

Study on the Application of the Concept of Substantial Similarity for the Protection of Architectural Works Towards Renewal of the Copyright Law in Indonesia

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ABSTRACT

Indeed, architecture is a work of art that is highly valued and economically valuable. An architect who can produce architectural works and get world recognition is certainly a technical master in making it and someone who has a taste of an artist. However, few architectural works have similarities, so how can we measure that the later works are independent or imitations. Therefore, this study intends to answer two problems: how to regulate the protection of architectural works in Indonesia today and how to describe and measure the concept of substantial similarity in the protection of architectural works. This study aims to offer changes to the Copyright Law in protecting the originality of architectural works with the concept of substantial similarity in Indonesia. The research method used is juridical normative through literature search studies using primary, secondary, and tertiary legal materials. From the research results, it can be concluded that the Copyright Law does not yet regulate in detail how the qualitative measures of acts are considered an imitation of architectural works. Therefore, Indonesia needs to technically regulate imitation measures that are considered substantively in violation of the overall shape, spatial composition, and design of architectural work through changes and renewal of the Copyright Law.

Keywords: *substantial similarity, architectural works, copyright law.*

1. INTRODUCTION

The science of architecture has contributed masterpieces to the life and civilization of mankind. Architectural works are also a marker of identity and pride in a country. Call it the Eiffel Tower, the masterpiece of architect Gustave Eiffel, built-in 1889, or the Golden Gate bridge by Joseph B. Strauss in 1930 in San Francisco, which has always graced Hollywood films.

Later, an architect, Zaha Mohammad Hadi (Zaha Hadid), a woman born in Baghdad, Iraq, on October 31, 1950, also contributed to world architecture. Zaha Hadid's works are unusual, not to mention special. Some of them trigger pros and cons views. Take, for instance, the Al Warkah football stadium in Qatar, which, according to Zaha, would be the for the 2022 World Cup event in Qatar, where many workers died during construction. Other popular architectural works of Zaha include the 2012 London Olympics Aquatic Center, the Heydar Aliyev Center in Baku, Azerbaijan, and the MAXXI Museum in Rome, Italy.[1]

Indonesia also has so many architectural works that are the pride of the nation. For example, the DPR/MPR

building, built in 1965, the masterpiece of architect Soejoedi Wirjoatmodjo, born in Surakarta on December 27, 1928. Or the Istiqlal Mosque, National Monument, Gelora Bung Karno, the masterpiece of architect Friedrich Silaban, born Bonandolok North Sumatra on December 16, 1912.

However, at a glance, many architectural works have similarities with one another. This is intentional or not because every architect in his creative process is always influenced by what they have seen. Architects find inspiration from available structures. Top designers usually don't see a problem when other people use their work to stimulate creativity. Zaha Hadid once said that "everything is a copy." [2]

The creative process of an architect who is inspired and influenced by his previous works in producing their own is normal and legally justifiable. The problem is when the architect's work is an imitation (plagiarism), either as a whole or the most substantive parts of architectural work.

Not all imitation processes can be justified—for example, the case of Zaha Hadid in China. Although Zaha Hadid justifies the act of imitation, she has brought a case

of plagiarism against her work to the law. In an article entitled *Never Meant To Copy, Only To Surpass: Plagiarism Versus Innovation In Architectural Imitation*, the story of plagiarism was carried out by a developer from China, Chongqing Meiquan in making a building called Meiquan 22nd Century. In the design process, Chongqing imitated Zaha Hadid's work in Beijing, China, namely Wangjing SOHO. Zaha Hadid alleged plagiarism because the Chongqing Meiquan building had started the construction process along with the construction of Wangjing SOHO so Zaha Hadid suspected that there was a misuse of Wangjing SOHO's blueprint. In addition, with the concurrent construction, it is feared that the construction of the Meiquan 22nd Century will be completed earlier than the original building, namely Wangjing SOHO. This will certainly be detrimental to many parties, including the project owner and Zaha Hadid herself.[3]

Then, how to measure a later architectural work as an original work, independent and not the result of plagiarism or imitation? This study seeks to answer it through two key questions: first, how are the arrangements for the protection of architectural works in Indonesia today, and second, how to describe and measure substantial concepts in the protection of architectural works.

2. RESEARCH METHOD

This research is a normative juridical legal research with a statutory regulatory approach. The research specification is a descriptive analysis by examining relevant cases. Secondary data is used as the main data collected and analyzed through document studies and literature studies, obtained from primary legal materials, secondary legal materials, and tertiary legal materials. The research data were analyzed using qualitative juridical analysis to assess the strength of the regulation of Law Number 28 of 2014 concerning Copyright (Copyright Law) related to the protection of architectural works.

3. FINDINGS AND DISCUSSION

1. *Arrangements for the Protection of Architectural Works in Indonesia*

Copyright is one part of intellectual property with the broadest scope of protected objects because it includes science, art, and literature, including computer programs. The development of the creative economy, which is one of the mainstays of Indonesia and various countries, and the rapid development of information and communication technology, necessitates reform of the Copyright Law, considering that copyright is the most important basis of the national creative economy. With the Copyright Law, which fulfills the elements of protection and development of the creative economy, it is hoped that the contribution of the copyright sector and related rights to the country's economy can be more optimal. Furthermore, the development of information and communication

technology has become one of the variables in the Copyright Law, considering that information and communication technology, on the one hand, has a strategic role in copyright development. However, on the other hand, it is also a tool for violating laws in this field. Therefore, proportional arrangements are needed so that positive functions can be optimized and their negative impacts can be minimized.

The renewal and amendment of Law Number 28 of 2014 concerning Copyright as a substitute for Law Number 19 of 2002 concerning Copyright should be appreciated, although it has not made many changes in the architectural field.

In Article 1, paragraph (2) of Law Number 6 of 2017 concerning Architects, it is stated that architecture is a form of the complete application of science, technology, and art in a composing space and built environment as part of human culture and civilization that fulfills the rules of function, construction rules, and aesthetic principles and includes the factors of safety, security, health, comfort, and convenience. Furthermore, Article 2 states that architectural practices are based on professionalism, integrity, ethics, justice, harmony, benefit, security and safety, sustainability, and sustainability.

Architectural work is one of the aspects protected by copyright as a science and art created by human intellect. However, the implementation of architectural copyright is not given enough attention because it is difficult to determine the uniqueness of an architect's work.[4]

Architectural work as part of copyright is intellectual property that has a strategic role in supporting national development and advancing the general welfare as mandated by the 1945 Constitution of the Republic of Indonesia. Copyright as part of intellectual property rights has a fairly broad scope, including science, arts, and literature.

In Article 1, paragraph (1) of the Copyright Law, it is stated that copyright is the exclusive right of a creator that arises automatically based on the declarative principle after work is manifested in a tangible form without reducing restrictions following the provisions of laws and regulations. Whereas in paragraph (2), what is meant by the creator is a person or persons who individually or collectively produce a unique and personal creation. Furthermore, in paragraph (3), the work is any creative work in the fields of science, art, and literature that is produced based on inspiration, ability, thought, imagination, dexterity, skill, or expertise, which is expressed in a tangible form.

Article 40 paragraph (1) of the Copyright Law protects works in the fields of science, art, and literature, which includes:

1. Books, pamphlets, the appearance of published papers, and all other written works;

2. Lectures, lectures, speeches, and other similar works;
3. Props made for the benefit of education and science;
4. Songs and/or music with or without subtitles;
5. Drama, musical drama, dance, choreography, puppetry, and pantomime;
6. Fine arts in all forms, such as paintings, drawings, carvings, calligraphy, sculpture, sculpture, or collage;
7. Applied works of art;
8. Architectural works;
9. Map;
10. Batik artwork or other motif art;
11. Photographic works;
12. Portrait;
13. Cinematographic works;
14. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, and other works resulting from the transformation;
15. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
16. Compilation of work or data, either in a format that can be read by a computer program or other media;
17. The compilation of traditional cultural expressions during the compilation is an original work;
18. Video games; and
19. Computer Programs.

As part of protected copyright, architecture, as referred to in the Elucidation of Article 40 paragraph (1) of the Copyright Law, is an architectural work in the form of a physical form of a building, drawings of building designs, technical drawings of buildings, and models or building models.

One of the limitations on copyright, as referred to in Article 44, paragraph (1) of the Copyright Law, is that the use, retrieval, duplication, and/or alteration of work and/or related rights product in whole or in part is not considered a copyright infringement if the source is mentioned or stated in full for:

1. Education, research, writing scientific papers, preparing reports, writing criticism, or reviewing a problem without prejudice to the reasonable interests of the creator or copyright holder;
2. Security and governance, legislative and judiciary;
3. Lectures that are for educational and scientific purposes only; or
4. Performances or performances that are free of charge provided that it does not harm the reasonable interests of the creator.

The formal norms contained in Article 44 paragraph (1) of the Copyright Law are contradictory norms, which according to Bruggink, is a conflict of legal norms between prohibited norms and norms that allow or permit norms.[5]

This means that the limitation and/or exception as referred to in Article 44, paragraph (1) of the Copyright Law will certainly constitute a legal "violation" if it does not mention the source, for commercial purposes, the use, retrieval, duplication, and/or alteration of work and/or product-related rights in whole or in substantial part.

Elucidation of Article 44, Paragraph (1) of the Copyright Law states that what is meant by "a substantial portion" is the most important and distinctive part that characterizes a work.

2. *Description and Measurement of Substantial Concepts of Similarity in the Protection of Architectural Works*

Historically, architecture departs from the times, where the function of a building requires other elements as identity. Initially, architects only designed religious buildings. In subsequent developments, architects began to be asked to design other functional buildings such as hospitals, markets, museums, and so on, in addition to being partners of the aristocrats to design their buildings. Simultaneously with the amalgamation of various fields of science and technology and the development of materials, architects then focused more on aesthetics. Later, the industrial revolution allowed the middle class to use the services of architects. From this history, it can be seen that the function of a building is the origin of the emergence of architecture.[6]



Eiffel Tower, Paris



Tokyo Tower

Source <https://www.dw.com/id/bangunan-bangunan-tiruan/g-17804737>, accessed on March 1, 2021



Golden Gate, San Fransisco **Ponte de 25 Abril Portugal**
 Source <https://www.dw.com/id/bangunan-bangunan-tiruan/g-17804737>, accessed on March 1, 2021



The design of the new DPR (Parliament) building is similar to Chile's Parliament building
 Source <https://nasional.tempo.co/read/323998/meniru-desain-arsitektur-bisa-dipidana>, accessed on March 1, 2021

Throughout history, there have been so many famous architectural works that have recently been found to have similarities, for example, the Eiffel Tower in Paris, the Golden Gate Bridge in San Francisco, or recently the new DPR Building Design, which is considered to have similarities with the Chilean Parliament Building. So then, can the later architectural works be said to have imitated and plagiarized the preceding architectural works? This question is certainly not easy to answer because most architects are "artists" who are always influenced by architectural works that they have seen before, perhaps even influencing their creative processes in their work.

One of the cases of violation of architectural works occurred in New York, the United States, between Thomas Shine v David Childs. Shine sued Childs for infringement of rights in the form of plagiarism on the design of the building because Childs' building design, namely

"Freedom Tower," which is considered to have copied Shine's building design, namely "Shine 99" and "Olympic Tower." [7] Considering that an architect is an artist who is definitely getting influenced and inspired by the architectural works of others they have seen and admired, the boundary between being inspired and plagiarizing is a question that is not easy to answer.

However, considering that an architectural work is a copyrighted work obliged to receive legal respect and protection, violations, both imitation, and plagiarism, cannot be justified. Therefore, to prove that later architectural works are copyrighted works of imitation and plagiarism of previous works, one of the principles that can be used is the principle of originality.

The principle of originality uses a substantial similarity approach and an independent creation approach. If there are similarities in the two architectural works created independently, then you can use the principle of independent creation to help prove that one of the architectural works is not an imitation of the other work. This is regulated in Article 1, point 2 and Article 44, paragraph (1) of the Copyright Law. The Copyright Law can still protect works that have elements of other works if they are independent creations.

Application of the principle of originality in Indonesia, because no court has yet handled cases related to similarities in architectural works and the explanation of the article, has not been in detail regulating what can and cannot be protected from an architectural work, so the application of the principle of originality can be formulated using several approaches. The principle, according to the case, can even use two approaches in one case. In the United States, the principle of originality has been applied in the case of Shine v Childs through proving a substantial similarity, which takes a substantial part. Protection of architectural works in the United States Copyright Law is very detailed regarding what is protected as stated in Section 10 of the Copyright Law of the United States (title 17 of the United States Code) that protection of architectural works includes the whole form and arrangement, composition of space and elements in the design as well as arranging also things that are not protected from architectural works, namely individual standard features, such as windows, doors and functional elements. [8]

4. CONCLUSION

The principle of originality with a substantial similarity and independent creation approach can help prove that one architectural work is not an imitation of another work and vice versa. This is regulated in Article 1, point 2 and Article 44, paragraph (1) of the Copyright Law that works that have similarities with other works can still be protected by the Copyright Law if they are independent creations. However, Patur realizes that the Copyright Law has not

regulated in detail the qualitative measures of acts that are considered imitations of architectural works. Therefore, Indonesia needs to technically regulate imitation measures that are considered substantively in violation of the overall shape, spatial composition, and design of architectural work through changes and renewal of the Copyright Law.

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