

## THE PROTECTION OF COPYRIGHT TO THE SHOW ADAPTED FROM THE FOLKTALE

Made Emy Andayani Citra, S.H., M.H.

---

### ABSTRACT

Indonesia is a country that has many folktales, such as the story of King Jayapangus, Jayaprana and Layonsari, Dayang Sumbi, Malin Kundang, and others. Folktale is a literary work that is delivered orally and has existed in the society for long period of time. Although it has been told repeatedly, it is still very interesting to be performed. The artists adapt folktale for their performances. In the concept of copyright, it is known about the fair use principle that is granting permission to other parties to use a work for the purpose of giving benefit for the society in the form of research, education and other non-commercial interests. In its development, the artists adapt the folktale to commercial performances, where spectators are required to purchase the admission tickets to watch the show. In this study, there are two issues discussed namely 1) who is the copyright holder of the show adapted from the folktale? and 2) what are the economic and moral rights to the show adapted from the folktale? The data in this study is obtained from the interviews with the show organizers whose shows are adapted from folktale and the literature in accordance with the research topic. The data obtained is analyzed qualitatively and presented analytically and descriptively. The state holds copyright over folklore, but if the folklore is adapted into a show, the performer has related rights. Related Rights are rights relating to Copyright which are exclusive rights for performers, producer phonograms, or broadcasting institutions. The performers of show that is adapted from the folktale gain protection over related rights consisting of economic rights and moral rights. The economic rights to the show provide financial benefits to the performers.

Keywords: Protection, copyright, folktale, show.

---

### INTRODUCTION

#### 1.1. Background of problem

Folktale is one part of traditional cultural expression or folklore. Folktale is one of creation in the field of literature that needs to get legal protection. People's story is a manifestation of traditional cultural expression, so it is an asset of the nation that must be protected in its use and authenticity for the sake of future generations. This is because in the folktale, there are positive values that can guide the life of the community where the story grows and develops.<sup>1</sup> Folktales are stories passed down orally and has been living in the society for long period of time.<sup>2</sup>

Indonesia has a lot of folktales that often become a subject matter in daily life. Parents tell about the good characteristics of the main character in folklore in which they hope their children will imitate the good values. Folktale is also often used as a lesson material at school and a study in research in the field of literature. Some famous folktales in Indonesia such as : King Jayapangus, Jayaprana and Layonsari, Dayang Sumbi, Malin Kundang, Roro Jonggrang and so on are often staged in performances, both for entertainment and commercial.

Nowadays, many sightseeing that hold shows adapted from the folktales. The show is performed on a paid basis, in which viewers must pay admission to watch the show. The show is packed with great interest, with a variety of good lighting, technology and immersive role playing. The folklores, as well as performances derived from the adaptation of folktale are work of creation that must be protected by the legal system of a nation.

The essential idea behind a copyright is simple: Artist and creators should be able to enjoy the fruits of their labour for a specified time period, after which the material becomes available for public use.<sup>3</sup> Folktale is the result of traditional cultural expressions.

The cultural climate in Indonesia, especially in this copyright has indeed offered something different for western law. The creators of Indonesia are very heartened when their creations are reproduced or utilized by others. The painters, carvers, and sculptors in Bali are very happy when their work is imitated by others even though it is not through the licensing process first.<sup>4</sup> Expressions of Folklore and so on, which formed by a group or a tribe who lived together in the long-term and common natural and social conditions. In the process of inheritance from generation to generation, those expressions were maintained and

---

<sup>1</sup> Tus, D. S. A. K. (2014). Perlindungan Hukum terhadap Keaslian Cerita Rakyat. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 3(3), p. 467.

<sup>2</sup> Ali, L. (1995). *Kamus Besar Bahasa Indonesia*, Edisi II, Cetakan ketujuh. Jakarta: Perum Balai Pustaka, p. 187.

<sup>3</sup> Wayne, A. (2006). Focus of Intellectual Property Rights, U.S Department of State, USA, <http://ipdigital.usembassy.gov/media/pdf/books/iprbook.pdf>. Last Accessed 11 April 2018.

<sup>4</sup> OK. Saidin. *op.cit.* p. 2

developed to be the cultural traditions of the group or tribe's life history, customs, environment landscape, the psychological characteristics and so on.<sup>5</sup>

Folktales as a result of traditional cultural expression is a work of copyright protected by law. The performances resulting from the adaptation of folktales are indeed the attempt to preserve Indonesian culture. On the other hand, performance for commercial purposes create problems in granting economic rights and moral rights in a work of creation, especially if the show is performed by a foreign people. Folklore and performances that are the result of adaptation of folklore are two different things. Thus, the copyright protection of the two works is also different.

This research will discuss about the copyright holder of the show adapted from the folktale. In this matter there are two things that will be examined, namely the copyright review of folktale and the performance adapted from folktale. Research will continue with reviewing the economic and moral rights to the show adapted from the folktale.

### 1.2 Research Questions

In this research, there are two problems that are discussed namely: 1) who is the copyright holder of the show adapted from the folktale? and 2) what is the economic and moral rights to the show adapted from the folktale?

### 1.3 Research Purposes

The purposes of this study are to find out the copyright holder of the show adapted from the folktale and to analyze the economic and oral rights to the show that adapted from the folktale.

## LITERATURE REVIEW

Copyright is an intellectual property right that results from human thinking. OK. Saidin said that intellectual property rights are exclusive rights. This exclusive nature is in a form of appreciation for the results of human intellect (in this case the work of the human brain), both in the form of inventions and the work of art and creation, especially when the work of the human brain is used for commercial purposes.<sup>6</sup> In the legal system in Indonesia, copyright protection is regulated in Law Number 28 Year 2014 on Copyright. In Article 1 Sub-Article 1 of Law Number 28 Year 2014 concerning Copyright is declared that Copyrights are exclusive rights of authors that arise automatically on the basis of a declarative principle after a work is manifested in its tangible form without prejudice to restrictions in accordance with the provisions of legislation. Article 31 specifies the definition of the creator where unless otherwise proved otherwise, the person who is named as: a. referred to in Creation; b. declared as Creator on a Work; c. mentioned in the Letter of Record of Creation; and / or d. listed in the general list of Creation as Creator.

In Law Number 28 Year 2014 regarding Copyright is determined on the creation of protected. Creation of protected as referred to in Article 40 of Law Number 28 Year 2014 on Copyright, including Works in the field of science, art, and literature. Creation in the field of science, art, and literature. consists of: a. books, pamphlets, writings of published papers, and all other written works; b. lectures, lectures, speeches, and other similar creations; c. props made for the benefit of education and science; d. songs and / or music with or without text; e. drama, musical drama, dance, choreography, puppetry, and pantomime; f. works of art in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, or collage; g. applied artwork; h. architectural works; i. map; j. works of batik art or other motif art; k. photography works; l. Portrait; m. cinematographic works; n. translation, commentary, adaptation, arrangement, modification and other works of the transformation; o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expression; p. compilation of Creation or data, whether in a format that can be read by Computer Program or other media; q. compilations of traditional cultural expressions during the compilation are original works; r. video games; and S. Computer program.

The law in Indonesia also regulates the arrangement of works that are not protected by copyright. Article 41 states:

Unrecognized copyrighted works include: a. works that have not yet been manifested in tangible form; b. any ideas, procedures, systems, methods, concepts, principles, findings or data even if they have been disclosed, represented, described, described or incorporated in a Work; and c. tools, objects, or products created solely for solving technical problems or for which the form is intended for functional purposes only.

Article 42 states "No Copyright to the work in the form of: a. the results of open meetings of state institutions; b. legislation; c. state speeches or speeches of government officials; d. court decision or judge's appointment; and e. scriptures or religious symbols"

## RESEARCH METHODS

This research is a normative legal research that examines norm obscurity regarding copyright owners for performances, where the performance is an adaptation of folklore. Legal materials used are primary legal materials (related laws and regulations) and secondary legal materials (books, journals, articles on official websites). Legal materials are collected through library studies and interviews with the show directors. The problem analysis is carried out qualitatively, and is presented in a descriptive analytical manner.

## THE COPYRIGHT HOLDER OF THE SHOW ADAPTED FROM THE FOLKTALE

Currently, three types of GST are in use around the world. Each differs primarily in its method of handling the tax on investment (capital) expenditures. The most common method, the consumption type, permits businesses to deduct immediately the full value

<sup>5</sup> Zhou, F., Zhang, X., & Cao, L. (2013). The Intellectual Property Protection of Traditional Literature and Art, p. 789.

<sup>6</sup> Saidin, OK. (2007). *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Jakarta: Raja Grafindo, p. 10

of the tax paid on capital purchases. A second approach, the national income type, allows only a gradual deduction of the GST paid on capital purchases over a number of years, much like depreciation.

A man is equipped with a mind that is not possessed by any other living things. By using the mind, the man is able to create many creations in various fields of life. They can be in the fields of science, art, literature, technology and business. The creativity produces a copyrighted work that obtains copyright protection. The term copyright was firstly proposed by St. Moh. Shah at the cultural congress in Bandung in 1951 which was later accepted by the congress, in lieu of the term rights of authors that were considered too lack in coverage of understanding. The term author rights itself is a translation of the Dutch term *Auteurs Rechts*.<sup>7</sup>

Copyright is an intellectual property in science, art, and literature that has a strategic role in supporting the development of the nation and promoting the general welfare. The laws governing copyright typically only cover creation in the form of a particular notion and do not include general ideas, concepts, facts, styles, or techniques that may be embodied or represented in the creation.<sup>8</sup> Copyright protection in law in Indonesia includes protection of traditional cultural expressions and adaptation results.

WIPO notes that the term folklore was used in an official regulation in 1967. The term folklore appears in Tunis Model Law on Copyright for Developing Countries. WIPO and UNESCO began to use the term and began providing an arrangement on the protection and utilization of folklore in 1982. WIPO and UNESCO collaborated to create a regulation beyond copyright law (*sui generis*) to protect the use of folklore.<sup>9</sup> Generally, WIPO and UNESCO only give the outline that folklore is basically a result of creativity that has characteristics of traditional art and culture that reflect a particular community or individual where the culture is developed and managed. Folklore types include verbal expressions, symbols, traditional music and others.<sup>10</sup>

The word folklore is derived from the English word folklore, a compound word derived from two words. Folk is a collective synonym, which also has the same physical or cultural identifiable features, as well as a personality awareness as a community. Lore is a tradition, partly culture, passed down orally or through an example accompanied by a gesture or a mnemonic device. The definition of folklore as a whole: folklore is part of the culture of a collective, which is dispersed and passed down from generation to generation, traditionally in different versions, either in oral form or in examples accompanied by gestures or mnemonic devices.<sup>11</sup>

According to the American Folklore Society, folklore is a broad umbrella term that encompasses traditional art, literature, knowledge, and practice disseminated largely through "oral communication and behavioral example."<sup>12</sup> The application in the protection of folklore is done because folklore is one of the most valuable asset for an indigenous community, even to the national level, therefore it is an approach that is used as an effort to develop, maintain and preserve the existence of folklore can basically be done. One of the efforts used in this case is of course the most important is the legal approach based on aspects of intellectual property, considering this has become a unity.<sup>13</sup>

One aspect of cultural studies is its approach from the tradition of the community from generation to generation. Elucidation of Article 38 Paragraph (1) of Law Number 28 Year 2014 regarding Copyright is declared as follows:

What is meant by "traditional cultural expression" includes one or a combination of forms of expression as follows: a. verbal textual, both oral and written, in the form of prose and poetry, in various themes and content of messages, which can be either literary or informative narrative; b. music, including, inter alia, vocals, instrumental, or any combination thereof; c. motion, including among others, dance; d. theater, including among others, puppet shows and folk plays; e. art both in the form of two dimensions and three dimensions made of various materials such as leather, wood, bamboo, metal, stone, ceramic, paper, textile, etc. or any combination thereof; and f. traditional ceremonies.

A study of artistic history may also take one of two types, focusing on the development of art style chronologically with a detailed analysis of the technical aspects, or studying the development of art with more detailed attention to the hopes and powers of community.<sup>14</sup> The expression of traditional culture is a national culture. The Constitution of the Republic of Indonesia defines national culture as arising from the intellect and effort of all Indonesians; in which embodied the nobility of various regional cultures in Indonesia, as well as foreign cultural influences in so far as to enhance the unity and friendliness of the Indonesian nation. Some elements in real life can be identified as related to the formation of a national culture.<sup>15</sup>

Folktale can be classified as a form of traditional cultural expression. Therefore, this culture must be protected by law. Law and culture are two sides of the coin that can not be separated from one another, then the existence of the law will be viewed from three points of view, namely:

- a. As the past as a product of civilization
- b. As to the present as a means of maintaining civilization

<sup>7</sup> Rasidi, A. (2004). *Undang-Undang Hak Cipta 1982, Pandangan Seorang Awam*. Jakarta: Djambatan, p. 3.

<sup>8</sup> Sugono, B. (2005). *Pengaturan Hak Cipta di Indonesia*. Jakarta: Pustaka Bangsa, p. 2.

<sup>9</sup> Mahmashani, S. (2010). *Konsep Kepemilikan Folklore dalam Undang-Undang No. 19 Tahun 2002 Tentang Hak Cipta dan Rancangan Undang-Undang Tentang Perlindungan dan Pemanfaatan Ekspresi Budaya Tradisional; Sebuah Studi Perbandingan*, p. 38

<sup>10</sup> *Ibid.*, p. 40.

<sup>11</sup> Danandjaja, J. (2002). *Folklor Indonesia*. Jakarta: Grafiti, p. 1

<sup>12</sup> American Folklore Society. (2010). About Folklore, What is Folklore, <http://www.afsnet.org/aboutfolklore/aboutFL.cfm> (last visited May 1, 2010) (noting that folklore includes folk traditions ranging from planting practices, dance, instructions on how to build an irrigation dam, and stories), Last Accessed 11 April 2018.

<sup>13</sup> Lutviansori, A. (2010). *Hak cipta dan perlindungan folklor di Indonesia*. Yogyakarta: Graha Ilmu, p. 14,

<sup>14</sup> Sedyawati, E. (2012). *Budaya Indonesia; Kajian Arkeologi, Seni dan Sejarah*. Jakarta: Rajawali Pers, p. 133

<sup>15</sup> Sedyawati, E. (2002). *Indonesia Heritage Seni Pertunjukan*. Jakarta: Groiler, p. 8.

- c. As to the future as a means of furthering civilization.<sup>16</sup>

Folktale and performances adapted from folklore are two different things. Therefore, copyright protection on both is also different. Folktale is an expression of traditional culture, so the copyright of folktale is held by the state. The copyright provisions on traditional cultural expressions are provided for in Article 38 of Law Number 28 Year 2014 on Copyright which states:

Article 38

- (1) The copyright on traditional cultural expressions is held by the State.
- (2) The State shall inventory, preserve and maintain the traditional cultural expression as referred to in paragraph (1).
- (3) The use of traditional cultural expression as referred to in paragraph (1) shall take into account the living values of the carrier society.
- (4) Further provisions concerning the Copyright held by the State over traditional cultural expressions as referred to in paragraph (1) shall be governed by a Government Regulation.

The Creator has the right to control the public in announcing or multiplying his creations, while the state can maintain the smoothness and security of society in the field of creation.<sup>17</sup> As the copyright owner of the folktale, the state shall inventory, preserve, and maintain the existence of folktale as one of the nation's wealth. Article 39 is also determined as follows:

In the case of the Unknown Creator's Creation and the Work has not been announced, the Copyright of the Works is held by the State for the benefit of the Creator.

- (1) In the case that a Work has been announced, but the creator is not known, or only the alias of the Creator is given, the Copyright to the Work is held by the party making the Announcement for the Creator's interest.
- (2) In case the Works have been published but the creator and party making the announcement are not known, the Copyright of the Works is held by the State for the benefit of the Creator.
- (3) The provisions referred to in paragraph (1), paragraph (2), and paragraph (3) shall not be applied if the Author and / or party making the Announcement can prove ownership of the Works.
- (4) The Creator's interest as referred to in paragraph (1) and paragraph (3) shall be executed by the Minister.

Folktale can be used and adapted in the other forms. Efforts to provide protection to the authenticity of folklore is to impose restrictions on its use or the application of the principle of fair use.<sup>18</sup> Fair use is the granting of permission to others to use a work for the purpose that benefits the community. Folktale can be made in the form of performances. The performances derived from folktale get the protection of related rights. The related rights are rights relating to copyright which are exclusive rights to actors, phonogram producers, or broadcasting agencies. Performer of the show is a person or several persons who individually or together show and perform a creation. Phonogram producer is the person or legal entity who firstly records and has the responsibility to perform sound recording, whether recording a performance or recording a sound or other sound.

#### THE ECONOMIC AND MORAL RIGHTS TO THE SHOW ADAPTED FROM THE FOLKTALE

Folktale and performances raised from folklore are a result of intellectual property. David I. Bainbridge says that, Intellectual property is the collective name given to legal rights which protect the product of the human intellect.<sup>19</sup> Intellectual property rights are rights derived as the results of creative activities from human mind's capability that is expressed to the general public in various forms, which has benefits and usefulness in supporting human life, also has economic value.<sup>20</sup>

Copyright is not a material right within the scope of the rights in the Civil Code, even though copyright can be classified as a material right because it meets the basic characteristics of the material. Copyright is a material right regulated in the scope of Intellectual Property Rights.<sup>21</sup> In line with the classification of various objects, then as a work of copyright, copyright is included as a non-bodily moving object.<sup>22</sup> These movable objects of course have economic value and give birth to moral rights that must be protected. Protection of economic rights and moral rights is the embodiment of reward theory as proposed by Robert M Sherwood. This theory essentially rewards people for their creative efforts and resources to create such an intellectual work. The award can not be separated from the realization of the recognition of intellectual works that have been produced.<sup>23</sup>

Copyright is a kind of intellectual property consisting of economic rights and moral rights.<sup>24</sup> Intellectual property rights are the property of immaterial wealth that can bring high economic profit or high value. This situation can occur when it is used to market commercial products. These intellectual property rights can become immaterial wealth because in the intellectual

<sup>16</sup> Ali, Z. (2005). *Sosiologi Hukum*. Jakarta: Sinar Grafika, p. 43

Supramono, G. (2010). *Hak Cipta dan Aspek-aspek Hukum*. Jakarta: PT. Rineka Cipta, p. 2.

<sup>18</sup> Djumhana, M. (2006). *Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual*. PT Bandung: Citra Aditya Bakti, p. 48-49.

<sup>19</sup> Bainbridge, D.I. (1990). *Computers and the law*. London: Pitmann Publishing, p. 7

<sup>20</sup> Djumhana, M dan Djubaedillah, R. (2003). *Hak Milik Intelektual, Sejarah, Teori dan Prakteknya di Indonesia*, Bandung: Citra Aditya Bakti, p. 21-22.

<sup>21</sup> Sofwan, S.S.M. (1981). *Hukum Perdata: Hukum Benda*. Yogyakarta: Liberty, p. 25-27.

<sup>22</sup> Supramono, G. (2010). *Hak Cipta dan Aspek-aspek Hukum*. Jakarta: PT. Rineka Cipta, p. 29

<sup>23</sup> Dharmawan, N.K.S. (2011). *Hak Kekayaan Intelektual dan Harmonisasi Hukum Global Rekonstruksi Pemikiran Terhadap Perlindungan Program Komputer*. Semarang: Badan Penerbit Universitas Diponegoro, p. 49.

<sup>24</sup> Sudjana, M. (2012). Hak Cipta sebagai Jaminan Kebendaan Bergerak Dikaitkan dengan Pengembangan Obyek Fidusia. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 24(3), 405-417.

property right itself contains economic value. This economic value will be utilized if, for example, the findings or creations are used by others in the commercial activities.<sup>25</sup>

Copyright protection is necessary to encourage and motivate the public to respect the rights of the creator of the work produced. Legal protection within the framework of intellectual property rights is an acknowledgment of the exclusive right, that is, the right to enjoy the economic benefits of creation or invention, with the exception that others without their consent can not enjoy the outcome of their creations. The law protects and prevents others from benefiting the creation unjustly.<sup>26</sup>

Copyright is the exclusive right of the author or the recipient of the right to announce or multiply his creation or grant permission to it without prejudice to restrictions under applicable legislation.<sup>27</sup> The exclusive right of such creator shall arise automatically on the basis of a declarative principle after a work is manifested in its tangible form without prejudice to restrictions in accordance with the provisions of legislation. As an exclusive right, copyright contains two essential rights, namely: economic rights and moral rights. The content of economic rights includes the right to publish (performing rights) and the right to reproduce (mechanical rights). The moral rights include the right of the creator to be named in the creation and the right of the creator to prohibit others from composing their creations, including title or title of creation.<sup>28</sup>

Economic rights are the right to obtain economic benefits over the creation and related rights products. The moral right is an inherent right of the creator or the performer who can not be omitted or removed for no reason whatsoever, even if the copyright or related rights have been transferred. In line with the various objects as discussed above, copyright is included as a non-bodied moving object.<sup>29</sup> The concept of economic rights of the Copyright Act is often different, in terms of its terminology, the type of rights it covers, and the scope of each type of economic right. In general, every state shall at least recognize and regulate economic rights including the right types:<sup>30</sup>

1. reproduction rights;
2. adaptation rights;
3. distribution rights;
4. public performance rights;
5. broadcasting rights;
6. cablecasting right);
7. Droit de suite;
8. public landing rights.

The economic rights of the creators are regulated in Law Number 28 Year 2014 on Copyright. Article 8 states that economic rights are the exclusive right of an Author or a Copyright Holder to obtain economic benefits from the work. The creator or copyright holder as referred to in Article 8 shall have the economic rights to: a. the publication of creation; b. Multiplication of Creation in all its forms; c. translation of creation; d. adaptation, organizing, or transforming works; e. distribution of works or copies; f. performances of creation; g. announcement of creation; h. communication creation; and i. rental of creation. A person doing economic rights shall obtain the permission from the creator or the copyright holder. A person without the consent of the creator or the copyright holder is prohibited from performing duplication and / or commercial use of creation.

The Berne Convention, in Article 6 bis, requires its members to grant authors the following rights: (i) the right to claim authorship of a work (sometimes called the right of paternity or the right of attribution); and (ii) the right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honor or reputation (sometimes called the right of integrity). These and other similar rights granted in national laws are generally known as the moral rights of authors. The Berne Convention requires these rights to be independent from authors' economic rights. Moral rights are only accorded to individual authors and in many national laws they remain with the authors even after the authors have transferred their economic rights. This means that even where, for example, a film producer or publisher owns the economic rights in a work, in many jurisdictions the individual author continues to have moral rights.<sup>31</sup>

The moral right is regulated in Article 5-7 of the Law of the Republic of Indonesia Number 28 Year 2014 About Copyright. Doctrinally, moral rights consist of the following rights:

- a. Paternity right or authorship right, if the copyrighted work produced by the creator is reproduced, announced or exhibited in public. The work must include the name of the creator.
- b. The right to protect the integrity of the work, which is the right to not alter the work of creation without the consent of the creator, or the heirs of the creator himself. Such changes, for example, are done by twisting, destruction, cutting, and replacement related to the copyrighted work.

<sup>25</sup> Muhammad, A. (2001). *Kajian hukum ekonomi hak kekayaan intelektual*, Bandung: PT. Citra Aditya Bakti, p. 12.

<sup>26</sup> Soelistyo, H. (2011). *Hak Cipta Tanpa Hak Moral*. Jakarta: PT. Raja Grafindo Persada, p. 21.

<sup>27</sup> Soelistyo, H. (2011). *Hak Cipta Tanpa Hak Moral*. Jakarta: PT. Raja Grafindo Persada, p. 116.

<sup>28</sup> Henry Soelistyo. (2011). *Hak Cipta Tanpa Hak Moral*, PT. Raja Grafindo Persada, Jakarta, Indonesia, p. 47

<sup>29</sup> Supramono, G. (2010). *Hak Cipta dan Aspek-aspek Hukum*. Jakarta: PT. Rineka Cipta, p. 29

<sup>30</sup> Sjahputra, I. (2007). *Hak Atas Kekayaan Intelektual (Suatu Pengantar)*. Jakarta: Harvarindo, p.118

<sup>31</sup> World Intellectual Property Organization. (2016). *Understanding Copyright and Related Rights*. Geneva, Switzerland: World Intellectual Property Organization, p. 14.

- c. The right of the authors to signify the results of the changes to the work of creativity in accordance with the dynamics of the times and the appropriateness prevailing in people's lives.<sup>32</sup>

In Law Number 28 Year 2014 regarding Copyright is regulated on moral rights. Article 5 paragraph (1) states:

(1) The moral right as referred to in Article 4 is an inherent right of the Creator to:

- a. still include or does not mention his name on the copy in connection with the use of his work for the public;
- b. using aliases or pseudonyms;
- c. to alter his creation in accordance with propriety in society;
- d. change title and title of creation; and
- e. defend its right in the event of distortion of creation, mutilation of creation, modification of creation, or any matter that is detrimental to her honor or reputation.

(2) The moral rights referred to in paragraph (1) can not be transferred as long as the creator is alive, but the exercise of the right may be transferred by a will or other causes in accordance with the provisions of the law after the creator dies.

(3) In the event of the transfer of the exercise of moral rights as referred to in paragraph (2), the recipient may waive or deny the exercise of his rights by providing the written document about the release or denial of the exercise of such rights.

Folktales and performances raised from folklore are two different things in the law on copyright. Performances are related rights. Article 20 of Law Number 28 Year 2014 regarding Copyright is declared as Related Rights as referred to in Article 3 letter b is an exclusive right which includes: a. the moral rights of performers; b. economic rights of performers; c. economic rights of phonogram producer; and D. economic rights of broadcasting institutions. WIPO state:

Related rights, also referred to as neighboring rights, protect the legal interests of certain persons and legal entities that contribute to make works available to the public or that produce subject matter which, while not qualifying as works under the copyright systems of all countries, contains sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right. The law of related rights deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright. Some laws make clear, however, that the exercise of related rights should leave intact, and in no way affect, the protection of copyright.<sup>33</sup>

The moral rights of the performers of performance is an inherent right of the performers which can not be eliminated or can not be removed for any reason even if its economic rights have been transferred. The moral rights of the performers include the rights about: a. his name is listed as performer, unless otherwise agreed; and b. no distortion of creation, mutilation of creation, modification of creation, or things which are detrimental to his honor or reputation unless otherwise agreed.

Performers have economic rights. The economic rights of the performing performer include the right to self-execute, grant permission, or prohibit other parties from: a. Broadcasting or communication of performances of the performers; b. Fixation of his unfinished performances; c. Duplication of the fixation of its performance in any manner or form; d. Distribution of the fixation of the show or copy; e. rental of the fixation of the show or its copy to the public; and f. provision of fixation of publicly accessible performances. Broadcasting or communications shall not be applied to: a. Fixation results of performances that have been given permission by the performers; or b. Broadcasting or re-communications that have been granted permission by the broadcasting institution for the first time to obtain a performance permit. Distribution does not apply to works that have been fixed, sold or diverted. Every person may make commercial use of the creation in a show without the prior authorization to the creator by paying the reward to the creator through the Collective Management Institution.

The term of moral rights applies *mutatis mutandis* to the moral rights of Performers. Protection of economic rights for: a. Performer, is valid for 50 (fifty) years since the show is fixed in Phonogram or audiovisual; b. Phonogram producer, valid for 50 (fifty) years since its phonogram is fixed; and c. Broadcasting institute, valid for 20 (twenty) years since its first broadcasting work. The period of protection of economic rights commencing on 1 January of the following year. In connection with the utilization of folklore for the financial benefit by foreign parties, it is appropriate to obtain prior permission from the state as the copyright holder of folklore, but until now, there is no further rules governing the process of submission of his petition and to whom the petition is addressed.

## CONCLUSION

The copyright holder of folklore is the state, while there is a corresponding right to the adaptation of the folklore. Copyright and related rights protection consists of economic rights and moral rights. The economic rights to the show provide financial benefits for the performers. The moral rights of the performers include the right about: a. his name is listed as the performer, unless otherwise agreed; and b. no distortion of creation, mutilation of creation, modification of creation, or things which are detrimental to his honor or reputation unless otherwise agreed.

<sup>32</sup> Muhammad, A. (2001). *Kajian hukum ekonomi hak kekayaan intelektual*, Bandung: PT. Citra Aditya Bakti, p. 21.

<sup>33</sup> World Intellectual Property Organization, *op.cit.* p. 26.

## REFERENCES

- Ali, L. (1995). *Kamus Besar Bahasa Indonesia*, Edisi II, Cetakan ketujuh. Jakarta: Perum Balai Pustaka.
- Ali, Z. (2005). *Sosiologi Hukum*. Jakarta: Sinar Grafika.
- American Folklore Society. (2010). About Folklore, What is Folklore, <http://www.afsnet.org/aboutfolklore/aboutFL.cfm> (last visited May 1, 2010) (noting that folklore includes folk traditions ranging from planting practices, dance, instructions on how to build an irrigation dam, and stories), Last Accessed 11 April 2018.
- Bainbridge, D.I. (1990). *Computers and the law*. London: Pitmann Publishing.
- Danandjaja, J. (2002). *Folklor Indonesia*. Jakarta: Grafiti.
- Dharmawan, N.K.S. (2011). *Hak Kekayaan Intelektual dan Harmonisasi Hukum Global Rekonstruksi Pemikiran Terhadap Perlindungan Program Komputer*. Semarang: Badan Penerbit Universitas Diponegoro.
- Djumhana, M dan Djubaedillah, R. (2003). *Hak Milik Intelektual, Sejarah, Teori dan Prakteknya di Indonesia*, Bandung: Citra Aditya Bakti.
- Djumhana, M. (2006). *Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual*. PT Bandung: Citra Aditya Bakti.
- Lutviansori, A. (2010). *Hak cipta dan perlindungan folklor di Indonesia*. Yogyakarta: Graha Ilmu.
- Mahmashani, S. (2010). *Konsep Kepemilikan Folklore dalam Undang-Undang No. 19 Tahun 2002 Tentang Hak Cipta dan Rancangan Undang-Undang Tentang Perlindungan dan Pemanfaatan Ekspresi Budaya Tradisional; Sebuah Studi Perbandingan*.
- Muhammad, A. (2001). *Kajian hukum ekonomi hak kekayaan intelektual*, Bandung: PT. Citra Aditya Bakti.
- Rasidi, A. (2004). *Undang-Undang Hak Cipta 1982, Pandangan Seorang Awam*. Jakarta: Djambatan.
- Saidin, OK. (2007). *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Jakarta: Raja Grafindo Perkasa.
- Sedyawati, E. (2002). *Indonesia Heritage Seni Pertunjukan*. Jakarta: Groiler.
- \_\_\_\_\_. (2012). *Budaya Indonesia; Kajian Arkeologi, Seni dan Sejarah*. Jakarta: Rajawali Pers.
- Sjahputra, I. (2007). *Hak Atas Kekayaan Intelektual (Suatu Pengantar)*. Jakarta: Harvarindo.
- Soelistyo, H. (2011). *Hak Cipta Tanpa Hak Moral*. Jakarta: PT. Raja Grafindo Persada.
- Sofwan, S.S.M. (1981). *Hukum Perdata: Hukum Benda*. Yogyakarta: Liberty.
- Sudjana, M. (2012). Hak Cipta sebagai Jaminan Kebendaan Bergerak Dikaitkan dengan Pengembangan Obyek Fidusia. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 24(3), 405-417.
- Sugono, B. (2005). *Pengaturan Hak Cipta di Indonesia*. Jakarta: Pustaka Bangsa.
- Supramono, G. (2010). *Hak Cipta dan Aspek-aspek Hukum*. Jakarta: PT. Rineka Cipta.
- Sutedi, A. (2009). *Hak Atas kekayaan intelektual*. Jakarta: Sinar Grafika.
- Tus, D. S. A. K. (2014). Perlindungan Hukum terhadap Keaslian Cerita Rakyat. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 3(3).
- Wayne, A. (2006). Focus of Intellectual Property Rights, U.S Department of State, USA, <http://iipdigital.usembassy.gov/media/pdf/books/iprbook.pdf>. Last Accessed 11 April 2018.
- World Intellectual Property Organization. (2016). *Understanding Copyright and Related Rights*. Geneva, Switzerland: World Intellectual Property Organization,
- Zhou, F., Zhang, X., & Cao, L. (2013). The Intellectual Property Protection of Traditional Literature and Art.

Made Emy Andayani Citra, S.H., M.H.  
Faculty of Law  
University of Mahasaraswati Denpasar, 80233 Denpasar, Indonesia  
Email: emyandayani@gmail.com