regarded as the work of an object that has economic value. The award is given to the creator of art work as the theory of M. Sherwood, underlying the need for protection of rights as follows:

#### a. Reward Theory

As recognition of intellectual work which has been produced by someone so that the inventor/creator or designer should be awarded as a counterweight to the creative efforts in finding/creating intellectual works.

#### b. Recovery Theory

As return to what has been issued by inventor/creator/designer such as cost, time and energy in the process of producing a work.

#### c. Incentive Theory

Incentives granted to the inventor/creator/designer to develop and to facilitate the useful research activities.

#### d. Risk Theory

Risk inherent in any work produced. A study has risks that can allow others find work produced or correct it and risks may arise from the association illegally.

### e. Economic Growth Stimulus Theory

Right protection is a tool for economic development.

Legal protection of dance copyright works actually gets the legal protection it is proved by the issue of Copyright Act repeatedly. But in practical terms, its implementation is still felt weak, because until now the public in general or the creator of dance in particular, do not understand how to do and act how if occur the infringement of copyright works, until the newest Act, they still do not understand the need for giving a deeper understanding. In addition, legal protection against the creators of dance art was felt unclear, as the creator of dance art want to get their rights as creators, both economic rights and moral rights, not like the creator of music art that legal protection has been implemented so that they get a royalty on their creation. Because they already have a institution or organization to collect the music creators throughout Indonesia so that their lives is more prosperous than the creator of dance art, which until now the creators of dance yet have an institution or organization to collect the creators of dance throughout Indonesia to be able to fight for their rights as dance creator.

#### 4.2 Giving Moral and Economic Rights as a Legal Protection against the Dance Creator

Generally, Intellectual Property Rights (IPR) today can be regarded as a means to protect the work result of individuals that involves energy and cost of various possibilities for taking action or unfairly use or threat of piracy. According to David Bainbrige, justification of Intellectual Property Rights protection described with a simple phrase. In essence, each person must be recognized and are entitled to have what it produces. If the right was taken from him, he was nothing more than a slave. In the context of creation, Copyright protection is necessary to encourage appreciation and build people's attitudes to respect a person's right over creation generates. The attitude of appreciation is more touching moral dimension, while respect is more geared to the economic aspects. Protection of Copyright Law is directed to allow the use of creation takes place in an orderly and provides economic benefits to the Creator. In general, a creation must meet minimum standards to qualify for a copyright. Each country applying different requirements to determine how and when a work is entitled to copyright, a copyright in a creation is obtained without the need to go through official registration in advance, when the idea of creation has manifested in a particular form, the copyright holder has been entitled to the right. However, although a creation does not need to be registered first to implement copyright, registration of creation (in accordance with permitted by applicable law in the jurisdiction concerned) has the benefit as evidence of a valid copyright. For that, the creators of dance should apply for registration of creation to obtain evidence of a valid copyright. On the other hand, in an interview at Directorate General of Haki argues that until now there is no one kind of dance applies for registration of dance work. For creator of dance, the researcher conducted interviews with some creator about dance copyright registered, according to them, they do not know how the procedure of registration, there is a sense of concern over the cost of registering of copyrighted works would be expensive and do not know the Act No. 28 of 2014 concerns Copyright newly revised. Still according to the creator of dance, that they still do not understand how to implement in the field was already

issued latest legislation as a substitute for old legislation. Based on the results of questionnaires to the creator of dance about the application for registration of copyrighted works of dance, so get an official certificate from the Minister, in this case the Ministry of Legal and Human Right can be seen in Table 1.

**Table 1.** The level of understanding about the application for registration of copyrighted works based on Act No. 28 of 2014 concerns Copyright

No	Description	Understanding of Dance Creator			Total
		Know	Less Know	Do not know	
1	Application for Registration of Copoyrighted Work at Ditjen Ditjen Haki	-	10	40	50
2	Ditjen Haki as Service Place for Copyright	5	30	15	50

**Source:** Questionnaire, 2015

Based on Table 1 as described above, it appears that the response of creator to the application for registration of copyrighted works at Ditjen Haki is still largely do not know by 40 people of 50 people who filled the questionnaire, or by 80% who responded do not know. As for Ditjen Haki as a service place for copyright is largely responded know by 60%, this shows that the level of understanding regarding the application for registration is still not work optimally. This shows that State has not fully provide legal protection against the Creator of Dance. Though work created has economic value, it is ironic that many creators of dance that does not understand that he has copyright over creative works produced. Most creators are quite satisfied if their work was well liked and sold, without knowing and thinking that the creator has copyright to be protected from exploitation illegally by unauthorized parties, the creator of dance actually obtain rights which should be optimal, whereas the creator consume time, energy and material to produce creations. If we examine the system of legislation, the work of art of dance as a work included in the scope of copyright protection. The problem that arises is the proof that the creators of dance are the real creator. This is because the system of copyright registration is not mandatory and does not constitute recognition of the birth of copyright, so many creators of dance not register creations whose impact could complicate formal verification if disputes arise in the future. Another issue that arises is the communal nature usually creations that have been produced someone will be used collectively by members of other communities, so the creators are actually less able to enjoy the copyright exclusively or even creation was abused by members of public for personal gain. Copyright protection is obtained exclusively by the creator is a moral rights provision for the creator of dance. Moral rights are rights inherent in the creator and cannot be diverted by any means; moral rights aimed more at the manifestation of the recognition of the work of others that cannot be valued in money. Under article 5 of Act No. 28 of 2014 concerns copyright, describing the moral rights, namely:

- (1) *The moral rights referred to in Article 4 is a right inherent eternally for creator for:*
  - a. *Include or not his name on the copy with respect to the use of his work to the public;*
  - b. *Using the nickname or pseudonym;*
  - c. *Change the work according to the propriety publicly;*
  - d. *Change the title and subtitle of the work; and*
  - e. *Defend their rights in the event of a work distortion, work mutilation, modification of work, or things that are detrimental to the honor of himself or his reputation.*
- (2) *The moral rights referred to in paragraph (1) may not be transferred as long as the creator is still alive, but the implementation of these rights can be transferred by testament or other reason in accordance with the provisions of the legislation after his death.*
- (3) *In the case of moral rights transferring as referred to in paragraph (2), the receiver can release or reject the implementation of their rights with a condition of release or rejection of the right implementation is expressed in writing.*

As the demands of the era, art of dance in Indonesian moves to the polarization to the entertainment commodity, which is entertaining and efficacy, which is present as a spiritual nourishment that enrich the inner experience. The first pattern that has been showing the beauty of form, glamour, spectacle and sex, are both closely linked to the religious values, rituals, behavior and identity. Creativity of dance art is considered as a dance if embodied in a new form instead of renewal, the dance is based on a Copyright Act and gets copyright protection of exclusive monopoly rights to use. Such rights authorize the creator to prohibit others from using his creations without permission. In more technical, especially based on his moral rights, the creator of dance is entitled to prohibit others to modify, increase or decrease the expression of creation that could potentially harm his integrity. Basically every copyright work created by the creator at the beginning of their creation should be maintained strictly by the creator not to be imitated, altered and mutilated. The local community should feel the need to have to continue to appreciate, respect and protect the dance works, both for the benefit of conservation and utilization interests in the future. But the reality faced today is the change without awareness that to a certain extent the modification violates the moral rights of creator who wants his creations protected and preserved. In addition, to moral rights as described above, each creation is based on the quantification of time, energy and cost consumed as well as the creative contribution of creator has economic value equivalent to the value of their expediency, no matter how small economic value exists and therefore make it worth mentioning as the creation of wealth. Typically, the higher of creativity by creator and the higher of skill and cost, the higher of expediency. The factors that contribute most are the creativity of creator. This element is a determinant of economic value. Economic rights are the creator's right to obtain economic benefits for creation as well as products related rights. The economic benefits that mean material or money that should be the creator's rights received. It is based on that the creators of copyright works in the produce requires energy, energy, time, and cost, so the element of fairness is an element that should be used as the basis of the logic of promoting the creator's rights. It is closely related to the

economic use of a copyrighted work is seen as an investment that must be managed in a commercial for the return of cost. The purpose was to improve the welfare of creator as well as to stimulate the intellectual creativity of creator in improving the quantity and quality of copyright works. For this reason, the creators are entitled to use the work in order to obtain economic benefits (*pecuniary rights*), which consists of the right to reproduce, right to distribute and right of performance). Other parties wishing to use the work are said legal if obtaining the permission of creator, and otherwise violate. Thus, the core of the economic rights is a tribute to the creator of that to be real and is not abstract, and therefore permission not simply thanks, but there are a number of economic elements in the form of material that must be received by the creator. The interest of creator or copyright holder, a creation can be exploited or used for any form of possible uses of the values of its economy. The form is varying and more depending on the type and nature of creation. Under the provisions of Article 8 of Act No. 28 of 2014 concerns copyright, describing the economic rights of the creator or copyright holder that, "economic right is a exclusive right of the creator or the copyright holder to get the economic benefits of creation." Protection of copyrighted works that refer to the Act No. 28 of 2014 concerns copyright, should also apply to copyrighted works of dance. In fact, both the creator and copyright works of dance has not been protected in accordance with the provisions of the copyright act No. 28 of 2014. In Indonesia, the regulation of copyright in IPR's legal system actually began in the 80's with the enactment of Act No. 6 of 1982 concerns copyright and then successively amended by Act No. 7 of 1987 and Act 12 of 1997 and No. 19 of 2002 until the enactment of newest copyright act No. 28 of 2014, which became effective on 16 October 2014 was still felt unable to give legal protection to the creators of dance in Indonesia, this is because the copyright act were most recently born, socialization of the latest legislation to the public especially dance has not been done. Based on the results of questionnaires to the creator of dance on the rights acquired by the creator in the form of moral and economic rights, as listed in Table 2.

**Table 2.** Rates of moral and economic rights received by the creator of dance

No	Description	Receiv ed	Someti me	Not Receiv ed	Total
1	Moral Right	30	10	10	50
2	Economic Right	10	10	30	50

**Source:** Questionnaire, 2015

Based on Table 2 shows that the response of creator on Moral and Economic Rights received there are 30 people who get the right moral, 10 people who sometimes accept or not and 10 people who not receive a moral right over his creation of 50 people who fill questionnaire. While the economic right is mostly do not get the economic rights, as many 30 people who not get economic rights due to the art of dance in launch performances only through the studios of dance whose creator themselves do not know where the studio, and 10 people who receive economic rights because at the time the show is

conducted itself by creator and the creator as owner of studio so that the economic value obtained not only in the show alone but getting through the convening of dance education itself. This shows that it is required an institution that governs the royalties to the creators of dance so that the economic rights may not run properly.

## 5 CONCLUSION

Art of dance is a part of the copyright associated with diverse cultural art owned by the Indonesian. Certainly, it is produced by draining of energy, thoughts, time, and cost is not small by creator. Relating to the creativity, the state has been provided protection against the creator over artwork as stipulated in Article 40 letter e of Act No. 28 of 2014 as an expression of respect and appreciation to the creator of dance. The response of creator associate with the regulation on the protection of creative works of dance regulated in Act No. 28 of 2014, it is necessary given the protection of creator over their copyrighted works, particularly their rights as a creator both moral and economic rights. In principle, they argues that appreciation and respect for creativity and intellectual work of a creator of who cultivate the arts, especially dance art needs to be appreciated and respected in the community. Giving moral and economic rights cannot be felt fully by the creator of dance; this is due to the creator of dance does not have an institutions that will accommodate the creativity of creators for their welfare. It is expected to the related parties both Ditjen HKI and the Ministry of Legal and Human Rights, to further improve the socialization of Copyright Act No. 28 of 2014, especially the creator of dance art in Indonesia. This socialization made in order to provide insight and understanding about the importance of the rights arising from creative works produced by a creator, so that they can use and utilize the creative works of dance art both economically and morally. Additionally, needed an organization or institution for the creator, such as Yayasan Karya Cipta Indonesia (YKCI) in Music and Song works, to provide protection economically to the creator who became a member of the institution.

## REFERENCES

- [1] Abdulkadir Muhammad, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, P.T. Citra Aditya Bhakti, Bandung, 2001.
- [2] Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, 2004.
- [3] Anne Fitzgerald, *Intellectual Property*, LBC Information Services NSW, Sydney, 1999.
- [4] Bryan A. Garner, Editor in Chief, *Black's Law Dictionary*, Thomson West, 2001.
- [5] David I, Bainbridge, *Cases dan Materials in Intellectual Property Law*, London: Pitman Publishing, 1995.
- [6] Kunjaraningrat, 1990, *Pengantar Ilmu Antropologi*, PT. Rineka Cipta, Jakarta.

- [7] Muhammad Ahkam Subroto dan Suprapedi, *Pengenalan Hak Kekayaan Intelektual Konsep dasar kekayaan Intelektual untuk penumbuhan Inovasi*, PT Indeks, Jakarta, 2008.
- [8] Ranti Fausa Mayana, *Perlindungan Desain Industri di Indonesia*, PT. Gramedia Widiarsana Indonesia, Jakarta, 2004.
- [9] Roger E. Schechter and Jhon R. Thomas, *Intellectual Property The Law Of Copy Right, Patents, And Trademarks*, Hoornbook Series, West Group, 2003.
- [10] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1994.
- [11] Sal Murgiyanto, *Tradisi dan Inovasi: Beberapa masalah Tari di Indonesia*, Jakarta, Wedatama Widya Sastra, 2004.
- [12] Soekanto, Soerjono and Mamudji, Sri., 1985, *Normative Law Research as a Brief Review*. First edition. CV Rajawali: Jakarta.