

## Copyright Legal Protection for Goldsmiths' Artwork in Jayapura City

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### Abstract

*This research aims to determine the factors that cause widespread copyright violations in the form of piracy of gold works of art among gold craftsmen in Jayapura City and also to find out the enforcement of Haki law in Jayapura City, especially those related to Copyright violations of gold works of art. This research was carried out using legal research methods with sociological juridical approach techniques, namely analyzing research problems based on the application of positive law against Copyright violators. Apart from the approach mentioned above, a normative juridical approach is also used, namely a legal research method approach whose data is based on secondary data obtained through literature studies originating from reference books to support primary data obtained from the field. The results of the research show that the reason for the widespread piracy or imitation of gold craft motifs in Jayapura is because of the collectivist values held by Indonesian society, especially among craftsmen, so that the creation of a motif immediately becomes common property, giving rise to imitation. The enforcement and protection of IPR law is not going well at all among Indonesian society, including the gold crafts community which has values and views that are different from the economic values adhered to by the capitalist economy. On the other hand, the legal awareness of the community in general and gold craftsmen in Jayapura in particular is very worrying, they don't understand Haki at all, let alone the procedures for registering it, they don't care what happens to their work*

## 1. Introduction

The emergence of copyright violations in various forms and types, quantities, is an attitude of disrespect for other people's work and even perpetrators of copyright piracy tend to exploit creations that are recognized by Law no. 28 of 2014 concerning Copyright, solely for the purpose of seeking personal gain. That is why the government pays attention and considers it necessary to protect creative works of creation, which in turn is

expected to generate greater enthusiasm or passion to be able to give birth to new creations in this field, besides being undeniable, it can increase state income from the taxation sector.

The more and bigger these works generally have added value to the dignity of the human beings who produced them and human life in general. From the point of view of the interests of developing life itself, it is impossible to separate the fulfillment of fostering and developing creativity to create from efforts to arouse the passion of creators.

The role of science and technology in the life of a nation and its future is very important. Therefore, with the enactment of Law no. 14 of 2014 concerning Copyright, Law Number 19 of 2002 concerning Copyright does not intend to revoke the enactment of Law no. 12 of 1997, as well as Law Number 7 of 1987, however, their nature is only to amend/replace and add certain articles that are considered by the law. In its implementation, many copyright violations are found in various forms, both quantity and quality.

In addition, the rationale behind the amendment to Law Number 12 of 1997 primarily concerns the need to adjust various provisions of the Copyright Law with the principles regulated in the agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter written as TRIP's), which is agreement package produced within the framework of the Uruguay negotiations (Uruguay Round).

Considering that the TRIPs agreement uses international conventions in the field of IPR such as the Paris convention, the Bern convention, the Rome convention and the Washington Treaty as a minimum basis for measuring the suitability of regulatory standards at the national level, Indonesia is obliged to adapt national IPR legislation in line with the various international agreements (Full Compliance). Specifically in the field of Copyright, it is emphasized the need for adjustments to the Bern Convention and the Rome Convention.<sup>1</sup>

As part of the agreement to establish the World Trade Organization (WTO) which has been ratified by Law Number 7 of 1994, Indonesia is bound to implement the TRIPs agreement. From a formal juridical perspective, this attachment basically only took place in 2000, but in anticipation of the consequences of this attachment, all IPR legislative reasoning needs to be fully adjusted earlier to enable socialization of the legislation among law enforcers and the public. The Full Compliance principle basically applies to both regulatory norms and standards.

Apart from these characteristics, the TRIPs agreement also contains different elements compared to national IPR legislation.<sup>2</sup>

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<sup>1</sup> Imam Sjahputra, 2007, *Hak Atas Kekayaan Intelektual (Suatu Pengantar)*, Jakarta: Harvarindo, p. 79.

<sup>2</sup> *Trade of Related Aspect of Intellectual Property Rihts* merupakan bagian atau lampiran dari kesepakatan Internasional *World Trade Organization* (WTO), yang khusus mengatur HAKI

These elements include:

- a) Contain new norms.
- b) Have higher standards.
- c) Contains strict law enforcement provisions

Regarding new material, for example, it can be shown from the regulations regarding "Rental Rights" which apply to Cinematography/Film/Video Film works, and the obligation to provide protection to "Performers" producers of Phonograms, and broadcast agencies in the field of Copyright.

In its development, with the help of science and technology, it has been possible for perpetrators of violations in the field of Copyright to carry out almost perfect violations. Such actions can be categorized as piracy where the pirate's actions are usually only discovered after a long time. In other words, the hijacker has enjoyed large profits from the results of his piracy. This allows the hijacker to move from place to place and this kind of situation can make it difficult for the investigation to reveal the case to completion.

On the other hand, only the creator knows whether there is an imitation or duplication of the creation he made. Because he is the one who knows exactly the characteristics or special signs of a creation, whether it has not been changed or imitated by unauthorized parties. However, in reality there are rarely any reports on the creativity of this art and craft. One form of copyright infringement that occurs in Jayapura City is imitation of gold artwork models which occurs among craftsmen or goldsmiths in Jayapura City.

From around 2000 until now, one of the gold motifs or models, both for pendants and rings, is in the shape of a bird of paradise spreading its wings while standing on a tifa. This motif is very popular with women in the city of Jayapura, meaning that many people women who wear pendants or rings with bird of paradise motifs. Because this motif is very popular in Jayapura City, it is not surprising that all the goldsmiths in Jayapura City are flocking to make gold crafts with motifs as the author has described above. This kind of phenomenon attracted the attention of the author as a student at the Faculty of Law studying Intellectual Property Rights, including Copyright which protects creative works in the fields of art and science. The author's interest relates to how legal protection is given to the creative works of gold craftsmen, creators of pendants or rings with bird of paradise and tifa motifs, as well as how much legal awareness there is for the creator to protect his creative work, and why it happens that the model or motif becomes as if public domain.

Based on the above background, the author will conduct research with the title: "Study of Copyright Legal Protection for Gold Crafts

Artistic Works in Jayapura City".

## **2. Research Method**

This research was carried out using legal research methods with a sociological juridical approach technique, namely analyzing the research problem based on the application of positive law towards Copyright infringers. In addition to the approach mentioned above, a normative juridical approach is also used, namely an approach to legal research methods whose data is based on secondary data obtained through literature studies originating from reference books to support primary data obtained from the field.

## **3. Results and Discussion**

### **Factors Causing the Piracy of Works of Art Among Goldsmiths in Jayapura City**

The fundamental purpose of Copyright Law is to safeguard the creations of creators, which can include authors, artists, singers, engravers, craftspeople, sculptors, programmers, and so on. Creators' rights must be safeguarded against the actions of others who publish or duplicate the author's copyrighted work without authorization.

In essence, copyright is a sort of private ownership of a creation that is the embodiment of a creator's idea in the disciplines of art, literature, and science. For example, when we buy a book in a bookshop, we merely purchase the right to retain and lend the book as we see fit.

The book is our personal property in its true form, namely an object in the form of a book, but when we buy the book, we can buy its form, namely a book, but we do not buy the copyright of written works on the book. The book is in the hands of the author and has been published by a book publisher, which means the author will receive royalties from sales. According to this way of thinking about the fundamental essence of copyright, no one has the right to duplicate or reproduce the book, let alone sell the copies or reproductions commercially.

The only right to reproduce a copyrighted work belongs to the creator or to someone to whom the creator transfers the right to reproduce by providing a license. The creator, as the copyright owner, owns intangible intellectual property that is very personal in character, with the right to exploit the economic rights of a creation in the domains of art, literature, and science.

According to the results of the author's interviews with several gold craftsmen in Jayapura City, the gold craftsmen are on average self-taught and rely solely on the artistic blood that flows from their parents' descendants, as is an indirect quote from the results of the author's interviews with several gold craftsmen in Jayapura City below: "In general,

gold craftsmen learn their trade from their parents." They have always assisted their parents since childhood, beginning with producing gold wire from gold bars and advancing to learning how to burn and polish gold crafts, with the most difficult thing being making acceptable patterns with their imagination.<sup>3</sup>

On the gold material, they saw various patterns such as animals, plants and other ornaments, however, this was not obtained immediately, it took quite a long time to practice to translate the pattern into a real form on the gold material.

The results of the author's interviews with gold craftsmen in Jayapura City are related to the piracy of creative gold craft works, so among gold craftsmen in Jayapura City there is a similarity of opinion among them, related to the question in the interview that have they ever been influenced by and imitated the work of other sculptors? The results of the interview revealed that they lived together, and were motivated to do so because of the influence and contagion of others. So, what influences gold works of art are motifs or patterns that are popular and liked by the public.

As a result of the author's observations, many craftsmen with exactly the same model were sold by the craftsmen, but there was never any conflict between the statue craftsmen. For example, there is a model that is trendy or popular, such as the Cenderawasih motif, then the craftsmen will make the same model and then sell it, which according to Copyright law can already be categorized as a copyright violation, but strangely so far none of them have. It was the craftsman who felt aggrieved, especially the one who claimed that the model was his creation. Thus the postulate in legal sociology may be true that:

The law is a reflection of the spirit and values that apply in society, so that not every particular law can be applied to a particular community, especially if that particular law conflicts with the values that apply in the local community.<sup>4</sup>

If a gold craftsman understands and appreciates it, he will certainly behave in accordance with copyright law, but what is happening in Jayapura City is quite different, as the author has explained in the background of the problem above, where the craftsmen have no idea what copyright is or how the law protects their work. Gold craftsmen's creations with motifs of birds of paradise standing on tigas are highly popular among women in Jayapura. However, this gold craftsman's creative work is not owned; crafts with this design have been known

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<sup>3</sup> Interview with Daeng Ambo, a gold craftsman in Jayapura City and Moh. Daeng Kasseng Youteva Market Complex, Abepura District, date

<sup>4</sup> *Non Transferable of Law* Dalam Ronny Hanitijo Soemitro, 1989, *Perspektif Sosial Dalam Pemahaman Masalah-masalah Hukum*, Semarang, Agung Press. p. 45

since the 1980s. The cenderawasih motif is now in the public domain, which means that any craftsperson who wishes to make the motif faces no obstacles.

The results of the research reveal that no one claims to be the creator of craftsmen's works of art with the Cenderawasih motif, so that even from the perspective of copyright law there has been a copyright violation where almost every craftsman in Jayapura City makes by imitating and selling it commercially, not just the Cenderawasih motif, but all the motifs that sell well in the market are always copied by gold craftsmen, when asked about this to five gold craftsmen it was said that none of them had ever registered their work of art to obtain copyright.<sup>5</sup>

In connection with the exclusive rights that the creator will receive, as well as the profits that the creator will get if the creator registers his creation, when this was asked of the craftsmen, the answer the author got was the same, namely that he did not feel the need to register his creation, let other craftsmen imitate it. The motive they made was because everyone had their own fortune, there was no need to sue each other.

### **Copyright Legal Protection for Goldsmiths' Artistic Works**

Talking about copyright legal protection for gold craftsmen's works of art in Jayapura, it will clearly be related to legal enforcement of Intellectual Property Rights. Conceptually, the meaning of law enforcement lies in the activity of harmonizing the relationship between values described in solid rules of attitude and action as a series of values elaboration at the final stage to create, maintain and maintain peaceful social life.<sup>6</sup>

The values that apply in society must be harmonized in law enforcement, for example, harmony between the values of order and peace, because the value of order has its beginning point in attachment, and humans require attachment and freedom in a harmonic form. The translation of more concrete values comes in the form of relevant regulations or so on. Law enforcement, as a process, is fundamentally an application that entails making decisions that are not strictly governed by legal norms but do involve some element of personal judgment.

Roscoe Pound said that essentially discretion lies in law and morals. On this basis, it can be said that interference with law enforcement occurs when there is a mismatch in the "tri-single" values, rules and patterns of behavior. This results in inconsistencies between paired values, which

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<sup>5</sup> Interviews with three gold craftsmen at the locations, Youtefa Market, Abepura Circle, and Jayapura City

<sup>6</sup> Soerjono Soekanto, 2004, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta, PT. Raja Grafindo Persada, p. 1.

manifest in confusing rules and undirected behavior patterns that disturb the peace of social life. Therefore, law enforcement does not merely mean implementing statutory regulations, even though in reality the tendency is that way.

The legal factor itself is the main problem of law enforcement, so in relation to the law enforcement process in the implementation of Law Number 19 of 2002 concerning Copyright in the City of Jayapura it can be seen as the applicable legal system, which is the legal basis for every member of society in the City Jayapura who creates something in the field of art, literature or science and intends to register their creation.

According to Friedman, the legal system consists of structure, substance and legal culture. Legal structures have patterns, shapes and styles, structures are bodies, frames and fixed shapes.<sup>7</sup> The structure for implementing the Copyright Law has been outlined in the relevant agencies, namely the Regional Law and Human Rights Office, and the Papua Province Industry and Trade Service.

Law Number 19 of 2002 is said to be the substance used as a benchmark by implementing institutions to determine community behavior patterns in the system. According to legal experts, legal rules can be distinguished between substance and regulations, the latter relates to the procedures for establishing regional regulations, while the former relates to, among other things, the mechanism for processing the registration of works in order to obtain copyright from the government.

Apart from structure and substance, the third element of law is legal culture. This legal culture arises from ideas, hopes and public opinion from a phenomenon to be bound by legal institutions. This Copyright Law was born from a legal culture that aims to shape patterns of societal behavior so that those who create things in the fields of science, art and literature register their creations, in order to obtain adequate legal protection.

Based on the description above, according to Soerjono Soekanto, the main problem of law enforcement or policy enforcement actually lies in the influencing factors, where these factors have a neutral meaning, so that the positive or negative impact lies in the situations and conditions that accompany the factors. The factors that influence law enforcement include:

1. The legal factor itself, according to Soerjono Soekanto, is related to, for example, whether a particular regulation is systematic enough, clear, easy to understand, or is it the opposite?
2. Law enforcement factors, namely the parties who form and the parties who apply the law. This relates to the role of enforcers of

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<sup>7</sup> Ronny Hanitijo Soemitro, 1990, *Permasalahan Hukum Dalam Masyarakat*, Penerbit Agung Semarang, p. 12

certain rules, carrying out things related to law enforcement such as conducting outreach, coordinating with related parties or agencies, role models and guidelines provided by enforcers of certain legal rules.

3. Community factors and community legal culture, this is related to the community's appreciation of certain legal rules, along with the degree of community compliance with the law, of course this is also related to the level of community legal awareness.<sup>8</sup>

The three factors above interdependently have their own roles, but influence each other on the enforcement of a particular legal rule, meaning that if one of the factors is not implemented optimally, it will affect the effectiveness of a particular legal rule. As stated by Yesmil Anwar: from a legal sociology perspective, especially in the realm of artistic IPRs as a subsystem of the IPR user community, there are three basic components in the form of a triangle, namely that these basic components are interconnected and influence each other.<sup>9</sup>

The three components are, statutory regulations (regulations) including a law enforcement system which is prepared to carry out IPR needs. Second, the artist component who is a legal subject who has rights and obligations over IPR. Meanwhile, the third is the community component that enjoys the work of artists. As a cultural product, art IPRs cannot be separated from the existence of a nation's legal culture.

Therefore, when we discuss IPR, art is actually inseparable from the existence of IPR as a positive legal system that applies in Indonesia. In looking at the problem of arts IPRs in Indonesia, these three components contain various problems and obstacles that need to be immediately resolved.

The law provides protection for artists and their works that arise from a creation process; the intellectual power, initiative and feeling of the artist. In Indonesia, these protection arrangements are outlined in Law No. 19 of 2002 concerning Copyright, which only came into effect on July 29 2003 by order of Article 78 of that law. Article 2 of the law states that copyright is an exclusive right for creators and copyright holders. This means that the right is intended solely for the holder so that no other party may take advantage of the right without the holder's permission. So, as an exclusive right IPR cannot be contested. This is in line with the principle that property rights themselves cannot be contested. Exclusive rights themselves are not only aimed at the

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<sup>8</sup> Soerjono Soekanto, *Op.cit.*, p.8

<sup>9</sup> Yesmil Anwar, 2007, Hak Cipta Milik Siapa?, artikel dalam Seminar HAKI, Bandung, Universitas Padjajaran.

community. Therefore, the aim of IPR law is to channel individual creativity for the benefit of humanity at large.

The analysis begins with existing laws and regulations, namely Law No. 19 of 2002 concerning Copyright. Judging from its history, which has undergone four amendments, this law is sufficient to meet the needs of people who wish to register their creations. However, for gold craftsmen in Jayapura City, the existence of this copyright law is meaningless, because from the perspective of gold craftsmen in Jayapura City, as the author has explained above, there is no desire to register their creative works in the field of gold crafts. So that the legal protection for gold crafts is not optimal, meaning that even though a creation immediately receives legal protection upon completion of its creation, however, in terms of proof, an unregistered creation will be more difficult to prove than if the creation is registered and has certification.

On the other hand, this has developed into something that is difficult from the aspect of strengthening the law because the current objective conditions regarding gold crafts, especially in Jayapura and generally also in Indonesia, are that there is so much plagiarism or imitation, not only of the cenderawasih motif but of all existing motifs. , so it is difficult to know who owns these motifs. A phenomenon like this illustrates to us that in Jayapura (perhaps including other areas in Indonesia) that in reality in Indonesia the creations of artists are not legally respected as they should be by the community or the artists themselves.

This can be caused by various things, including that IPR as a legal institution is felt to be unable to protect the legal interests of artists. Or it could be that the artist himself feels he doesn't "need" IPR protection. In this case, it seems that the artist views the existence of IPR only from the aspect of his own moral interests rather than economic benefits. Although Law No.14/20 protects these two interests as stated in the seventh section regarding the moral rights of creators. Article 24 paragraph 2 states that a copyright may not be changed even though the copyright has been transferred to another party, except with the consent of the creator or with the consent of his heirs if the creator has died.

This article clearly shows that the economic and moral aspects of copyright are protected by law. For example, if a song's lyrics have been sold to a record company by its creator, the name of the author of the song's lyrics cannot be removed even when the work is published. This represents a significant advance in our current copyright laws. <sup>10</sup>Because this law recognizes that the moral dimension of the work was born not only on the basis of economic interests but is an expression of the artist's

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<sup>10</sup> Muhammad Yuris Azmi, 'Nomor 28 Tahun 2014 Tentang Hak Cipta Dan Undang-Undang Tentang Jaminan Fidusia', Universitas Sebelas Maret, IV.1 (2016), 97-106.

existence as a human being whose human rights (HAM) are universally protected as a set of rights inherent in the essence of human existence as God's creatures. Violation of the artist's moral rights means a violation of human rights as regulated in Law no. 39 of 1999 concerning Human Rights.

On the other hand, it must be acknowledged that in terms of law enforcement, IPR is still far from what was expected, especially in terms of the human resource capabilities of the law enforcers. The fundamental problem of the regulatory component and law enforcement of IPR in the arts sector is based on Copyright Law no. 28 of 2014, is how to disseminate applicable legislation.<sup>11</sup> Even though in legal fiction the public is thought to know the contents of the IPR law, in reality the regulations regarding IPR are still not widespread among the public. Especially among gold craftsmen in Jayapura, many of them do not understand the rights and obligations related to IPR. They do not understand the copyright registration procedures as regulated in chapter IV Article 35 concerning procedures for registering works as regulated in the law above. Even though the exclusive nature of the copyright for gold craftsmen attached to the work of the gold craftsman is announced or not announced to the public, it is recommended that it be registered so that if the work is pirated or there is a dispute, the registration letter for the work can be used as initial evidence in court.

This really helps gold craftsmen who generally don't know what to do and how to get legal protection? Besides that, most gold craftsmen in Jayapura do not know how to obtain royalty rights from their work. In short, gold craftsmen are often excluded from the rights to their work due to ignorance. That is why it is still necessary to continuously socialize various regulations regarding artistic IPRs in their various manifestations. The legal awareness of gold artists still needs to be increased, this is the duty of the government, gold artists' professional organizations, and non-governmental organizations that care about IPR to provide legal education to the community and artists. The problem involving the artist component is cultural barriers.<sup>12</sup>

The last one is the obstacle from the community component. In the name of legal fiction in the context of positive law in Indonesia, the public is assumed to know about the existence of the Copyright Law. If a citizen violates the Copyright Law, they will be subject to legal sanctions even if they state that they did not know that their actions were

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<sup>11</sup> Muhammad Ahkam Subroto dan Suprapedi, 2008, *Pengenalan HKI (Hak Kekayaan Intelektual) Konsep dasar kekayaan Intelektual untuk Pertumbuhan Inovasi*, Jakarta: PT Indeks, p.14.

<sup>12</sup> V. Selvie Sinaga, *Faktor-Faktor Penyebab Rendahnya Penggunaan Hak Kekayaan Intelektual Di Kalangan Usaha Kecil Menengah Batik*, Jurnal Hukum Ius Quia Iustum, 21.1 (2014), 61-80.

prohibited by the Copyright Law. The problem is that many gold craft artists don't care whether their work is given royalties or not, whether it is stolen or pirated. Moreover, currently the facts on the ground are that law enforcers have not yet strictly enforced the law against perpetrators of IPR violations. Therefore, what happens is that people who control the world of the arts industry (for example, the recording industry in the broadest sense) in Indonesia have an easy opportunity to profit from the ignorance of artists and the ignorance of society as well as the weakness of law enforcement. In similar conditions, IPR culture is difficult to enforce. If we want to get out of this unfavorable condition, there is no other way that these three components must be seriously addressed together. Hopefully, in turn, Indonesia will gain recognition in the global IPR association and be oriented towards an IPR system that is well integrated in the national and international legal system.

A very important solution is to build a climate of good coordination between the central and regional governments. For this reason, regional governments are obliged to arouse the desire of artists in the region to register their work. Regional governments should have the responsibility to play an active role in helping artists who are not yet "IPR AWARE" to register their creative works. Of course, by registering their works with the Director General of Intellectual Property Rights, a broader movement in the form of education on understanding copyright also needs to be carried out in the regions. The movement is aimed at children and adults, as legal subjects who have the right and obligation to respect someone's creative work.

#### **4. Conclusion**

The reason why there is a lot of piracy or imitation of motifs made from gold crafts in Jayapura is because of the collectivist values adhered to by Indonesian society, especially among craftsmen, so that the creation of a motif immediately becomes common property, resulting in imitations occurring among all craftsmen. gold. So even though from the perspective of Haki law there are acts that violate the rules, namely reproducing by copying motifs that are not actually theirs, among craftsmen who have different points of view or values, this is not something that is prohibited.

The enforcement and protection of haki law is not working at all among Indonesian society, including the gold crafts community, which has values and views that are different from the economic values adhered to by the capitalist economy. On the other hand, the legal awareness of the public in general and gold craftsmen in Jayapura in particular is very worrying, they don't understand Haki at all, let alone the registration procedures, they don't care what the fate of their works will be in the future, they don't care what royalties are, legal protection, or anything else. feel disturbed if

someone imitates their work.

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