

STRENGTHENING LEGAL INSTITUTIONS FOR PERFORMING RIGHTS TO PRESERVE LOCAL ART CREATIONS AS NATIONAL TOURISM ASSETS

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Abstract - This study aims to analyze new legal institutions whose acceptance of them is determined by the level of experience or breadth of civilization of the society. The level of legal application and the cultivation of a new legal doctrine does not yet emphasize the strength of the strictness of legal logic which must correspond to the depth of the soul (Volk Geist) of society. The research was carried out preceded by a focus group discussion, and a review of statutory and policy documentation to find out the philosophical and sociological basis for the issuance of laws. Simultaneously, theoretical studies are carried out on the implementation of the law which will shape legal culture. The field research step was carried out by a series of in-depth interviews with experts and practitioners, both legal practitioners and music user industry practitioners, collecting data on public understanding by distributing questionnaires. Field data was analyzed quantitatively and document data and doctrinal studies were analyzed qualitatively. The results of the research show that the arrangement for performing rights can support a new legal institution in Indonesia with the birth of the Collective Management Organization arrangement. This right is accepted as a right suitable for industrial culture in Indonesia. Likewise, this right can support the cultural tourism industry in Indonesia based on songs and music as well as fine arts in the form of local paintings and carvings.

Keywords: legal institutions; performance rights; copyright; cultural works of art; tourist assets

INTRODUCTION

Respect for creative works of art in the form of statutory legal protection has not fully fulfilled the creator's desire to obtain economic effects from the results of his work (Juardi & Roestamy, 2023). This is related to the level of expression and appreciation from the public for the value contained in a creative work (Mat et al., 2020). Universally, the protection of copyrighted works can be recognized through several international conventions, however, in their application, the legal institutions in Indonesian legislation do not always operate in an orderly manner (Zubaidah et al., 2022). The international regulation on Performance Rights, namely the WIPO Performances and Phonogram Treaty, was only born in 1996 and only came into effect in 2022) marking the birth of a new legal institution in the field of Copyright (Rudy et al., 2021). New legal institutions that develop cannot always be automatically and evenly accepted by the majority of society (Lin & Lian, 2018). Acceptance of new aspects is determined by the level of experience of the society or the breadth of its civilization (Strum et al., 2019).

This also influences the birth of a new legal institution which can become a reference in law enforcement (Shadiq et al., 2023). An example is the case of songs that have been recorded/CDs. In the concept of Copyright, the buyer of a cassette/CD is only entitled to enjoy the cassette/CD he bought himself in the form of enjoying the song and singing it himself (Shadiq & Karim, 2023).



However, if the buyer of the cassette/CD takes commercialization steps in the form of playing the song/music for a fee (taking economic profit) such as in the karaoke business, live music in hotels and restaurants, the owner of the cassette must pay royalties to the creator (Yudiaryani, 2021). As for the general opinion (especially entrepreneurs who use songs/music as sales) argue that it doesn't make sense that if a cassette that has been purchased is played in a karaoke business, we still have to pay royalties for playback, hasn't the cassette has been purchased so that all of its contents are our rights as buyers, including seeking sustenance from the songs in it (Peña et al., 2022).

Regularity in Copyright law in the field of songs and music encourages certainty of legal protection while at the same time encouraging the growth of national tourism in the form of the availability of music-based entertainment facilities such as karaoke, live music, and others (Makkawaru, 2016; Mading, 2023). This can be an innovative mechanism for supporting tourism. In the copyright doctrine, the playback of songs and music by companies using music to attract subscriptions must comply with the Performing Right doctrine attached to copyright, which in practice often fails to be enforced (Mezei & Lapatoura, 2023).

However, this doctrine was not incorporated into Indonesian Copyright law until 2014. The issuance of Law No. 28 of 2014 shows that there has been a new legal institution that has not previously been regulated and has even faced challenges from certain communities, especially industrial communities that use music and song arts services (Pastor & Santamaria, 2021). This research aims to find out to what extent the Performance Rights doctrine has been accepted as a legal culture for the song/music user services industry (karaoke and hotels). This research is important to examine/analyze changes to regulations that engineer people's behavior (the music industry) to be immediately accepted. Furthermore, it analyzes if the range of copyrighted products has expanded from just songs/music to the regulation of copyright performing rights in other arts such as visual arts and painting (Soelistyo, 2011).

Copyright performance rights for this type of fine art and painting have become copyright legal institutions abroad, such as in Europe. Meanwhile, in Indonesia, the latest Copyright Law has just been published, so it is necessary to analyze the level of public acceptance of its implementation (Zubaidah & Ainun, 2021). This research is urgent to see the level of legal enforcement. Civilization of a new legal doctrine in Indonesia. Through this research, there will be a push to accelerate basic research in higher education to produce a new policy principle in the form of a sequence of research results included in an academic text that must show the level of logical rigor and results of social analysis where the law will be applied (Kameli, 2023).

The strength of the strictness of legal logic with the depth of adjustment to the spirit (*Volk Geist*) of society will determine the formation of a strong legal culture as well (Bello, 2020). The law will continue to live and develop along with the development of society, standing based on its own moral and cultural authority. The problems studied are: 1) how the regulation of performance rights can support new legal institutions in Indonesia; 2) to what extent has the law on Performance Rights been accepted by the public as a suitable right for industrial culture in Indonesia; and 3) to what extent the development of performance rights can support the cultural tourism industry in Indonesia (Cipta & Moral, 2022). Previous research on legal enforcement focused more on testing newly published legislation regarding a particular statutory provision related to a particular case (Robinson, 2020). This research does not examine the legislation but examines the legal institutions carried out by these laws, especially new legal institutions that originate from foreign legal institutions for us, but these institutions must be applied in Indonesia as a consequence of participation in agreements in international conventions, in terms of this is a legal institution of rights (Kasih et al., 2022). To what extent does the legal institution of performance rights receive a public response in legal terms?

If the previous conception is that a legal rule that has been implemented by the state is accepted or not, the conclusion is only on the effectiveness or ineffectiveness of the regulation for the problem item being punished (de Carvalho et al., 2023). The concept is developed that whether a rule (legal institution) is effective or not must go beyond the problem item being punished and



penetrate other important aspects of a policy system/legislative arrangement by the state, in this case, the legal institution of performing rights can also support government policy in tourism business sector (Gunawan et al., 2022).

METHOD

The problem-solving approach is a normative-empirical approach, where it is emphasized that the law applied can only be assessed for its effectiveness if it meets the elements of legal substance and good legal structure (Makkawaru et al., 2020). The strictness of the legal substance which is reflected in the legal norms/rules contained in the statutory articles should be assessed for its effectiveness through people's adherence to the law (new legal order), so that the empirical approach complements the normative approach to solving the problem of implementing new legal institutions in society, as the legal institution of performance rights in copyright law in Indonesia. This research was conducted in North Toraja Regency where there is a song and music user service industry, as well as a center for non-song and music fine artworks (Zubaedah et al., 2023). In developing arts and culture-based tourism in the fields of songs and music as well as non-songs and music. The focus group discussion was conducted at the research location and continued with a study of legislation and policy documentation to find out the philosophical and sociological basis for the issuance of laws. Simultaneously, a theoretical study is carried out on the theory of legal enforcement which will shape legal culture. This research simultaneously discovers and determines the position of legal science in the philosophy of science and legal theory. The field research step was carried out by a series of in-depth interviews with experts and practitioners, both legal practitioners and music user industry practitioners, collecting data on public understanding by distributing questionnaires. Field data was analyzed quantitatively and document data and doctrinal studies were analyzed qualitatively.

DISCUSSION

1. Regulation of Performing Rights Can Support New Legal Institutions in Indonesia

Comparing two laws that regulate the same thing because one is a law that changes the next law is worth doing as a form of study of legal history and legal politics. The Indonesian Copyright Law can be an example, namely the latest law, Law Number 24 of 2018, which is an amendment to Law Number 19 of 2002. The Considering Consideration states: that Law Number 19 of 2002 is no longer by developments law and the needs of society so it needs to be replaced with a new law. Researchers conducted a study of the content of copyright legislation, especially Law No. 24 of 2016 concerning Copyright which is the main source of legislation on the issues studied. In researching the study of two copyright laws, namely Law no. 19 of 2002 concerning copyright there is a development of rules that guide new legal institutions when regulations appear in chapter XII regarding collective management institutions which were not previously included in the old copyright law.

Collective management institutions indicate an increase in the legal idea of copyright law which has an economic orientation as evidenced by the orientation of royalties that extends not only to conventional copyright rights, namely for creators and copyright holders, but also for related rights owners (Nemlioglu, 2019). The owner of the related rights is not the main idea owner in the creation of copyrights but only relies on other expertise (which in the concept of ideas/ideas in Intellectual Property Rights does not include this). Related Rights (in the original language/English called Neighboring Rights) letterlijk implies not the original creator (only neighbors of the Creator), have been placed in Chapter III of the copyright law and even one of the subsections is economic rights which is also a new structure in the law -Indonesian copyright invitation.

2. Performance Rights and Community Acceptance Amidst Industrial Culture

As a new legal institution, performance rights have begun to be widely introduced by music practitioners and songwriters. When Enteng Tanamal and Chandra Darusman initiated the birth of the Karya Cipta Indonesia Foundation, which is now called Karya Cipta Indonesia, it echoed the desire to collect royalties through the work mechanism of a collective management organization



which in Western countries is called the Performing Right Society. This organization is called a non-profit which relies on collecting licensing fees from businesses that use music and songs as their type of business. Then the results of the levy are redistributed to the creators who are members. Membership is determined through a voting power mechanism granted by the creator. This way of working provides benefits for fulfilling the economic rights of creators, writers, music publishers, and others (Eynaud et al., 2018). The scope of distribution of membership and distribution can cover the entire world. Live performances or recordings, whether on television or the internet, can fulfill the elements of performing to the public. The public measure is based on all spaces beyond limited performances of friends and family but includes concert performances, restaurants, hotels, karaoke, etc.

The rise of community businesses that use songs and music as their merchandise, has an impact on supporting economic progress at both the large and micro, small, and medium business levels. The growth of businesses in the form of cafes and karaoke provides an opportunity for song and music creations to become a commodity for these businesses (Geriya, 2021). Communities are also more open to receiving the benefits of songs and music in the form of singing them using digital devices. Hotels, restaurants, hospitals, airports, ports, and others are business facilities that must be understood. Research in North Toraja obtained data that the habits of Caucasians are a little freer so after visiting certain natural or cultural attractions, they need karaoke and night clubs at night (data source Salam Taunbaru from the Tourism Office). Thus, the use of songs and music in this business is closely related to the economic rights of the creator. Most of the café managers or supervisors interviewed admitted that they did not know if their businesses were obligated to make calculations for the songs sung in their places.

Table 1. Number of Cafés per District in North Toraja Regency

| Sub-district | Total Café/Restaurant | Collective management organization | |
|----------------|--------------------------|------------------------------------|--------------|
| | | Recorded | Not Recorded |
| Rantepao | 20 | 0 | 20 |
| Tallunglipu | 16 | 0 | 16 |
| Kesu | 14 | 0 | 14 |
| Kapala Pitu | 4 | 0 | 4 |
| Sesean Suloara | 4 | 0 | 4 |
| Total | 58 | | 58 |

Source: Research data, 2023.

Table 2. Potential Use of Songs and Music in Non-Karaoke Businesses in North Toraja Regency

| Sub-district | Total | Collective management organization | |
|---------------|-----------|------------------------------------|--------------|
| | | Recorded | Not Recorded |
| Star hotels | 35 | 5 | 30 |
| Budget Hotels | 18 | 1 | 17 |
| Restaurant | 25 | 1 | 24 |
| Total | 78 | 7 | 71 |

Source: Research data, 2023.

3. The development of performance rights can support the cultural tourism industry in Indonesia

As previously stated, both domestic and foreign tourists need the presence of entertainment in the form of songs and music both in the form of singing houses and cafes with karaoke facilities, in hotels in the form of song performances and live music, the North Toraja government encourages song and music-based entrepreneurs to provide them. With a total of 58 cafes that are licensed to be clustered by the Government, especially in areas adjacent to major tourist villages such as



Nonongan, special attention is paid to developing them with a zone system so that it is easy to carry out supervision and guidance.

This has a supportive effect on the development of the tourism industry (Purwandoko et al., 2020). However, in the interest of cultural tourism, some conflicts or frictions must be addressed, namely The management of cafes is often seen by traditional leaders and religious leaders as something that is beyond the boundaries (Salam Taunbaru, SE, MM. Tourism Office). The results of the questionnaire were distributed to 150 (one hundred and fifty) respondents and it was confirmed that only 120 (one hundred twenty) respondents returned answers, with tabulated data.

Who has the right to benefit from a work of art? The following data was obtained:

Table 3. Parties entitled to works of art

| No. | Respondents answer | Frequency | Percentage |
|--------------|--|------------|--------------|
| 1 | Creator only | 16 | 13.4 |
| 2 | Creators and General Public | 80 | 66.6 |
| 3 | Creators and communities who obtain permission | 14 | 11.7 |
| 4 | General public | 10 | 8.3 |
| Total | | 120 | 100.0 |

Source: Research data, 2023.

Table 3. Parties entitled to works of art

| No. | Respondents answer | Frequency | Percentage |
|--------------|--------------------|------------|--------------|
| 1 | Yes | 64 | 53.4 |
| 2 | No | 36 | 30.0 |
| 3 | Doubtful | 12 | 10.0 |
| 4 | Don't know | 8 | 6.7 |
| Total | | 120 | 100.0 |

Source: Research data, 2023.

Of the 68 respondents, 28 respondents stated that royalties must be paid directly by the user to the creator, while 40 respondents stated that users make payments through the intermediary of the organization. Those who answered that no royalties need to be paid argued that the singing house/karaoke company had been instrumental in introducing the created song. the creator through karaoke, and other answers that the creator has received "money" from the record company or the internet company. The majority of respondents (76/%) stated that they did not agree that Ramah Singing/Karaoke companies argued that they were reluctant to pay royalties to singers because it would "increase the company's costs", although 16 respondents stated that they could understand the company's complaints as "over costs". Further research explores public opinion regarding the development of the rights of non-song and music creators, 98 (%) of respondents agree that if their rights are respected song creators, painters, and carvers by providing royalties, they are encouraged to improve their subsequent works, it will have an impact on increasing cultural tourism industry, especially in the regions.

CONCLUSION


Performing rights arrangements can support new legal institutions in Indonesia as seen from changes in copyright law with the emergence of additional regulations regarding collective management institutions. Another thing is proven by the widespread orientation of royalties to related rights owners. The public has accepted the right to perform as a right suitable for industrial culture in Indonesia. The birth of an institutional management organization is a non-profit organization that collects licensing fees from businesses that use music and songs as a type of business, which is then distributed to creators. Performance rights can support the cultural tourism industry in Indonesia. Domestic and foreign tourists need the presence of entertainment in the form



of songs and music, whether in the form of singing houses or cafes with karaoke facilities, also in hotels in the form of song performances and live music, so the government encourages entrepreneurs based on the art of song and music, even based on fine arts in the form of paintings and typical carvings local.

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