

LEGAL PROTECTION OF WAYANG CENK BLONK BASED ON COPY RIGHT LAW

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ABSTRACT

The purpose of this scientific paper is to find out the limits of legal regulations on the distribution of video content of wayang cenk blonk which can be categorized as copyright infringement and to find out the form of government coordination in the context of preventing copyright infringement of the wayang cenk blonk as a puppet art on social media. This is a normative legal research with a statutory regulatory approach and conceptual approach. The study shows that the limitation of an act can be categorized as copyright infringement if the creation and use of the work is carried out without obtaining permission from the Creator or the Copyright Holder. The government has also coordinated in order to prevent copyright infringement of the wayang cenk blonk on social media by conducting national cooperation regarding the Implementation of Content Closure and/or Access Right to Use of Copyright violations.

Keywords: *Legal Certainty, Content, Copyright, wayang cenk blonk*

1. Introduction

1.1 Background

As a country consisting of various ethnicities and cultures, Indonesia has a variety of works of art and culture that must be preserved as well as protected considering the development of globalization in the world.¹ One of the works of art and culture in Indonesia that needs to be preserved and protected is the Wayang Cenk Blonk. Wayang Cenk Blonk is a Balinese shadow puppet with a characteristic form of jokes and fresh chatter which is closely related to factual conditions.²

This Wayang was born because of I Wayang Nardayana's intellectuality, has created a shadow puppet pedaling from Tabanan, Bali.³ The name "Cenk Blonk" comes from the figures of the *Punakawan* created by I Wayan Nardayana, namely Nang Klenceng and Nang Cobleng.⁴ Before the existence of the Wayang Cenk Blonk, shadow puppet shows were generally witnessed by the older generation. Through the

¹ Kusharyani, M., Santoso, B., & Wisnaeni, F. (2016). Eksistensi Dan Perlindungan Wayang Orang Sriwedari Surakarta Ditinjau Dari Aspek Hukum Hak Cipta. *Law Reform*, 12(1), 60-72. Doi: <https://doi.org/10.14710/Lr.V12i1.15841> retrieve from, 3 November 2020.

² Adityarani, R. (Tanpa Tahun). Profil I Wayan Nardayana. Url: <https://www.merdeka.com/i-wayan-nardayana/profil/>, retrieve from, 3 November 2020.

³ *Ibid.*

⁴ Wistari, Gusti Ayu. (2019). Menikmati Wayang Tradisional Bernuansa Modern Lewat Cenk Blonk Kompasiana Url: <https://www.kompasiana.com/Wistari07513/5d48bb1e097f3626d33fe4a2/Menikmati-Wayang-Tradisional-Bernuansa-Modern-Lewat-Pertunjukan-Cenk-Blonk>, retrieve from, 3 November 2020.

creativity and intellectual of I Wayan Nardayana, now the Wayang Kulit art, namely Wayang Cenk Blonk can be enjoyed by teenagers to adults.

In the beginning, wayang performances were used as a medium for religious ceremonies and disseminating religious teachings, which in their performances depict how people should behave in their social life, now that the goal has been developed and turned into a medium that describes how the society behaves at this time, especially in this dynamics of society behave.⁵ Wayang Kulit performances generally has a function as a medium of communication and are intended to be a medium for counseling and education.⁶ Now, the Wayang Cenk Blonk show can also be enjoyed not only live, but also online via the social media platform such as *YouTube*.⁷

In the era 4.0 of the all-digital industry, all intellectual property in the form of photos and videos can be easily accessed and duplicated by various parties.⁸ One of the positive impacts of this all-digital industrial era is the ease in enjoying various creations such as movies, songs, music and even videos featuring Wayang Cenk Blonk shows. However, at the same time as the use that has the potential to violate the exclusive rights owned by the Creator and Copyright Holder, namely a violation of moral rights and economic rights. The existence of potential violations that can be committed against a work is a reason that aims to provide protection for intellectual works in the form of Copyright, which has taken an effort to create a copyright work.⁹

The Copyright law in Indonesia explicitly regulates the meaning of copyright, namely in the provision of Article 1 number 1 of Indonesian Law Number 28 of 2014 concerning Copyright (hereinafter UUHC) which stipulates that "*Copyright is the exclusive right of a creator that arises automatically based on the principal declarative after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations*".

The definition of copyright as in the UUHC emphasizes that "copyright is an exclusive right owned by a creator of a work or creation which is a creativity that comes from the human intellectual in order to fulfill the needs and welfare of human life itself."¹⁰ According to the explanation of Article 4 of the UUHC, exclusive rights are right reserved only for creators, so that other parties cannot use or exploit these rights without permission from the creators or rights holders.¹¹

⁵ Pratama, D. (2017). Wayang Sebagai Media Pembelajaran Pendidikan Karakter. *Repository*, 24-29. Url: [Http://Proceeding.Unindra.Ac.Id/Index.Php/Repository/Article/Viewfile/4110/582](http://Proceeding.Unindra.Ac.Id/Index.Php/Repository/Article/Viewfile/4110/582) retrieve from, 3 November 2020.

⁶ Rakhmada, P. (2014). Perlindungan Hukum Folklor Wayang Kulit Di Dalam Undang-Undang Hak Cipta Dan Intangible Cultural Heritage (Ich) Unesco. *Kumpulan Jurnal Mahasiswa Fakultas Hukum*. Url: [Http://Hukum.Studentjournal.Ub.Ac.Id/Index.Php/Hukum/Article/View/597](http://Hukum.Studentjournal.Ub.Ac.Id/Index.Php/Hukum/Article/View/597) retrieve from, 3 November 2020

⁷ Wistari, Gusti Ayu. *Loc.Cit*.

⁸ Cegah Pencurian Kekayaan Intelektual Di Era 4.0, Url: [Https://Dgip.Go.Id/Cegah-Pencurian-Kekayaan-Intelektual-Di-Era-4-0](https://Dgip.Go.Id/Cegah-Pencurian-Kekayaan-Intelektual-Di-Era-4-0), retrieve from, 3 November 2020.

⁹ Asri, D. P. B. (2018). Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. *Jipro: Journal Of Intellectual Property*, 1(1), 13-23. Url: [Https://Journal.Uii.Ac.Id/Jipro/Article/View/11142/8509](https://Journal.Uii.Ac.Id/Jipro/Article/View/11142/8509) retrieve from, 3 November 2020

¹⁰ Saidin, O. K. "Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)." (2015). p.11

¹¹ Purbawati, R. (2019). Perlindungan Hak Cipta Atas Streaming Lagu Dalam Joox. *Jurist-Diction*, 2(2), 617-638. Doi: [Http://Dx.Doi.Org/10.20473/Jd.V2i2.14255](http://Dx.Doi.Org/10.20473/Jd.V2i2.14255) retrieve from, 3 November 2020

Based on the provisions of Article 43 letter d of the UUHC, it is determined that "the creation and dissemination of Copyright content through information and communication technology media that is non-commercial and/or beneficial to the Creator or related parties, or the Author declares that he does not object to the production and distribution is not considered a Copyright violation." However, the explanation of Article 43 letter d of the UUHC has not provided a clear understanding of "non-commercial nature".

This issue became an interesting issue to study because currently there are several digital platforms that can provide economic benefits if the uploaded shows have a large number of viewers. In addition, currently many social media accounts have uploaded footage of the Wayang Cenk Blonk show to social media with promotional arguments for the work. This phenomenon provides an understanding that copyright infringement occurs because there is no clarity on the rules governing the boundaries regarding "non-commercial nature" in the distribution of a copyright work or the existence of vague norms. In this case, the obscurity in question is regarding the limitations on the concept of copyright infringement.

In fact, in the UUHC has regulated efforts to prevent copyright infringement and related rights through information technology-based means, namely in the Provisions of Article 54 of the UUHC which stipulates that the government has the authority to supervise, cooperate and coordinate with various parties as well as to supervise recording actions using any media at the venue. However, the provisions of Article 54 of the UUHC didn't explain the supervisory mechanism for the creation and dissemination of the content itself, so it appears that it still contains obscurity or vague norms.

The Copyright protection is also regulated internationally, for those international protection there are international conventions that regulate it, among others the Trade Related Aspects of Intellectual Property Rights Agreement (hereinafter TRIPs Agreement), Berne Convention, and Universal Copyright Convention and also Rome Agreement.¹²

The TRIPs Agreement provides an elaboration of the objectives of providing protection and enforcement of intellectual property rights to encourage innovation, exploitation and dissemination of technology, as well as to gain mutual benefits between creators and users of technological knowledge, and to create social economic welfare so that rights and obligations are equal or balanced.¹³ The TRIPs Agreement states various types of Intellectual Property Law that must be reviewed with the minimum standards of this convention, this is regulated in Part II of the TRIPs Agreement which includes, among others, copyright and related rights.¹⁴

Copyrights in the TRIPs Agreement stipulate that copyright protection or copyright refers to and obliges member countries to comply with the Berne

¹² Muhammad, A.A. (2017). "Konvensi Internasional Tentang Hak Cipta Dan Pengaturan Hak cipta di Indonesia." *Al-Qisth Law Review* 1, No. 1 (2017): 22.

¹³ Raharja, G. G. G. (2020). Penerapan Hukum Terhadap Pelanggaran Hak Cipta Di Bidang Pembajakan Film. *Jurnal Meta-Yuridis*, 3(2). Doi: <https://doi.org/10.26877/Jm-Y.V3i2.6029> retrieve from, 3 November 2020

¹⁴ Dharmawan, N. K. S. (2014). Keberadaan Dan Implikasi Prinsip MFN Dan NT Dalam Pengaturan Hak Kekayaan Intelektual Di Indonesia. *Jurnal Magister Hukum Udayana*, 3(2), 44117. Doi: <https://doi.org/10.24843/Jmhu.2014.V03.I02.P03> retrieve from, 3 November 2020

Convention.¹⁵ In the UUHC, the legal protection provided adheres to an automatic protection system where this concept is based on one of the principles of the Berne Convention, namely Automatically Protection.¹⁶ Referring to the concept of protection, it can be interpreted that copyright can be registered or not, it is not an obligation or is absolute, as stipulated in the provisions of Article 64 section (2) of the UUHC.¹⁷

Based on the background description previously described, it appears that there are a legal problem regarding the protection of the copyright of a work, especially with regard to the creation and dissemination of content based on information technology facilities such as whether, the limitations of legal regulations on the distribution of video content of Wayang Cenk Blonk can be categorized as copyright infringement, and what is the form of government coordination in order to prevent copyright infringement on the art of Wayang Cenk Blonk on social media.

1.2. Legal Issues

1. What is the legal framework of Wayang Cenk Blonk as a video content categorized as copyright infringement?
2. What is the form of government coordination in the context of preventing copyright infringement of the Wayang Cenk Blonk on social media?

1.3. Purpose of Writing

The purpose of writing this scientific paper is to find out the limits of legal arrangements for the distribution of video content of Wayang Cenk Blonk which can be categorized as copyright infringement based on Law Number 28 of 2014 Concerning Copyright, and to find out the form of coordination carried out by the government in order to prevent rights violations copyright of Wayang Cenk Blonk on social media. The previous studies conducted by Anak Agung Sinta Paramisuari and Sagung Putri M.E Purwani in 2019, examined Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta. In this case, the focus of the researcher is about the government should give protection for the social community right as the holder of TCE as well as protecting the existency of ETC itself.¹⁸ Based on the background, these problems are important to be made and discussed in a scientific work.

2. Research Metode

The writing of this scientific paper is normative legal research.¹⁹ According to Peter M. Marzuki's opinion, "normative legal research is a process that aims to find a

¹⁵ Dewi, A. A. M. S. (2017). Perlindungan Hukum Hak Cipta Terhadap Cover Version Lagu Di Youtube. *Udayana Master Law Journal*, 6(4). Doi: <https://doi.org/10.24843/Jmhu.2017.V06.104.P09> retrieve from, 3 November 2020

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Paramisuari, Anak Agung Sinta, and Sagung Putri ME Purwani. "Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta." *Kertha Semaya: Journal Ilmu Hukum* 7, no. 1 (2019): 1-16. DOI: <https://doi.org/10.24843/KM.2018.v07.i01.p04> retrieve from, 9 February 2021

¹⁹ Dwijayanthi, Putri Triari, and Ni Ketut Supasti Dharmawan. "The Responsibilities of Influencers in Promoting Tie-Dye Motif Products Based on Copyright Law." *Substantive Justice International Journal of Law* 3, no. 2 (2020): 167-179. DOI: <http://dx.doi.org/10.33096/substantivejustice.v3i2.90> retrieve from, 9 February 2021

rule of law, legal principles and legal principles to answer legal problems".²⁰ This paper uses a conceptual approach and statute approach that examines legal issues in this scientific paper, including Indonesian Law Number 28 of 2014 Concerning Copyright.

3. Result and Discussion

3.1 The Limitation of Legal Regulations Against the Spread of Video Content Wayang Cenk Blonk Can Be Categorized as Copyright Infringement

In providing protection, copyright adopts an automatic protection system or adopts a declarative system.²¹ This protection is based on the Berne Convention.²² Wayang Cenk Blonk as a form of puppetry is protected in the copyright regime, as one of the objects of copyright protection as stipulated in the provisions of Article 40 letter e, the UUHC provides automatic protection for works in the form of puppets. Referring to pre provisions of Article 58 UUHC, the protection provided is valid for the life of the Creator and continues for 70 (seventy) years after the Creator dies, starting from January 1 in the following year.

The protection stipulated in the UUHC is copyright as it is an exclusive right consisting of moral and economic rights, as well as related rights. The giving of this exclusive right is a form of appreciation or reward given to the Creator and is also an opportunity to get back the efforts or sacrifices he has given. Recognition and granting of copyright have a concept that follows a philosophy based on natural law.²³ The exertion of efforts to produce useful works of copyright (Labor Theory) gave birth to natural property rights (the Natural Theory) as thought by John Locke, who stated that property rights were born and existed because of the effort and the sacrifice of time and energy that had been contributed and invested to produce the property.²⁴

Awarding awards to the creator for his creative efforts in creating a work and the opportunity to recover what has been sacrificed as stated by Robert M. Sherwood in the theory of reward and recovery theory. A similar opinion was also expressed by Richard A. Mann & Barry S. Robert, who in essence provide protection for creative efforts, especially protection for economic investment in creative efforts considering that in creating the work, worthy of an award in the form of exclusive rights.²⁵

Based on the provisions of Article 9 section (2) of the UUHC, it is determined that "every person exercising economic rights as referred to in section (1) must obtain permission from the Creator of the Copyright Holder". Furthermore, in Article 9 section (3) is determined that "every person without the permission of the Creator or the Copyright Holder

²⁰ Fajar, Mukti, & Yulianto Achmad. "Dualisme Penelitian Hukum." *Normatif Dan Empiris, Pustaka Pelajar, Yogyakarta* (2013). P. 90.

²¹ Mahartha, Ari. "Pengalihwujudan Karya Sinematografi Menjadi Video Parodi Dengan Tujuan Komersial Perspektif Perlindungan Hak Cipta." *Jurnal Kertha Patrika* 40, No. 1 (2018).

²² *Ibid.*

²³ Haryono, Haryono, And Agus Sutono. "Pengakuan Dan Perlindungan Hak Cipta Tinjauan Secara Filosofis Dan Teoritis." *Civis* 6, No. 2 (2017). Doi: <https://doi.org/10.26877/Civis.V6i2.1904> retrieve from, 3 November 2020

²⁴ Dharmawan, Ni Ketut Supasti. "Hak Kekayaan Intelektual Dan Harmonisasi Hukum Global (Rekonstruksi Pemikiran Terhadap Perlindungan Program Komputer)." *Badan Penerbit Universitas Diponegoro, Semarang* (2011). P. 47.

²⁵ Dharmawan, N.K.S. "Orasi Ilmiah Perlindungan Kuliner – Gastronomi Kepariwisata Dalam Perspektif Hukum Kekayaan Intelektual Dan Pemajuan Kebudayaan" Swasti Nulus, Denpasar, (2020) p. 11.

is prohibited from carrying out reproduction and/or commercial use of a work". If someone exercises economic rights as stipulated in the provisions of Article 9 section (1) without obtaining permission from the Creator of Copyright Holder, the act is an act that can be categorized as violation of copyright if the creation and use of the work is carried out without obtaining permission from the Author or the Copyright Holder.

3.2 The Forms of Government Coordination in the Context of Preventing Copyright Infringement of Wayang Cenk Blonk in Social Media

Law enforcement is a common problem faced by everyone.²⁶ Article 7 of the TRIPs Agreement, it is determined that *"the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligation"*.

Based on the Article 7 of the TRIPs Agreement which states that the purpose of providing protection and enforcement of intellectual property rights is to encourage the birth of a motivation, transfer and dissemination of technology in order to obtain mutual benefits between producers and users of technological knowledge for the common welfare.²⁷ In the field of creation, there is also a need for state intervention to be able to balance the interests of the creator with the interests of the community, as it is known that the creator has the right to control who can use his creation officially and to avoid any unwanted duplication activities.²⁸

Article 52 and Article 53 of the UUHC are regulated on matters relating to technological control facilities. In the explanation of Article 52 UUHC, it stated that *"Technology control" means, any technology, device, or component designed to prevent or limit actions that are not permitted by the Creator, Copyright Holder, Related Rights Owner, and/or prohibited by laws and regulations.*" The means of technological control themselves are related to the aspects of registration and recording as well as copyright protection and can be used as protection for works or related rights products.²⁹

In accordance with the provisions of Article 54 of the UUHC, the Government is given the authority to carry out a collaboration and coordinate in terms of preventing acts of infringement of copyright and related rights through technology-based means. Since 2015, *"the Minister of Law and Human Rights and the Minister of Communication and Information of the Republic of Indonesia formally stipulated a Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information regarding closing Content and/or Access Rights to Use of Copyright and/or Right Violations"*, related to the Electronic System established in Jakarta on July 2, 2015.³⁰

²⁶ Ningsih, Ayup Suran, dan Balqis Hedyati Maharani. "Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring." *Meta-Yuridis* 2, No. 1 (2019).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Saidin, OK., *op.cit.* p. 292

³⁰ Peraturan Bersama Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Dan Menteri Komunikasi dan informasi Republik Indonesia Nomor 14 Tahun 2015 Nomor 26 Tahun 2015 Tentang Pelaksanaan Penutupan Konten Dan/Atau Hak Akses Pengguna Pelanggaran Hak Cipta Dan/Atau Hak Terkait Dalam Sistem Elektronik, URL:

Through the “Joint Regulation on the Implementation of Content Closure and/or Access Rights for Copyright Violation and/or Related Rights in Electronic System, UUHC provides a strong foundation for the Minister of Law and Human Rights and the Minister of Communication and Information”. In terms of closing and eradicating the contents that is proven to have violated copyright through social media.³¹

The Ministry of Law and Human Rights is given the authority by the law, which is the UUHC in regulating necessary matters relating to administration and enforcement of copyright law.³² Meanwhile, “the Ministry of Communication and Information, referring to the provisions of Article 56 UUHC, the Ministry of Communication and Information, is given the authority to carry out law enforcement actions related to the administrative sector in the event of a Copyright violation contained in the information system by closing the users access rights to proven content committing copyright infringement and violation on the internet”.³³

Not only collaborating with “the Ministry of Law and Human Rights and the Ministry of Communication and Information”, the UUHC is also collaborates with the Police. The UUHC authorizes the Police to regulate criminal offenses against Copyright in the form of complaints, if there is a criminal act in the Copyright of the party who is injured or feels aggrieved can report it to the police accompanied by evidence corroborates the report, this is in accordance with the provisions of Article 120 of the UUHC.

In addition, the UUHC there is a recognition the existence of an institution, known as a Collective Management Institution, which is an institution in the form of a non-profit legal entity where this institution is authorized by Creators, Copyright Holders and/or current rights owners to manage their economic rights in the form of collection and distributing the royalties.³⁴ The provisions regarding Collective Management Institution are stated in the UUHC that “to obtain the economic rights of every Creator, Copyright Holder, Related Rights owner becomes a member of the Collective Management Institute in order to attract reasonable compensation from users who take advantage of Copyright and Related Rights in the form of Public services that are commercial”.³⁵ And also, the Copyright users and Related Rights users who make use of the copyright are required to pay royalties to the Creator, Copyright Holder and to Related Right owners through the Collective Management Institution.³⁶ This statements

<https://www.dgip.go.id/peraturan-perundang-undangan-terkait-hak-cipta> retrieve from, 3 November 2020

³¹ Kusno, Habi. "Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet." *Fiat Justisia: Jurnal Ilmu Hukum* 10, No. 3 (2016). Doi:<https://doi.org/10.25041/Fiatjustisia.V10no3.789> retrieve from, 3 November 2020

³² Widya P, E. S. T. I., And Rinitami Njatrijani. "Perlindungan Hukum Terhadap Karya Cipta Potret Yang Dimuat Melalui Media Sosial Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta." Phd Diss., Universitas Diponegoro, 2019.

³³ *Ibid.*

³⁴ See: Article 1 point 22 UUHC

³⁵ Kusbiyanto, Mari. "Upaya Mencegah Hilangnya Wayang Kulit Sebagai Ekspresi Budaya Warisan Budaya Bangsa." *Jurnal Hukum & Pembangunan* 45, No. 4 (2015): 589-606.

³⁶ *Ibid.*

means that the royalties will be regulated, administered, managed and distributed by the Collective Management Institution.³⁷

The copyright protection of Wayang Cenk Blonk creations provided by UUHC is in accordance with the thought of Robert M. Sherwood, which is the theory of intellectual property protection which showed that copyright as an intellectual property needs to be given legal protection in the form of rewards and incentives. Protection of creations, namely Wayang Cenk Blonk, also needs to be given considering the risk that can arise due to the distribution of video content on social media which has the potentation to cause economic and moral harm to the Creator or to the Copyright Holder.

4. Conclusion

The limitations of a work can be categorized as a violation of copyright if the creation and use of the work is carried out without obtaining permission from the Author or from the Copyright Holder. In order to prevent the distribution of video content of the Wayang Cenk Blonk on several social media platforms, a coordination with the Government is needed. The form of government coordination in the context of preventing copyright infringement of the Wayang Cenk Blonk as Puppet art on social media is carried out by conducting supervision and cooperation between "the Minister of Law and Human Rights and the Minister of Communication and Information on Implementation of Content Closure and/or Access Rights to Use of Copyright Infringement and/or Related Rights in Electronic Systems, as well as the establishment of Collective Management Institution". But not only collaborating with "the Ministry of Law and Human Rights and the Ministry of Communication and Information", the UUHC also collaborates with the Police regarding criminal offenses against Copyrights issues.

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³⁷ Munawar, Akhmad, dan Taufik Effendy. "Upaya Penegakan Hukum Pelanggaran Hak Cipta Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta." *Al-Adl: Jurnal Hukum* 8, No. 2 (2016).

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