

CONCEPT OF LEGAL PROTECTION AGAINST THE CREATORS OF PAINTING ARTS BASED ON THE PRINCIPLES OF DIGNIFIED JUSTICE

LINDAWATI PUTRI WIDHARTA¹, TEGUH PRASETYO², ELVIRA FITRIYANI PAKPAHAN³, TOMMY LEONARD⁴

^{1,3,4} Fakultas Hukum, Universitas Prima Indonesia

² Fakultas Hukum, Universitas 17 Agustus 1945 Surabaya

lindawatiputriwidharta@gmail.com, teguh.prasetyo@uph.edu,
elvirapakpahan@unprimdn.ac.id, tommy_journal@unprimdn.ac.id

Abstract

This study discusses the legal protection of the creator of a painting based on the principle of dignified justice. The method used in this research is the empirical juridical method. Based on the results of the study, it can be concluded that the picture of legal protection for paintings at this time is still lacking, it can be seen from the number of cases that occurred but still at least touched by the law both in the form of compensation and criminal prosecution. The role of law enforcement is still lacking in dealing with violations of Copyright itself. These violations show that the public lacks awareness about the meaning of appreciating the work of others. In relation to copyright protection for works of art, paintings that are currently deemed inappropriate or inappropriate for the painters themselves. There is no understanding and there is no common interest between the government and the creators, especially the creators of paintings, namely painters.

Keywords: legal protection; painting arts; principles of dignified justice

I. INTRODUCTION

In Indonesia, the soul of the nation comes from Pancasila as the source of all sources of law (Prasetyo 2013a). Pancasila is the only source of truth and is absolute. All regulations that apply in the Pancasila Legal System must derive life, soul/spirit from Pancasila. Thus, on the basis of the direction of the theory of Dignified Justice above, in this research the author has sought and found in the volkgeist the view of (Treshna 1959) about the meaning of law as an order in the quote below: legal regulations are not only made to advise, persuade or suggest. But more than that, legal regulations (rules/legal norms) are orders. He ordered or forbade something. In short, he is forcing, even though that coercion cannot always be realized in the form he wants

With a different substance (to a certain extend), the urgency of criminal sanctions with a cumulative character that supports absolute truth according to the law can also be seen in the formulation of the philosophy of criminal law put forward by Jeremy Bentham: "...that every individual law must contain an imperative, criminal provision and that those laws with only civil provisions cannot have the nature and effects of laws without being connected with imperative provisions" (Betham 1970).

According to the theory of Dignified Justice, in every society there is ubi societas ibi ius (Prasetyo 2013a) including the law as an absolute command (Indonesia) or command (Bentham, Mill and Austin). For this reason, in-depth research needs to be carried out in order to reveal the philosophical in the soul of the Indonesian nation (volkgeist) with regard to law, especially the regulation or legal protection of Copyright, more specifically Copyright protection from painting creators by using criminal law (criminal law). law), especially criminal sanctions that are cumulative in nature with civil sanctions (private law) and also sanctions in the field of state administrative law (administrative law).

This in-depth (scientific) research is intended to ascertain, then to express the certainty obtained from the results of this legal research (Prasetyo 2019b) in a dissertation about the existence of a truth. The urgency for the research on the above aspects is also due to the fact that juridically, there is still the impression that the Copyright Law is not very clear in explaining the matter to



whom (public or private) actually the rights to copyright, especially the copyright rights of the creators of painting. as rights and or wealth created by law (Copyright Law) it is granted. According to the theory of Dignified Justice, Copyright as a law that is supported by the existence of criminal sanctions as special sanctions that are cumulative can be seen as a meeting point between the pull of the top (the spirit of God Almighty which cannot be separated from other values in Pancasila) and the pull of the bottom. known as *volkgeist* (Prasetyo 2020b). Many jurists refer to themselves as “world legislators” or the legislators of the world (Kaino 2009).

The benefits are always oriented or put a great emphasis on the public interest (the public goods). On that basis, Bentham in the command theory of law of the utilitarians (1748-1832) argued that the law is a command (the law as a command) (Surya Prakash Sinha 1993a) Everyone, all nations want happiness. That is an absolute order, according to Bentham, because it must be supported by criminal sanctions. However, Bentham does not include the dimensions of legal objectives as envisaged in Dignified Justice, namely that justice includes certainty and benefit (Prasetyo 2015a). To understand the different philosophical meanings behind the two legal theories as stated above, in-depth legal research is needed.

Observing the legal arrangements in Article 6 of the Copyright Law, it can be seen that the Moral Rights as part of the Copyright owned by the Creator are also given the fulfilment of the need to obtain legal protection. In the Elucidation of Article 16 paragraph (2) of the Copyright Law, Moral Rights cannot be transferred, they remain attached to the Creator. However, Economic Rights can be transferred or transferred. The transfer of Copyright must be done clearly and in writing, either with or without a notarial deed.

The use of the word “can” in the formulation of the provisions above seems to be optional. Authors with Moral Rights may choose to seek protection of their Moral Rights, as provided for by the law. That is, even though the Copyright Law stipulates that the Moral Rights are basically inherent in the Creator, the Creator may not want to use the principle that the Moral Rights are inherently attached to the Creator. In other words, there is a possibility that the Creator may choose not to use the means of protection that are regulated or provided for in the law through the principle that the Moral Rights basically remain attached to the Creator.

In order to obtain the fulfillment of the need for legal protection of the Moral Rights which basically remain attached to the Creator, then according to the Copyright Law the Creator may have: (a). Copyright management information; and/or (b). Copyright electronic information.

According to the formulation of Article 7 paragraph (1) of the Copyright Law, what is meant by Copyright Management Information that allows the Author to obtain legal protection includes information about: (a). a method or system that can identify the originality of the substance of the Work and its Author; and (b). information code and access code.

Meanwhile, what is meant by Copyright Electronic Information includes information about: (a). a Work, which appears and is attached electronically in connection with the Announcement of Works; (b). the name of the creator, his alias or pseudonym; (c). Creator as Copyright Holder; (d). the period and conditions of use of the Works; (e). number; and (f). information code.

Article 7 paragraph (3) of the Copyright Law further emphasizes in a formulation of legal provisions concerning the meaning of the need for protection as an urgent need (urgency) for an Author who holds Moral Rights if the Author chooses to use Copyright Management Information or Information Electronic Copyright. Such legal protection can be achieved by setting prohibitions on eliminating, changing, and damaging facilities in the form of Copyright Management Information and Copyright Electronic Information as a means to protect Moral Rights as part of Copyrights owned by Authors.

It should be stated here that the protection sought and provided for in Article 7 paragraph (3) of the Copyright Law mentioned above is possible if the Author wishes to use Copyright Management Information or Copyright Electronic Information. Thus, in a contrario it can be understood that if the Author does not choose to use the facilities provided in Article 6 letters (a) and (b), then no legal protection can be given to the Moral Rights of the Creator.

The law does not provide an explanation of who has the obligation to provide a facility known as Copyright Management Information or Copyright Electronic Information. Thus, the two means of



protection in the form of Copyright Management Information or Copyright Electronic Information as formulated in the Copyright Law can be interpreted to be provided by the Creator himself or provided by a third party.

The state should be able to become a third party, apart from the community. However, it seems that the above means of protecting Moral Rights are aimed at the Creator or Community Organizations consisting of the Creators themselves to protect Moral Rights. If the means of protection of the Moral Rights as part of the Copyright referred to in the law above exist and are already owned by the Author, then the legal provisions stipulate that the facilities available in the Copyright Law for the protection of the Moral Rights as part of the Copyright shall obtain legal protection.

What is meant by legal protection here is protection from criminal law, including in the form of regulation and criminal sanctions. As stated above, criminal sanctions can be requested through complaints if the means already owned by the Author in the context of protecting moral rights as Copyrights are removed, changed or damaged. In the legal setting, it is formulated that the party who violates the formulation of the criminal law provisions in Article 7 paragraph (3) of the Copyright Law will be subject to punishment as regulated in Article 112 of the Copyright Law.

The copyright of the painting which is the subject of this dissertation research has legal protection for 70 years after the creator's death. This is stated in the formulation of Article 58 paragraph (1) letter (f) of the Copyright Law. There is formulated an implied meaning that:

Copyright protection, including protection of works of art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, or collage itself is valid for the life of the creator and continues for 70 years after the author's death, starting January 1 next year

Based on Article 1 number (1) jo. Article 40 paragraph (1) letter (f) jo. Article 58 paragraph (1) letter (f) of the Copyright Law as stated above, it appears that the Copyright Law has implicitly determined that there is or is no registration - currently it is not a registration but a recording of copyrighted works of painting or the like, but Copyright it's still there. In addition, it is also stated that the Copyright is attached for life and 70 years after the death of the creator. The registration of a Copyright on a copyrighted work (for example, in the context of this writing is a copyrighted work in the form of a painting) carried out by the creator or by other people, both individuals and groups, is still required. However, the formulation of the legal provisions above does not clearly provide protection against acts such as those that harm the Copyright of the Creator-Painter.

In view of the unclear formulation of the legal provisions in the Copyright Law, the phenomenon of painting, for example a plagiarism or forgery of a painting by still including the signature or name of the original painter on the painting and in general, laymen more often refer to such acts as cases of fraud escaping from legal bondage. In fact, it should be an act of fraud, if it is true that the general view of plagiarism and counterfeiting as stated above can be charged with Article 380 Paragraph (1) 1 and 2 of the Criminal Code. It's just that the use of articles of the Criminal Code to ensnare perpetrators of plagiarism or forgery of paintings is not in line with the principle of *lex specialist derogate legi generali* adopted in the Copyright regulation system.

In the regulatory system for Copyright, the principle adopted is that a special law (Copyright Law) will overturn the general law (KUHP). However, considering the prevalence of fraudulent acts - following the common mind as stated above - relating to Copyright as a phenomenon stated above is not regulated in a special law (Copyright Law). So, the legal means that can be used to resolve the above case is the general law (KUHP). However, the formulation of the articles in the Criminal Code above is a crime, not a violation as specified in the Copyright Law.

II. REVIEW OF LITERATURE

2.1 Theory of Justice

Justice is the glue of the order of civilized social life. To restore order in social life, justice must be upheld. Each violation will receive sanctions according to the level of the violation itself (Mahfud 2015). The definition of justice as stated above is studied in legal science. The science of law is known as the philosophy or theory of Dignified Justice and is popularly known today as Dignified



Justice. This means that there is a difference between the concept of justice when compared to the theory of Dignified Justice as a theory (science) of law. The Theory of Dignified Justice is a jurisprudence. Not just a small concept in the ocean of legal science. Dignified Justice is built and developed not only to understand and explain the applicable law and in it there is justice.

It is dignified to provide explanations, even to criticize the theories of law and justice that have been known and generally come from the West. As stated in the Background Problem of this research, the theory of Dignified Justice criticizes the thinking of Jeremy Bentham, John Stuard Mill and John Austin from the positivistic legal school of thought.

2.2 Legal Protection Theory

The term legal protection cannot be found as an entry in Black's Law Dictionary. In the famous legal dictionary, there is no explanation of the term legal protection. However, in Black's Law Dictionary one can find a term with a narrow meaning in legal protection, known as the protection order.

The meaning of the term protection order given by Black's Law Dictionary is an order issued by court in domestic violence or abuse (Campbell 1991). This understanding is taken from the understanding put forward by judges in Court Decisions made in the United States. In the Judgment referred to by Black's Law Dictionary, there is a term to explain the meaning of a protection order. Taking this into account, it can be understood that the term legal protection has the same meaning as a protection order. What is meant by a protection order is a protection order that is used as an instrument from the court or judge.

2.3 Copyright

Copyright is part of a broader concept, namely intellectual property rights using the word Intellectual property rights or IPR which was popularized by Bambang Kesowo, when the first translation of the concept of intellectual property rights was carried out (Kesowo 1995). Copyright is an intellectual property in the fields of science, art, and literature with a strategic role in supporting national development and public welfare as mandated by the 1945 Constitution of the Republic of Indonesia.

Cannot be separated from this understanding, Copyright is also defined as the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Copyright is an exclusive right consisting of moral rights and economic rights.

2.4 Theory of Dignified Justice

Philosophically, the truth is in the mind, said Plato in Ideenleer's teachings (Soehino 1991). Plato's teachings were corrected by Teguh Prasetyo in his theory of Dignified Justice. According to Teguh Prasetyo, the concept of mind in Plato's teachings must be interpreted as legislation in force, or court decisions that have permanent legal force and if possible, further than that, in the teaching of legal discovery, according to Teguh Prasetyo, thoughtsll it is jurisprudence (judge made law). The applicable laws and regulations or legislations and judges' decisions which have permanent legal force and if possible have become jurisprudence, are then used as the main reference (primary legal material), otherwise it is the only legal reference to be applied or concreted in people's lives in everyday cases brought before the courts/judges according to the applicable law. According to the theory of Dignified Justice, legislations applied by judges through judges' decisions with permanent legal force, or even those that have become jurisprudence are real manifestations of the nation's soul (volkgeist).

The theory of Dignified Justice teaches that legislations, for example, which are applied by judges through judges' decisions that have permanent legal force, or if necessary, jurisprudence (judge-made laws) are a real manifestation of the spirit of the nation (volkgeist). Given that the truth is in the soul of the nation (volkgeist), the soul of the nation or the minds of the people must be complete (supremacy of law). Because there is no sovereignty or command and absolute law (command) if the rule of law is incomplete.

III. RESEARCH METHOD

The research method used is empirical juridical with descriptive research type. Data sources consist of primary data, namely the results of interviews and secondary data, namely primary, secondary



and tertiary legal data. Methods of collecting data with literature study and interviews were then analysed qualitatively.

IV. RESULTS AND DISCUSSION

4.1 Legal Protection Against Current Painting Artwork

A work of art painting is an intellectual work of the creator of the result of a creation. Creation in Law Number 28 of 2014 is any copyrighted work in the fields of science, art, and literature produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form. Because a work of art in this case a painting has been regulated by law, it is necessary to have a legal protection.

According to the author's analysis, currently the legal protection of painting works is still lacking in the number of cases of copyright infringement that have occurred and there are still few cases of painting copyright infringement that are touched by the law. There are still many violations that occur, such as forgery, imitation, plagiarism of paintings which are more or less disturbing to the painters.

Legal protection is protecting a person's interests by allocating a power to him to act in his interests. Setiono argues that legal protection is an action or effort to protect the public from arbitrary actions from the authorities who are not in accordance with the rule of law to create order and peace so as to enable humans to enjoy their dignity as human beings. (Satjipto Rahardjo) Meanwhile, according to legal protection, it is an act to protect individuals by harmonizing the relationship of values or rules that are manifested in attitudes and actions in creating order in the social life between fellow human beings.

This protection does not work well if there is no serious action for the perpetrators of copyright infringement. It can be seen from the small number of cases regarding copyright infringement such as forgery, plagiarism, imitation, and others that have reached court even though there are many violations that we can find. The absence of active action taken by law enforcement officials also contributed to the rampant copyright infringement that occurred. By protecting the law is the same as protecting the rights of the creator himself. Protection of rights is a common term in the legal realm. Rights are interests that are protected by law, while interests are individual or group demands that are expected to be fulfilled. In essence, interests contain powers that are guaranteed and protected by law in carrying out them. Furthermore, in the IPR there are 2 principles, namely: (1) The declarative principle is a right that arises automatically in the Copyright without the need for a registration of the work first; (2) The constitutive principle is a right that arises based on a prior registration application. Copyright itself adheres to the declarative principle as contained in the definition of copyright Article 1 number 1 of the Copyright Law which reads Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of the legislation.

Referring to the applicability of the provisions of international conventions in the field of Copyright, especially the Berne Convention, every work has received automatic protection since the creation became real (real expression), the protection is given directly without depending on the country of origin of the creator (direct and independent protection), and The application of this provision applies equally to all countries that have ratified the Berne Convention, including WTO member countries that have also signed the TRIPS Agreement. Thus, there is no need for state intervention, including a country forming a registration system for a copyrighted work which will then become proof or formality of ownership of a work. The provisions of the declarative principles in this International Convention on Copyright are in accordance with the doctrine and legal principles of copyright protection. The fundamental principle in the copyright law regime is that copyright does not protect ideas, information or facts, but rather protects the form of the expression of those ideas, information or facts (protected expression of ideas). It can be said that Copyrights exist in real form, and not the ideas themselves. So, Copyright does not protect ideas or information until the idea or information is put into a form that can be calculated in material form,



and can be published (publication) or reproduced (reproduction) which develops into a concept of wealth that provides economic benefits. for the creator or rights holder.

According to the author's analysis, the understanding of the creators of the paintings regarding the Copyright Law itself is still lacking. The understanding of the painting creators regarding Copyright itself is only limited to its protection. Actually, if the creators of the paintings understand the Copyright Act, there are many things that can be used in the Copyright Act. There are many advantages to the legal protection itself, namely the emergence of moral rights and economic rights attached to intellectual works where one may not use the work of others without the permission of the creator or the copyright holder himself.

This relates to the economic rights owned by the creator. By multiplying a creation without the permission of the creator, it will indirectly reduce the income of the creator. The creator feels aggrieved because by multiplying a creation without the permission of the creator, morally the name of the creator is sold and materially the creator does not benefit from the reproduced creation. The public's view of copyright itself as a result of jointly owned copyrighted works. This view is different from what is stated in the law that copyright belongs to individuals. It is this difference of opinion that causes the rise of copyright infringement in the community.

Lack of firmness and consequences for law enforcement officers, especially the police, prosecutors, and judges in dealing with violations of the law in general are an opportunity for violations or crimes to occur. The absence or lack of supervision of law enforcement officers is a stimulus to the decline in public legal awareness. Efforts to increase awareness of respect for other people's copyrighted work is not an easy job, it must be supported by facilities and infrastructure that require very large costs, besides that, support for academics, students, law enforcement officials, government, and the general public regarding Copyrights must also be increased. In the context of Indonesia, the challenges that arise are not only in terms of the laws and regulations which always open up space to be interpreted differently,

Perhaps the most basic justification for IPR is that someone who has put an effort into creation has a natural right to own and control what they have created. This approach emphasizes honesty and fairness. It is seen as a dishonest and unfair act to steal someone's business without getting his or her approval first. It is the same as someone who grows rice, and then someone else joins in and harvests it and takes all the profits from selling the rice without permission.

Many experts agree that IPR law is a form of compensation and encouragement for people to create. This can benefit society in the long run. By limiting the use of innovation, it is hoped that it will eventually increase the level of information and innovation available in the community.

Regarding copyright protection for paintings, it can be done in 2 (two) ways, namely: (1) preventive legal protection is legal protection provided by the government which is used as an effort with the aim of preventing an infringement. This protection model is in the form of recording the creation in order to prove in the event of a dispute, (2) Repressive legal protection is legal protection provided by the government which is used with the aim of resolving disputes in the event of a violation. This protection model is in the form of a lawsuit in accordance with applicable regulations. Regarding the occurrence of disputes, the settlement of copyright disputes can be carried out through 3 (three) settlement methods: (1) Settlement of copyright infringement of a civil nature,

Meanwhile, in Indonesia there is a tendency to deal with violations by seeking criminal sanctions rather than trying to file civil claims through the Commercial Court to obtain compensation. However, in line with the latest changes to the Law that have been enacted and legal awareness increasing, it is hoped that in the future an effective compensation settlement will be preferred. In addition, it is hoped that this will become a special reference in the Commercial Court where knowledge in this field is increasingly enhanced.

4.2 The Concept of Protection of Paintings Based on the Principle of Dignified Justice

Talking about the model for protecting the art of painting means talking about the law. Laws that keep changing due to revisions made by members of the legislature are still considered not in accordance with what the creators want, especially painting artists. The current protection model is deemed to be inappropriate or inadequate in protecting every work produced by the painting



creator. In accordance with Article 1 Number 2, that the creator is one or several people who individually or jointly produce a creation that is unique and personal. The work of the creator is a creation, according to Article 1 Number 3 creation is any work of copyright in the field of science, art, and literature produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form.

According to the author's analysis, the future protection model is as follows: (1) Hand in hand between law enforcers including the police, prosecutors, government parties, or other related parties involved in handling cases of copyright infringement; (2) In making a recording on the Copyright of a painting, it is not judged by the product of the painting because a painting is one of the objects of Copyright that cannot be reproduced so that it is better to judge it from the discoveries of the character or from the form of the artist's style; (3) The validity period of the Copyright is longer because the painting is not related to the trend where the longer it is the more expensive it will be; (4) Involve experts, art experts, or art consultants in making any policies or in handling cases of painting infringement.

The author adds that regarding the protection of copyrighted paintings, the author has the idea that an institution or organization should be formed as a place or place for painters to gather. The institution must be an official institution that is legalized or authorized by the government or from the culture itself. With the existence of an institution or organization, painters can generate recognition from the community or from the government so that it raises the government's concern about the painting art itself. In addition, the institution or organization can be used as a place for the aspirations of the painters in responding to the rise of copyright infringement on paintings that are increasingly modern with their progress following the times.

With the effective protection of Copyright, it will be able to increase the passion and motivation to work if the Copyright Law is in accordance with what the creators want. It is as if the creators, especially painters, are more productive in producing each painting if the protection is maintained properly. After being productive in producing each work, it will also be able to increase the standard of living for the creators themselves and can increase economic growth for their country. In relation to the law of copyright protection, the author feels that the law of copyright protection should be re-conceived so that all creators get legal protection.

Legal protection exists because of the urgent need to provide protection to those who in a legal relationship have a weaker position and need more protection. In the context of the legal objectives discussed in the Dignified Justice theory, legal protection is a logical consequence of the existence of law to humanize humans (nguwongke uwong).

In this regard, the theory of dignified justice or Dignified Justice Theory is considered important to be applied in upholding the rights of justice to the creator, as proposed by Teguh Prasetyo, dignified justice describes and especially explains how the existence of law and justice in the Pancasila legal system. Dignified Justice as a new legal theory serves to explain and justify an applicable legal system, which is different from the western theories that have been referred to so far. Dignified Justice Theory explains and justifies a legal system by, among other things, a postulate that the law exists and grows with the spirit of the nation or the Volkgeist.

The theory of Dignified Justice is not anti-theories that have existed and are referred to in explaining the laws that apply in Indonesia. However, Justice with Dignity seeks to set an example for law enforcement, including seeking, and building or constructing or reconstructing laws and explanations of the law from philosophy or philosophy excavated from within Indonesia itself, not having to rely on theories, concepts or concepts. concepts developed in other legal systems. Dignified Justice Theory departs from the postulate of the system working to achieve the goal, namely dignified justice. Justice that humanizes humans, or justice that nguwongke wong.

So, it is not just a theory, but a fact that good regulation and protection of IPR, especially copyright will make the creators get proper appreciation and encouragement both from the community and from the government. Further impact, citizens in the country will compete to create the best possible and produce works of high quality. Thus, the community will benefit from

social inheritances in the form of high-quality copyrighted works/intellectual creations as cultural fruits that can be passed down and developed from generation to generation.

V. CONCLUSION

Based on the results of the author's analysis of legal protection of works of art painting for now is still lacking, it can be seen from the many cases that occurred but still at least touched by the law both in the form of compensation and criminal prosecution. The role of law enforcement is still lacking in dealing with violations of Copyright itself. These violations show that the public lacks awareness about the meaning of appreciating the work of others.

Thus, it is important to re-conceptualize copyright protection for works of painting that are currently deemed inappropriate or unsuitable for the painters themselves. There is no understanding and there is no common interest between the government and the creators, especially the creators of paintings, namely painters. The models that painters want include: law enforcement that is more active in dealing with cases of copyright infringement, besides that the theory of dignified justice is felt to be important in enforcing a law to protect creators, and it is better to involve experts in the arts in every policy making. or in handling cases of painting violations, socialization and government intervention to painters.

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