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Strengthening the Legal Protection for Visual Artists Against Copyright Infringement

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Abstract
This study aims to determine how Banjarmasin artists safeguard their creations and how to address copyright violations in paintings. This study's research methodology is empirical juridical, which involves examining the issues that have been developed by fusing primary and secondary legal sources. The study's findings demonstrate that painters place a high premium on registering their works with the Directorate General of Intellectual Property Rights in order to ensure that they are legally protected and to aid in the settlement procedure for monetary damages resulting from infractions. Painters have so far protected their paintings by adding watermarks or signatures, but this is undoubtedly insufficient to stop copyright infringement or counterfeiting. the absence of focused education and socialisation for artists. According to Law Number 28 of 2014 governing copyright, there are two possible courses of action for painters who experience copyright infringement: non-litigation (outside the court) and litigation (via the court). In addition, civil lawsuits and criminal charges may be pursued.

Keywords: Copyright, forgery of painting, legal protection.

1. Introduction

The impact of numerous regional customs, history, and cross-cultural exchanges is inextricably linked to the evolution of fine art in Indonesia. Every area has a different artistic style and method that reflects the uniqueness of the local environment and culture. The existence of Indonesian fine art enhances life in addition to providing aesthetic appeal culture and creating a sense of national identity (Salam, Sukarman, Hasnawati, & Muhaimin, 2020, p. 10). The promotion of Indonesia as a creative and competitive cultural hub in the global art world, the building of national identity, and the unification of cultural variety are all made possible by fine arts. Therefore, in order to guarantee the continuation and growth of art as a vital component of the country's cultural legacy, support and appreciation of fine arts in Indonesia are essential.

For instance, traditional Javanese carvings are filled with religious symbolism and depict the everyday lives of the Javanese people, while traditional South Kalimantan

paintings depict the splendour of tropical scenery and flowing rivers (Salam et al., 2020, p. 15). Gusti Sholihin was one of the first South Kalimantan artists and contributed to the introduction of fine art to the area. He became the first individual from South Kalimantan to exhibit at San Paolo, Brazil, as a result of his outstanding accomplishments. The government created a unique gallery at the Lambung Mangkurat Museum in his honour and memory in acknowledgement of his outstanding efforts (Semawi, n.d., p. 10).

Protecting artists' rights is essential if we are to value their work, particularly when it comes to marketing these works. Beyond only safeguarding copyright, this protection includes a number of other elements that guarantee creators are fairly compensated for their contributions. According to Mr. Kris Imanu, a painter from Banjarmasin, the difficulties in this area are evident, since their artwork frequently lacks sufficient protection. Therefore, in order to safeguard the interests of painters, more robust legal protection measures are required (Budiana, Senastri, & Mahaputra, 2026, p. 102). The value of a painting is quite complex. A piece of art is evaluated not just from an aesthetic standpoint but also from a variety of aspects that show the originality, inventiveness, and even cultural background of its production. As a result, the selling price of a painting can significantly surpass typical projections, frequently reaching astounding amounts that are hard for people who are not directly involved in the art industry to understand.

Another important component or assurance that might raise a painting's selling price is authenticity. The phrase "copyright" is frequently used to establish who owns something, especially when it comes to painting. The right to possess works that originate from human intellectual capacity in the domains of science and technology is known as copyright (Usman, 2004, p. 2).

The Indonesian art industry is rife with copyright problems, which undoubtedly affects the country's economy and jeopardises the younger generation's access to art. "Paintings that claim to be by S. Sudjojono or other masters and are then published in books not only endanger the future of history related to the lives and reputations of artists, but also for the historiography of Indonesian art," said Aminudin T.H. Siregar of the Bandung Institute of Technology during a 2015 Indonesian Art Lovers Association (PPSI) discussion on "The Threat of Fake Paintings" (Khoiri, 2016). He is concerned that the art market may deteriorate and affect painters financially as a result of the increase of these paintings' fakes.

Article 40 paragraph (1) letter F of the Copyright Law governs art in Indonesia. It states that works of fine art in all forms, including paintings, drawings, carvings, calligraphy, sculptures, statues, and collages, are protected creations in the fields of science, art, and literature. Additionally, copyright is an exclusive right made up of both economic and moral rights, according to Article 4 of the Copyright Law. Thus,

it is clear that a painting is a work of art with unique rights that belong to the author or copyright holder and include both moral and economic rights (Soelistyo, 2011, p. 272). However, Mr. Misbah Tamrin, a well-known painter in South Kalimantan who trained under Gusti Sholihin, believes that the government's attempts to address copyright issues are subpar. He claimed that because some painters are thought to be unconcerned with properly registering their works to safeguard them, cases of forgery are rarely thoroughly examined (Tamrin, 2024). When a work is first declared or announced, copyright protection instantly takes effect. This implies that copyright is protected and has the same legal force whether it is registered or not. Thus, it is not required to register a work. The only purpose of registering a work is to make verification easier or to serve as initial proof in the event of a future dispute. The chairman of the South Kalimantan Painters Association's (IPKS) Banjarmasin section claims that social media is frequently used in Banjarmasin for painting forgeries. Painters upload their artwork, which is subsequently reposted by others and claimed as their own, even though the original artist is the rightful owner (Imanu, 2024).

With 56 painters in Banjarmasin and 33 in Banjarbaru registered in the IPKS community, the city boasts a strong painting community with great artists, which is why Banjarmasin was selected as the research site. Nonetheless, there is still a need for increased awareness and efforts to safeguard copyright for artistic creations, particularly paintings. It's possible that many artists lack sufficient legal protection or do not fully comprehend how to safeguard the copyright of their creations. In order to gain a better understanding of the laws and legal procedures that apply in Banjarmasin with regard to copyright in paintings, it is also worthwhile to investigate the possibility of copyright infringement lawsuits in this area.

2. Method

The author employed empirical legal research. Abdul Kadir Muhamad defines empirical juridical study as "research conducted by examining secondary data first and then continuing with conducting research on primary data in the field." (Muhammad, 2004, p. 134) Therefore, empirical legal research is a type of legal research that looks at how normative legal rules are applied or implemented in actual social practices (Muhammad, 2004, p. 134). To put it another way, this study concentrates on real-world community conditions in order to find and gather the relevant information. Finding the emergent issues is the next stage after gathering the data, which will eventually result in attempts to address them (ULM, 2021, p. 272).

In research, gathering data is a crucial stage. When gathering legal materials, researchers use primary and secondary legal documents to conduct literature studies. Researchers use data gathering methods, such as direct interviews with sources using

prepared questions, to examine books, websites, laws, and regulations pertaining to the primary issue in the author's research.

3. Results and Discussion

3.1. Protection of Artists' Works

The significance of safeguarding artistic creations within the framework of copyright is frequently overlooked. Many people concentrate more on the legal protection of artistic creations like films, songs, and sculptures, even if many artistic creations still do not have the best protection. Artists' ignorance of the significance of legal certainty regarding copyright protection once their works are finished is one of the primary sources of this issue. The importance of copyright to the long-term viability of artists' careers and the preservation of their creations is often overlooked by both self-taught and academically trained artists(Pemayun, Suwitra, & Sepud, 2017, p. 44).

Mr. Kris Imanu, Chairman of IPKS Banjarmasin City, stressed the need of artists taking proactive measures to safeguard his work. In order to acknowledge and authorise ownership, he recommended that artists sign each piece they create. Additionally, adding watermarks to paintings is a crucial step in strengthening protection, ensuring that the artist's identity and copyright are still discernible even after the piece is posted online. However, Kris Imanu explained and said further that these techniques still have weaknesses that can be exploited by careless people (Imanu, 2024). Further interviews with Kris Imanu revealed that some painters are unaware of the importance of copyright, and there are several variables that influence this, including:

1. With an emphasis on the creative process, a lot of artists are motivated more by the desire to create and explore their ideas. Legal considerations like copyright are frequently disregarded in favour of the process of producing artistic creations.
2. Lack of knowledge/education: The significance of copyright protection is frequently underemphasised in Indonesia's formal and informal arts education systems. Artists frequently find copyright law information to be overly technical and boring.
3. Oversimplified assumption: People believe that art is free and accessible to everybody. The attitude of sharing in the art world is sometimes thought to be at odds with the idea of exclusivity that is inherent in copyright.
4. A convoluted administrative procedure. Many people believe that the copyright registration procedure is difficult, expensive, and time-consuming. Many artists are deterred from registering by this. Additionally, artists are still unsure about whether their copyright immediately covers all of their creations or just one.

5. Not knowing the law. Generally speaking, Indonesians—including artists—remain mostly ignorant of the law. The legal ramifications of copyright infringement are not well understood by many (Wahyuni, Ramadhani, Desi, & Tarina, 2023, p. 7451).
6. An immature environment in the arts sector. Indonesia's arts sector is not as developed as that of other nations. Consequently, copyright safeguards and associated law enforcement continue to be inadequate.

Painting communities working together for copyright advocacy is a group effort by different artist communities to campaign for copyright protection of their artwork. This type of cooperation is exchanging information, teaching artists the value of copyright, and offering assistance when infractions like plagiarism or artwork fraud take place (Gunawati, Mucharrom, & Putra, 2025, p. 349).

In addition to defending artists' individual rights, this campaign seeks to increase public understanding of the value of preserving the uniqueness of artistic creations. More generally, this partnership can promote stricter laws and rules to safeguard artists' copyrights at the municipal and national levels while concurrently creating a more sustainable and equitable arts ecosystem.

Counselling and socialisation related to efforts to spread knowledge of intellectual property rights (IPR) are still deemed inadequate and ineffective in the Banjarmasin area itself. Instead, the socialisation invites various organisations and non-governmental organisations that are unrelated to copyright; in fact, creative activists like MSMEs and artists were not invited to attend (Chrisanti & Sulistiyantoro, 2024, p. 136). However, based on the socialisation that was previously attended by researchers with the theme of socialisation of trademark applications involving MSMEs, the organisers will hold another socialisation with the theme of copyright. Additionally, the government established a Copyright Council on an institutional level (Yolanda, 2019, p. 40).

The painting arts community in the Banjarmasin region have not worked together to promote copyright. Article 3 of Government Regulation of the Republic of Indonesia Number 14 of 1986 respecting the Copyright Council contains particular regulations pertaining to the Copyright Council. The notion that legal protection for copyright has not been adequately socialised in society is the foundation for the creation of this Copyright Council organization. As a result, Abby explains that the Copyright Council's presence is critical in carrying out its advocacy and education obligations, which include offering legal advice, technological help, and other programs targeted at boosting public awareness of copyright.

It is envisaged that this organization can help the government fulfil its goal of providing complete copyright protection through the Copyright Council. Members

of the public as well as representatives of pertinent government agencies, including the Ministry of Law and Human Rights, the Ministry of Education and Culture, and the Ministry of Trade and Industry, are members of the Copyright Council. These members of the public include both institutional and individual associations of creators, publishers, record producers, film producers, cinematographic artists, writers, cultural personalities, and scientists with expertise in copyright.

3.2 Legal Protection Against Copyright Violations in Paintings

1. Indonesia's Legal Structure for Painting Copyright Protection

Intellectual property rights (IPR), which include copyright, provide legal protection for works of literature, art, and science. Only works of art that are tangible and able to be expressed—for instance, by being seen, read, or heard—are covered by this protection. A concept must be realized as a creative work in order to be protected by copyright. Products or outcomes of human cognition that occur from intellectual capacity are included in intellectual property rights themselves. This idea emphasizes the importance of human intelligence and creativity as the origin of legally recognized creations. The person who creates the work as an expression of originality and creativity is referred to as the creator in the context of copyright. The inventor or another party who lawfully acquires the rights by transfer, inheritance, or other legally recognized methods may be the copyright holder. Copyright is governed by Law Number 28 of 2014 in two primary areas: economic rights and moral rights.

While economic rights allow the creator or rights holder the ability to use the work through licensing, sales, royalties, and other means, moral rights involve granting permission to create a work and safeguarding its integrity. qualified to obtain financial advantages. In addition to benefiting authors and rights holders, copyright protection seeks to ensure justice, order, and legal certainty. Legal protection is offered in the case of a violation, both repressively through severe criminal action and preventively through counselling and warnings. One crucial strategy for enhancing legal protection is copyright registration. In court, ownership documentation is strengthened by registration with the Directorate General of Intellectual Property (DJKI).

Completing a form, providing pertinent files, and paying the required costs are all part of the registration procedure. By giving the rights holder documentation of original copyright that may be utilised in court, registration increases the security and protection of intellectual property.

2. Painting Law Enforcement Mechanism Violations of Copyright

After a person that feels wronged by the unapproved use of their work or creation files a complaint, the law enforcement system for copyright infringement can be put into action. In the context of copyright, also referred to as economic rights, dispute

resolution covers a broad variety of topics. These conflicts can emerge from breach of contract owing to violations of the license agreement's conditions, as well as from illegal conduct that produce losses for the inventor or beneficiary of the rights. There are two legal procedures for resolving copyright disputes in the Commercial Court: (1) Civil Dispute Resolution and (2) Criminal Violation Claim Resolution.

a. Resolving civil disputes

Conflicts pertaining to property, referred to as economic rights in copyright parlance, are known as copyright disputes (Zahida & Santoso, 2023, p. 188). These disputes may emerge from illegal actions that cause losses for the rights' author or beneficiary, as well as from contract violations brought on by licence agreement clauses being broken. Generally speaking, Book III of the Civil Code regulates these two categories of legal actions, categorising them as:

1) *Onrechtmatige daad* (Tort)
2) The Breach of Contract

In this sense, "compensation" refers to a circumstance in which one party experiences a loss and the other party is required by its actions to make up for that loss. It is impossible to divorce the compensation event from the earlier incident that resulted in the loss. As a result, it's critical to determine what caused the loss and who is accountable. Only the party that was connected to the incident that resulted in the loss may be required to pay compensation; this is known as an obligation. Laws and agreements are the two main sources of obligations. The duty to provide remuneration results from a legally mandated requirement or a mutually agreed upon contract.

The Civil Code's Article 1365, which governs illegal activity, is also mentioned in relation to damages. When it comes to copyright infringement, damages result from the illegal activity rather than from a contract violation. There are two primary requirements to submit a claim for damages:

1) There was an error on the part of the party carrying out the action.
2) The error causes loss to another party.

According to Article 56 of the Criminal Code, the occurrence may be brought before the court as a claim for damages if these two requirements are satisfied. Although a lawsuit for damages may be brought in tandem with a criminal complaint, it is preferable to do so following a criminal conviction that establishes the offender's guilt. Maintaining consistency between the judge's rulings in criminal and civil proceedings is crucial. If a lawsuit for damages is authorised before someone is proved guilty, this can generate issues. The ensuing law enforcement procedure may be complicated, for instance, if a lawsuit for damages is filed and the criminal judge

finds the defendant not guilty a few days later. On the other hand, law enforcement will also face challenges if the criminal judge finds the defendant guilty after the civil judge dismisses the complaint for damages owing to questionable culpability (Mantili, 2019, p. 300).

The Civil Code's Book III has lex generalis requirements, whereas Copyright Law No. 28 of 2014 contains lex specialis regulations. According to this statute, alternative dispute resolution procedures like arbitration, mediation, or the courts must be used to settle civil issues involving copyright infringement. The objective is to facilitate a prompt, economical, and effective resolution in compliance with Indonesian civil justice norms. The main method of settlement under this law is mediation, which is followed by arbitration and the legal system (Mantili, 2019, p. 305). Other courts are not able to settle copyright disputes; only the Commercial Court has the last say. In Indonesia, opposing parties must first settle their differences through mediation before initiating criminal charges.

Compensation is due to creators, copyright holders, associated rights holders, or heirs who suffer damages as a result of copyright infringement. The court ruling regarding the copyright and/or related rights offence will specify this compensation. Within six months of the final, legally binding court ruling, compensation must be paid to the creator, copyright holder, or holder of associated rights. It is crucial to remember that compensation may be specified in the criminal ruling; losses incurred by the author or their successors do not always need to be brought in a civil litigation. In the copyright registration system, which employs a negative-declaratory method, if a work has been registered in the general register and the Minister has issued a registration letter, other interested parties may submit a lawsuit to cancel the registration through the Commercial Court. The creator and/or registered copyright holder are the targets of this lawsuit. The right of the author or their heirs to bring legal action against those who wilfully and unlawfully infringe their moral rights remains unaffected by the transfer of copyright to another party. Among these moral rights are:

1) The right to include or not include a name on copies of works used for public use.
2) The right to use an alias or pseudonym.
3) The right to change creations in accordance with societal norms.
4) The right to change the title and subtitle of the creation.
5) The right to maintain the integrity of the creation from distortion, mutilation or modification that is detrimental to the honor or reputation of the creator.

Similarly, the transfer of artists' economic rights to third parties does not take away their or their heirs' ability to sue those who infringe their moral rights, which include:

1) Unless otherwise specified, the right to be listed as a performer.
2) The right, absent an agreement to the contrary, to prevent his creations from being distorted, mutilated, or altered in a way that would be harmful to his honour or reputation.

Creators, copyright holders, and owners of associated rights may launch a lawsuit in the Commercial Court for damages if a third party violates their copyright. A request to give up all or a portion of the money received from planning an event that violates copyright or related rights products may be included in a lawsuit for damages. The harmed party may also ask for an interim or provisional ruling to:

1) Take away the tools used to create the infringing work.
2) Prevent copyright-violating materials from being published, distributed, communicated, or duplicated.

A copyright infringement lawsuit must be written to the Chief Justice of the Commercial Court and recorded in the case register by the clerk on the day of registration. The clerk will deliver a signed receipt on the same day. The lawsuit application must be submitted to the Chief Justice of the Commercial Court within two days of registration. The Commercial Court will then schedule a hearing date within three days of the lawsuit being lodged, and the bailiff will notify the parties within seven days.

After registration, a case must be decided within a maximum of ninety days. If this deadline is not reached, the Chief Justice of the Supreme Court may approve a 30-day extension. The Commercial Court must deliver the ruling during a public hearing. The Supreme Court has a maximum of seven days following receipt of the application to schedule a hearing in the cassation filing procedure. After the cassation application is received, the decision must be made within ninety days. Within seven days following the ruling, the Supreme Court clerk must provide a copy of the cassation decision to the Commercial Court clerk. In addition, the applicant and respondent must get a copy of the cassation decision from the Commercial Court bailiff within seven days following the clerk's decision (Saidin, 2015, p. 270).

The right of the author or owner of related rights to launch a criminal lawsuit is not diminished by the ability to file a civil case for copyright and/or related rights violation. At the aggrieved party's request, the Commercial Court may grant a temporary injunction with the following objectives:

1) Stop products suspected of violating copyright or associated rights from being sold.
2) Seize, confiscate, and keep items as proof of copyright or related rights infringement.

3) Protecting evidence and keeping it safe.
4) Put an end to the infraction to stop more damage.

The author, copyright holder, owner of related rights, or their lawyer must make a written request for a temporary injunction to the Commercial Court. Among the prerequisites that must be fulfilled are:

1) Proof of ownership of copyright or related rights.
2) Initial indications of a violation.
3) Clear description of the goods and/or documents requested.
4) Statement of concern about the removal of evidence by the alleged violating party.
5) Payment of a guarantee in an amount commensurate with the value of the goods to be subject to temporary determination.

The Commercial Court clerk must record the application and deliver it to the court chairman within 24 hours of the prerequisites being met. The chairman of the Commercial Court will designate a judge to review the application within two days of receiving it. After the appointment, the judge has two days to determine whether to approve or deny the application. The judge will make a temporary ruling if the application is approved, and the impacted party must be informed within 24 hours. If the application is denied, the judge will provide the applicant an explanation (Widyastuti, 2025, p. 7).

Following the issuance of a temporary injunction, the Commercial Court will request information from the party covered by the order within seven days. After receiving the summons, the party has seven days to provide information and supporting documentation. Within 30 days of the interim injunction's issuance, the judge will make a decision regarding its upholding or revocation. The applicant will receive their security deposit back if the interim injunction is upheld, and they have the option to report the infraction to the police or launch a lawsuit for damages.

On the other hand, the security deposit will be reimbursed to the party covered by the injunction in the event that the temporary injunction is revoked. One immaterial property right that falls within the category of property rights is copyright. According to Law No. 28 of 2014, copyright is made up of both economic and moral rights. Economically valuable property rights are regarded as property in the context of criminal law. In contrast to crimes against morality, honour, or the life of people, when such property is "disturbed" by another party, the disturbing party may be classified as a legal subject who has committed a crime or violation of property. Copyright infringement is considered a crime against property under Copyright Law No. 28 of 2014 (Saidin, 2015, p. 281).

Article 3 of Law Number 28 of 2014 states that copyright and related rights are governed. Additionally, Article 4 highlights that copyright infringement may result in criminal penalties, demonstrating the robust legal protection of copyright. Several articles are mentioned in this instance, including: For violations of economic rights without rights, Article 113 stipulates criminal penalties of up to 4 years in jail and/or a fine of Rp1,000,000,000.00; if the violation takes the form of piracy, the penalty rises to 10 years in prison and/or Rp4,000,000,000. Managers of establishments that permit the sale of products that breach copyright are subject to a maximum fine of Rp100,000,000.00 under Article 114.

A maximum fine of Rp500,000,000.00 is stipulated in Article 115 for the unapproved commercial use of portraits. Article 116 stipulates that minor infractions are punishable by one year in prison and/or Rp100,000,000.00, significant infractions by four years in prison and/or Rp1,000,000,000.00, and piracy is punishable by ten years in prison and Rp4,000,000,000. Similar penalties, including the same piracy penalty and a maximum threat of four years in prison and/or Rp1,000,000,000.00, are outlined in Articles 117 and 118 for economic rights infringement. According to Article 120, this crime is a complaint offence, meaning that the victim must file a report.

4. Conclusion

According to this study, Banjarmasin painters continue to encounter a number of difficulties in safeguarding the copyright of their creations. There is still a dearth of knowledge and comprehension regarding the significance of legal copyright protection. The majority of artists still lack a thorough understanding of the copyright registration procedures that might provide their creations legal certainty. Additionally, Banjarmasin painters employ unofficial techniques like watermarking or signing their creations, but these haven't been able to totally stop copyright violations or counterfeiting.

Law Number 28 of 2014 concerning Copyright states that if a painter violates the law, there are two ways to resolve copyright disputes: non-litigation (outside the court) through mediation, negotiation, conciliation, or arbitration in accordance with Law Number 30 of 1999 concerning Arbitration and Alternative Settlement; and litigation (through the courts) through civil lawsuits or criminal charges, particularly in cases of piracy, with fines or imprisonment in accordance with Articles 112-120 of the Copyright Law.

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