LEGAL PROTECTION OF COPYRIGHT REGULATIONS FOR RELIGIOUS-BASED WORKS: A LEGAL AND MORALITY REVIEW BY RONALD DWORdIN

Nyoman Arjana

arjana01@gmail.com

Universitas Pendidikan Nasional, Denpasar, Indonesia

Abstract

Copyright protects intellectual works, including those based on religion, but its regulation is still debated due to its intersection with morality. Ronald Dworkin's perspective on law as interpretative practice can be applied in resolving copyright disputes over religious works. This research aims to analyze the regulation of copyright protection for religious-based works in Indonesia and the application of Ronald Dworkin's concept of morality for fair legal protection. The study employs a normative method with a conceptual and legislative approach to analyze primary and secondary data related to the legal protection of copyright for religious-based works. The results of the analysis are presented descriptively and qualitatively to formulate arguments addressing the research issues. The findings indicate that the copyright regulation in Indonesia, based on Law No. 28 of 2014 concerning Copyright, has provided fundamental protection for intellectual works based on religious values. Scriptures, books, music, art, and religious-themed folklore are generally protected under both public and private domains. However, exceptions exist for non-commercial use and academic purposes without the need for the creator's permission. Moral rights are still respected by acknowledging the source. The regulation is deemed to have struck a balance between protecting the economic rights of creators and providing public access to religious works. The concept of Ronald Dworkin's morality is relevant for application in the Indonesian Copyright Law to ensure fair legal protection for religious works. Commercial use of religious works without permission should still be considered a copyright infringement. However, non-commercial use for academic and social purposes should be allowed while acknowledging the source. The duration of protection also needs to be shortened to expedite the transition of religious values into the public domain. Implementing Dworkin's moral concept requires the revision of the Copyright Law through public discussions with the aim of formulating fair regulations for creators and society.
INTRODUCTION

Copyright is the exclusive right granted to the creator over their intellectual, artistic, and literary works, which automatically arises declaratively once a work is manifested in a tangible form, subject to legal restrictions and provisions.¹ This legal concept ensures that the creator has control and ownership over the use and distribution of their work, providing a balanced framework between the interests of the creator and the public's right to access and benefit from these works. Furthermore, copyright protection also extends to works based on religious values, such as sacred texts, books, songs, and artworks inspired by specific religious teachings.² Nevertheless, copyright regulations on religious-based works remain a source of debate, particularly from moral and justice perspectives.

The viewpoint refers to the concept of morality originating from the legal philosopher Ronald Dworkin, who classifies morality into ethics and morality. Ethics is defined as principles that apply generally, while morality encompasses personal views on what is considered right and wrong. From Dworkin's perspective, he advocates that the law should derive from morality rather than ethics, to be applied fairly to all parties. This approach emphasizes the importance of incorporating individual moral values in the formulation and implementation of the law, so that justice can be realized in various legal contexts.

Thus, copyright regulations regarding religious-based works need to consider moral aspects, not just limited to the formal ethics of intellectual ownership. The religious values at the core of such works should remain open for access and utilization by humanity. Although copyright plays a role in protecting the interests of the creator or copyright holder concerning the commercial use of the work, it is essential to maintain a balance so that religious values are not constrained and can continue to benefit society at large.³

A number of examples of religious-based works, such as translations of sacred texts, exegesis of sacred texts, sermons, poetry and hymns, as well as artistic works with religious themes, often become the subject of debate regarding their copyright status. Resolving copyright disputes over these works involves not only legal considerations but also takes into account moral aspects and religious values. The process of determining copyright for religious-based works involves careful consideration of the interests of the

¹ Yulia, Hukum Hak Kekayaan Intelektual (Lhokseumawe: Sefa Bumi Persada, 2021).
creators, the public’s right to access religious information, and the balance between legal protection and freedom of expression in the religious domain.

According to Ronald Dworkin's perspective, law is not only considered as a mere legal institution but also as an interpretative practice. In this context, legal decision-makers, especially judges, are not only bound by written legal rules but also must take into account values of integrity, justice, and morality. This approach becomes relevant when applied to resolving copyright disputes related to religious-based works. By considering moral and justice aspects, judges can make more holistic decisions in line with the moral principles advocated by Dworkin, thereby achieving a fair and balanced resolution of copyright disputes.

The Copyright Law itself actually provides exceptions to copyright restrictions for the purposes of education, research, criticism, review, or purely non-commercial announcements. However, the implementation of these exceptions in religious-based works is still not optimal. The Copyright Law explicitly prohibits the creation of works that are contrary to religious morality. It can be said that legal protection for copyright in religious-based works needs to consider moral aspects and religious values alongside the applicable positive law. Ronald Dworkin's view of law as interpretive practice, which also considers aspects of integrity and justice, can be a basis for deciding copyright disputes related to religious-themed works. This indicates the need for harmonization between legal and moral aspects in regulating copyright to provide fair protection that aligns with the religious principles underlying the work.

This research is important to be conducted in order to contribute to the development of legal science, especially concerning copyright issues related to works with religious nuances. The results of this research are expected to serve as a reference in resolving copyright disputes involving religious works by considering legal and moral aspects proportionally. Thus, legal certainty and the preservation of moral and religious values in society can be achieved. The research problem formulation is as follows:

1. How is the arrangement of copyright protection for religious-based works regulated in the copyright laws of Indonesia?
2. How is Ronald Dworkin’s concept of morality applied in ensuring fair legal protection for copyright of religious-based works in Indonesia?

This research applies the normative legal research method, which focuses on legal principles with an emphasis on dogmatic legal science. The research process is carried out by examining theories, concepts, legislation, and court decisions related to the legal protection of copyright in works based on religion. The adopted approach consists of two aspects, namely conceptual and legislative approaches. The conceptual approach involves the analysis of views and doctrines of legal experts related to the concept of copyright protection and moral perspectives according to Ronald Dworkin.

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5 Diah Imaningrum Susanti, Raymundus I Made Sudhiasra, and Rini Susrijani, EKSPRESI BUDAYA TRADISIONAL DAN HAK KEKAYAAN INTELEKTUAL (Malang, 20119).
Meanwhile, the legislative approach involves a study of regulations related to copyright and an analysis of relevant court decisions.

The sources of legal materials can be divided into two main categories, namely primary legal materials and secondary legal materials. Primary legal materials include legislation related to copyright and court decisions. Meanwhile, secondary legal materials consist of books, journals, theses, dissertations, and other relevant sources. The process of data collection is carried out through two methods, namely literature review and interviews. Literature review is used to gather secondary data from both primary and secondary legal materials. On the other hand, interviews are conducted with legal and philosophical experts to obtain primary data that can support the analysis. The data analysis technique applied is qualitative descriptive, where the collected data is analyzed comprehensively to form a comprehensive understanding of the research problem. Primary and secondary data are integrated to form a systematic argument in response to the research questions. The results of the data analysis are presented through a logical and structured narrative.

DISCUSSION

Regulation of Copyright Protection for Religious-Based Works in Copyright Laws in Indonesia

As one of the intellectual property rights regulated by law, copyright grants exclusive rights to the creator or copyright holder to communicate or reproduce their work for a certain period. In the context of Copyright Law, a work qualifies for copyright protection if it meets certain criteria, such as originality and embodiment in a recognizable form. Within the scope of copyright, religious-based works, such as scriptures, books, songs, and religious art, are included, naturally meeting the requirements for legal protection. However, it is important to acknowledge that protection for religious works requires special consideration.

Religious works have significant differences from purely commercial works. Copyright protection for religious works is not only related to the exclusive rights of the creator or rights holder but also considers aspects of public interest and the access of religious communities to such works. Efforts to achieve a fair and adequate balance between copyright protection, public interest, and the general public’s right to access religious works need to be a focus in designing and evaluating related regulations. Copyright protection is granted to various types of works, including works in various fields such as science, art, and literature. Examples include books, lectures, speeches, and other types of works that can be accessed through sight, reading, or hearing. Therefore, copyright in general can provide protection for works rooted in religious values, such as sacred texts, books, songs, religious lectures, and artistic works with

6 Zulkifli Makkawaru, Perlindungan Hukum Ekspresi Budaya Tradisional; Upaya Pengelolaan Aset Kekayaan Intelektual Bangsa (Sukabumi: Farha Pustaka, 2019).
religious elements. This indicates that the copyright legal framework in Indonesia offers broad protection for various creative expressions derived from religious values.

Article 40 of the Copyright Law specifically asserts that the government has Copyright over folklore and the cultural products of the community considered as collective property, such as stories, tales, fables, legends, chronicles, songs, handicrafts, choreography, dance, calligraphy, and other works of art. Much of Indonesia's folklore and cultural heritage embody values of local religion and spirituality. Therefore, even though folklore includes religious elements, Copyright is still enforced as a form of protection, even when these works have become part of the public domain. This article reflects efforts to preserve and protect Indonesia's cultural heritage, allowing the community to continue accessing and utilizing cultural heritage fairly while respecting the inherent copyright.8

Article 40 paragraph (1) of the Copyright Law states that works eligible for protection include the fields of science, art, and literature. The types of works encompassed by this provision include books, computer programs, lectures, sermons, and other works arising from intellectual abilities. Therefore, works inspired by religious values such as books, songs, religious lectures, and artistic works with religious themes are considered creations protected by copyright, as long as they meet the specified requirements. Article 40 paragraph (2) of the Copyright Law emphasizes that protected creations must be original and arise from the creative ability of the creator.9 Therefore, the regulation provides a clear legal basis for protecting various types of works that emerge from intellectual processes.

Copyright grants exclusive rights to the creator or copyright holder to disclose and reproduce their work. However, this right is not absolute, and there are limitations outlined in Articles 44 to 51 of the Copyright Law. These articles establish various restrictions on copyright that can be applied for the common good, such as in the fields of education, research, writing of scientific works, security, and other areas. These limitations aim to strike a balance between the exclusive rights of the creator and the needs of the public to access, use, and benefit from such works for broader public interests.10

The importance of copyright restrictions, especially on religious-based works, is reflected in efforts to ensure that the religious values contained within them can still be accessed by the general public. For example, sacred religious texts such as the Quran

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and the Bible should not be restricted in their usage solely due to copyright protection.\(^{11}\) This indicates the need for a balance between the protection of copyright and the rights of the public to access and appreciate religious-based works without harming the creators. However, in this context, it should be noted that the Copyright Law also recognizes limitations on copyright protection. Articles 43 to 49 of the Copyright Law contain provisions for exceptions to copyright infringement that apply to non-commercial activities, educational purposes, and research. These provisions affirm that in certain situations, the use of works outside of commercial activities may be allowed without violating the exclusive rights of the creator. This creates the necessary balance between copyright protection and the interests of the public in education, research, and other non-commercial activities.

Although copyright grants exclusive rights to the creator, there are limitations that need to be considered, especially in the context of using works for scientific purposes. In this case, these limitations require users to always cite the source in full, maintain the integrity of information, and give acknowledgment to the creator. Additionally, it is important to note that using works for commercial purposes still requires official permission from the creator, even when the work has a religious context.\(^{12}\) This emphasizes the importance of maintaining a balance between the exclusive rights of creators and the public interest, ensuring that the use of works not only complies with copyright but also considers ethical aspects and principles of justice in utilizing intellectual heritage.

Although there are copyright restrictions, it is important to fully attribute the source, especially in the context of scientific research. This supports transparency and integrity in the use of intellectual works. Furthermore, despite copyright protection for religious-based works, usage for commercial purposes still requires permission from the creator. This approach maintains fairness in the utilization of religious works, ensuring that creators retain control over the use of their works in a business context, while also providing protection for the religious values embedded in the work.

The copyright restriction only applies to non-commercial use and must not harm the interests of the creator or copyright holder. In other words, duplicating sacred texts for commercial purposes without permission is not allowed. Similarly, when using religious works such as songs, films, or religious books for non-commercial purposes, it is still required to cite the source as a form of respect for the copyright and religious content contained within.\(^{13}\)

From these regulations, it can be concluded that the Copyright Law in Indonesia has successfully achieved a balance between protecting the economic rights of creators and providing public access to religious-based works. Nevertheless, its implementation

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still requires reinforcement through efforts in socialization and consistent law enforcement, especially regarding the legitimate non-commercial use of religious works that does not harm the creators. This is intended to ensure that religious values remain accessible to the public at large while respecting the rights of creators.

**The Application of Ronald Dworkin's Concept of Morality in Providing Fair Legal Protection for Copyrights of Religious-based Works in Indonesia**

Copyright is one of the important aspects in protecting intellectual works within the realm of intellectual property. The function of copyright is to provide legal protection for the results of someone’s creative efforts or creations manifested in various forms, such as books, music, drama, and works of art, in the fields of science, art, and literature. However, in practice, copyright violations often occur, which can be detrimental to the creator or copyright holder. In the context of religious works, such as sacred scriptures, granting copyright protection poses its own challenges.

Ronald Dworkin, an American legal philosopher, classifies morality into two main aspects: morality and ethics. According to him, morality is divided into two parts. The first is personal morality, which encompasses standards of personal behavior regarding what is considered right and wrong, and this aspect is deemed inviolable. Meanwhile, the second aspect is ethics, which includes standards of general behavior regarding what is considered right and wrong in a social context. With this distinction, Dworkin attempts to provide a more detailed and nuanced perspective on how morality can be analyzed and understood within the framework of law and philosophy.

In Dworkin's view, he argues that the legal foundation should be based on morality rather than ethics. This approach aims to ensure that the law reflects substantive justice, not just formal rules without considering specific contexts. By relying on morality, the application of the law can be adapted to the needs of specific cases to achieve justice, prioritizing the principle of substantive justice over mere mechanical consistency. This approach emphasizes the importance of considering moral values in the formation and interpretation of laws to achieve fair results that are in line with the specific situations faced.

The moral concept embraced by Dworkin holds significant relevance in the context of the legal protection of copyright concerning works derived from religious values in Indonesia. In accordance with the provisions of Law Number 28 of 2014 concerning Copyright, religious aspects are given special treatment concerning the limitations of copyright. Dworkin's understanding of law as interpretative practice can help clarify and establish fair parameters in regulating copyright for works with religious nuances. Therefore, the application of Dworkin's moral principles can provide valuable guidance in developing a legal framework that aligns with religious values and

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principles of justice to achieve an optimal balance between the copyright of creators and the public’s access to religious-based works.\textsuperscript{16}

Limitations need to be applied wisely through a moralistic approach, not just a set of rules. For example, in the use of religious works for academic purposes, it is important to always cite the sources thoroughly. This action not only ensures compliance with copyright laws but also demonstrates respect for the moral rights of the creator. Thus, an approach that integrates moral values in the implementation of copyright restrictions can help create a fair balance between protecting the rights of creators and the public interest, while ensuring appreciation for ethical and just values in the use of intellectual works.

In this context, an important moral consideration is that religious-based works essentially have universal characteristics, and therefore should be easily accessible to the public. Meanwhile, the protection of the economic rights of creators is also an equally important aspect, where creators need to receive proper rights and incentives for their work to stay motivated in creating new works.\textsuperscript{17} Therefore, the use of religious works for commercial purposes and personal gain without the creator’s permission must continue to be regarded as a copyright infringement. The importance of maintaining a balance between the rights of creators and public rights needs to be emphasized, not only through strict regulations but also by considering moral aspects.

Relevant differentiation is applied in the protection of copyright for religious-based works. Ethically, copyright should indeed grant exclusive rights to the creator to exploit their work economically. However, morally, religious works should be open for the benefit of humanity. Therefore, Indonesia needs to incorporate Dworkin’s concept of morality into the Copyright Law to ensure legal protection for religious works is fair to both creators and the public. Here are some ways to achieve this:

Firstly, the use of religious works for commercial purposes without the creator’s permission should be considered a copyright violation, given the ethical principle that creators are entitled to the economic benefits of their work. Meanwhile, for non-commercial use aimed at education, research, spiritual enrichment, and other social activities, it is advisable to be allowed without seeking permission from the creator. This approach aligns with moral values, asserting that religious works should be a source of benefit for the community, enabling broader access for educational, research, and spiritual service purposes.\textsuperscript{18} Thus, this approach creates a fair balance between the rights of creators to receive economic benefits and the moral values that emphasize service and blessings for society.

Secondly, the inclusion of sources and the creator’s name remains an obligation, even for non-commercial purposes, as a form of respect for the moral rights of the creator. This action is a tangible acknowledgment of the original source, contributing to


\textsuperscript{17} Sutoyo, Anita Trisiana, and Siti Supeni, \textit{PENDIDIKAN NILAI MORAL BERBASIS PANCASILA} (Surakarta: UNISRI Press, 2020).

\textsuperscript{18} Ismayana, “KEPENTINGAN UMUM DALAM PERLINDUNGAN HAK CIPTA DI INDONESIA.”
maintaining the authentic value of religious-based works. Although used for non-commercial purposes, citing sources and the creator’s name not only demonstrates compliance with legal and ethical aspects but also preserves the integrity of the work and provides the deserved recognition to creators for their contributions and identity.19

The third, copyright for folklore and traditional works that have become a common heritage of society requires moral consideration. Although ethically, they are under the jurisdiction of the country’s copyright laws, religious folklore should still be enjoyed and developed by the broader community, as long as they uphold integrity and their distinctive meanings. It is important to strike a balance between protecting the copyright of individuals or groups and the collective rights of society to preserve and inherit traditional values.20 In this case, legal protection must be integrated with ethical considerations that allow broader access to religious folklore, support cultural sustainability, and respect the shared interests of the community.

Fourth, the duration of copyright protection for religious-based works needs to be reconsidered. While ethically, copyright law establishes a protection period of up to 70 years after the creator’s death, from a moral standpoint, religious works should be made more readily accessible to the general public. Therefore, considering shortening the protection period to just 20 or 30 years is relevant. This step is taken to ensure that the religious values embedded in the works can become common property more quickly, given the importance of public access to the cultural heritage of religion.21 Thus, adjusting the duration of copyright protection can create a better balance between the rights of creators and the interests of the public in accessing and appreciating religious-based works.

The implementation of Dworkin’s concept of morality requires awareness and responsibility from all parties. The government needs to ensure flexible copyright regulations to accommodate specific needs for religious works. Meanwhile, civil society and industry players also need to uphold morality in the use of religious creations. Thus, copyright protection for religious works can be carried out fairly for all parties. Universal religious values can continue to be available for the benefit of the community, while creators’ rights remain proportionally protected through a moral legal approach.

The implementation of Dworkin’s concept of morality requires a revision of the Copyright Law involving various relevant stakeholders. The government, academics, cultural figures, and religious leaders need to engage in discussions to formulate fair regulations for all parties involved. The revision of the law should also follow the legislative procedures applicable in Indonesia. Thus, Ronald Dworkin’s concept of morality can be a valuable consideration in efforts to provide legal protection for copyright over religious works that is fair and proportional. A balanced regulation between the economic rights of creators and public access will be established in

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20 Bungana PA, “PERLINDUNGAN FOLKLOR MENURUT UU HAK CIPTA PERKEMBANGANNYA DAN PERBANDINGANNYA DENGAN NEGARA-NEGARA LAIN.”
accordance with the universal morality of sacred religious works that uphold human values.

CONCLUSION AND SUGGESTIONS

The copyright regulations in Indonesia, based on Law No. 28 of 2014 regarding Copyright, have provided basic protection for intellectual works that are based on religious values. Sacred texts, books, music, art, and folklore with religious nuances are generally protected, whether in the public or private domain. However, there are exceptions for non-commercial use and for academic purposes without the need for the creator's permission. Moral rights are still respected by acknowledging the source. This regulation is considered to have struck a balance between protecting the economic rights of creators and providing public access to religious works. Nevertheless, its implementation still needs to be strengthened through socialization and consistent law enforcement. The goal is to ensure that religious values remain accessible to the wider community while respecting the rights of the creators.

The concept of morality by Ronald Dworkin is relevant to be applied in the Copyright Law of Indonesia to ensure fair legal protection for religious works. Commercial use of religious works without permission should still be considered a copyright infringement. However, non-commercial use for academic and social purposes should be allowed, with proper attribution to the source. The duration of protection also needs to be shortened to allow religious values to become public property more quickly. The implementation of Dworkin's moral concept requires the revision of the Copyright Law through public discussion. The goal is to formulate fair regulations for both creators and the community. Thus, copyright protection for religious works can be carried out proportionally in accordance with universal morality.

Based on the research findings, it is recommended that the Indonesian government consider strengthening the implementation of Law No. 28 of 2014 on Copyright, especially concerning religious-based works. Although the current regulations provide sufficient protection, there is a need to emphasize public awareness to ensure understanding of the limitations on non-commercial use and academic purposes. Certain revisions may also be considered, such as establishing shorter time limits for the protection of religious-based works to expedite access by the public. Ronald Dworkin's concept of morality, particularly in the context of protecting economic and moral rights of creators, can serve as a relevant foundation for strengthening the legal framework. Through public discourse and careful revisions, it is hoped that fair and balanced regulations, in line with universal values, can be developed, ensuring copyright protection while facilitating public access to religious-based works.

REFERENCES


