

Analysis of Legal Protection Against Dance Creators Which His Creations Are Uploaded on Youtube by Other Parties Without Permission from Dance Creators Based on Law Number 28 of 2014 Concerning Copyrights

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ABSTRACT

Dance is the result of hard thinking by a dance creator with his abilities and creativity, besides that dance copyright is also a form of copyrighted work that is protected by law, but the protection provided by law is still not optimal. Until now, there are still many irresponsible parties who only think about personal gain without seeing any party being harmed by their actions. Uploading a person's dance copyright to YouTube regarding protection and violation can be seen from various laws and regulations, namely the copyright law (UUHC), and the electronic information and transaction law (UU ITE). This raises the question regarding how the legal protection for dance creators whose creations are uploaded on youtube by other parties is carried out without the permission of the dance creator based on law number 28 of 2014 concerning copyright. The research method used is the empirical juridical research method. The results of the research that the authors get are that the protection of dance copyrights has been regulated in article 40 of the UUHC, where dance is included in copyrighted works protected by law, but the enforcement procedures carried out by the government are still very inefficient, where the government can only provide enforcement of a cover action if there is a complaint or report that it is very detrimental to the creator.

Keywords: *Dance Copyright, Dance Creator, Dance Creation Law Protection*

1. INTRODUCTION

A human being who lives in society is a human being who is regulated by several laws that apply to his area of life. Humans are included as one of God's creations, where God gives reason or intellect to every human being, this is what distinguishes humans from other living creatures. Thus, humans have the ability to create or create something from what they learn and imagine. Therefore, at this time there are many intellectual products created by humans that can help humans in carrying out their daily lives. Apart from being in the form of goods, human creativity can also be channeled into other forms, such as in the form of art, because art is the result of human creativity, so it needs to be protected to appreciate the results of the hard work and creativity of these parties, the world government creates regulations aimed at protecting intellectual works which became known as the Copyright Act .

Before the birth of copyright law in Indonesia which regulates copyright, copyright was first discussed regarding

its protection. In 1967 an international organization called the World Intellectual Property Organization (WIPO) was formed which aims to encourage creativity and promote the protection of intellectual property throughout the world. Previously, WIPO was named the United International Bureau for the Protection of Intellectual Property (known by its French acronym, BIRP) which was established in 1893 to oversee the Berne Convention on the Protection of Art and Literature, and the Paris Convention on the Protection of Industrial Property Rights. [1]

WIPO was officially formed by the WIPO convention (which was signed in Stockholm on 14 July 1967 and repaired on 28 September 1979). Under article 3 of this convention, WIPO seeks to "promote the protection of intellectual property rights (IPR) throughout the world." In 1974 WIPO became the UN's special representative for this purpose. WIPO has embodied two classic IPR conventions, namely the Berne Convention on the Protection of Art and Literature (which was held and signed in Switzerland in 1886) and the Paris Convention

on the Protection of Industrial Property Rights (which was held and signed in France in 1883).

Besides WIPO, there is another international organization that was also formed with the aim of regulating international trade and labor issues, namely the World Trade Organization (WTO). The beginning of the establishment of the WTO was related to the emergence of the International Trade Organization (ITO) and the General Agreement on Tariffs and Trade (GATT). At the end of World War II, the international community formed an international organization capable of regulating international trade and employment issues. After the United Nations (UN) organization was formed, then a draft charter was made for the establishment of the International Trade Organization through a conference. The conference was able to ratify the Havana charter, but the American congress rejected it, so the charter could not be enforced. At the same time, the GATT draft was also drafted. Initially, GATT was created to accommodate international forums capable of encouraging free trade between member countries. The forum wants to regulate and reduce tariffs on trade in goods and provide a common mechanism for settlement of trade disputes.

Many countries in the world also form their respective laws and regulations governing the protection of copyright, this is triggered by the formation of organizations and international agreements that are formed to protect someone's copyrighted works that have both economic and moral value. One of the countries that is influenced by international organizations to make a separate legislation that regulates copyright and how to protect it is Indonesia.

Regarding the protection of copyright, there is an agreement that regulates the recognition of the IPR field, namely Trade Related of Intellectual Rights (TRIPs). When viewed from an organizational perspective, there is no legal relationship between WIPO and WTO, but regarding the TRIPs agreement in the WTO, the arrangement is considered more complete than WIPO. In addition to the Berne Convention and the Paris Convention, the WTO also includes the Rome Convention (international convention for the protection of performers, producers of phonograms and broadcasting organizations, in Rome in 1989) and the WIPO Treaty on integrated circuits (Treaty on intellectual property in respect of integrated circuit/IPIC Treaty, in Washington in 1989). TRIPs have fully regulated the protection of intellectual property rights. TRIPs are an important milestone in the development of international standards in the protection of intellectual property rights.

According to the Big Indonesian Dictionary (KBBI) rights are power, authority to do something that has been regulated in laws, regulations, and other policies. Intellectual Property Rights comes from English, namely Intellectual Property Rights (IPR), as regulated in Law Number 7 of 1994 concerning the ratification of the WTO, which means rights to property from human intellectual abilities, which have a relationship with a person's personal rights (human rights). WIPO defines this as a creation of human thought which includes its inventions,

literary and artistic works, symbols, names, images and designs used in trade.[2] According to the WIPO Convention, Intellectual Property Rights are defined as intellectual property rights that can include rights relating to literary works, artistic and scientific works, inventions in all fields of human endeavor, scientific inventions, industrial designs, trademarks, service marks, and names in commercial markings, protection against unfair competition, and all other rights resulting from intellectual activity related to industry, scientific works, literary works, and artistic fields."

There are several things that are important elements in Intellectual Property Rights, including:

- a. There is an exclusive right granted by law;
- b. These rights relate to human endeavors based on intellectual abilities; and
- c. This intellectual ability has economic value.

Law Number 28 of 2014 concerning Copyright (Copyright Law) provides an understanding of Copyright,[3] namely, Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in tangible form without reducing restrictions in accordance with the provisions legislation. If there is a Copyright, then there is automatically a holder of the Copyright which is explained that "The Copyright holder is the creator as the owner of the copyright, the party who receives the right legally from the Author, or another party who further receives the rights from the party receiving the Copyright. the right legally. In this case, Copyright is a Legal Object and the Creator is a Legal Subject, so that the Copyright Law also provides an understanding of the Creator, namely, the Creator is one or several people who individually or together produce a unique creation. and personal, or in other words, the creator is the person who owns or is the source of an idea or inspiration so that the creation of a work of art will then automatically arise exclusive rights to the work based on declarative principles. Art is the embodiment of the beautiful feeling contained in people's souls, born through the mediation of communication tools in a form that can be captured by the sense of hearing (music), the sense of sight (painting), or born through the mediation of motion (dance).[4] Therefore, art is the result of one's creative activities, so art has the nature of moving and living. The art of dance was created on the basis of body movements. Humans can explore their bodies to be created into a dance work. This dance creation activity is often referred to as choreography. A person who arranges choreography is called a choreographer (dance stylist).

The task of the dance stylist is to compose and present dance works that contain meaning, either to create new works or to remodel a dance work. According to Hidajat, the art of dance that develops in society can be divided into traditional dance and modern dance. Traditional understanding can be understood as a procedure or habit that applies in a certain environment or area that is hereditary and is still considered to exist today. Based on this understanding, traditional dance can be interpreted as a dance procedure or dance performed by an ethnic

community from generation to generation from generation to generation.

The construction method is a method or guide for the preparation and combination of various elements to achieve success which must be understood by a dance stylist (choreographer). Reconstruction is the renewal of the system or foundation, which also means that reconstruction is coaching towards renewal or renewal. If it is associated with dance, then dance reconstruction is an activity that describes an event through movement and expressions accompanied by music as a medium for delivering certain messages.[5]

Based on the general provisions in Article 1 Chapter 1 of Law no. 11 of 2008 concerning Information and Electronic Transactions, in point 1, that what is meant by electronic information is one or a set of electronic data, including but not limited to writing, sound, pictures, draft maps, photographs, Electronic Data Interchange (EDI), letters Electronic mail, telegram, telex, telecopy or the like, processed letters, signs, numbers, access codes, symbols, or perfusion that have meaning or can be understood by people who are able to understand them.[6] Electronic information is one of the things that is regulated substantially in the ITE Law in addition to electronic transactions. The development of the use of electronic information today, has provided convenience and benefits. For example the use of email to make it easier for everyone to communicate. In Article 1 point 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions, the definition of information technology is a technique for collecting, preparing, storing, processing, announcing, analyzing and or disseminating information. The term "information technology" began to be used widely in the 80s.

Social media or also known as social networking is part of new media. It is clear that the interactive content in new media is very high. Social media, quoted from Wikipedia, is defined as an online medium, with its users being able to easily participate, share, and create content including blogs, social networks, wikis, forums and virtual worlds. Blogs, social networks and wikis are the most common forms of social media used by people around the world. One of the social media that is often visited by the public is YouTube, on YouTube we can see events that are happening outside Indonesia very easily or we can also watch television shows that only air in certain countries. YouTube is a video-based social media that is very effective and useful for its users, because we can find new entertainment that comes from other countries but is limited by distance. Nowadays, there are many people who use YouTube as a forum to spread their talents, in the form of singing, story telling, dancers, even telling their personal life which is made into a Video Blog or known as a Vlog. YouTube is a website that allows people to share videos they have created. YouTube was first launched in 2005 which was started by Jawed Karim, Steve Chen, and Chad Hurley. Now YouTube is one of the most visited websites in internet history. As employees of the PayPal company, the trio quickly realized, in 2004, that there was no single location where videos could be shared. Years

later, Karim explained that it was the Janet Jackson Super Bowl incident and the tsunami in December that sparked the idea.

As a capital-funded start, the idea for YouTube received an \$11.5 million investment from Sequoia Capital in 2005. By February, the domain name had been registered at headquarters above a pizza restaurant in California. In April, the first video was uploaded by Karim entitled 'Me at the Zoo'. After a Beta testing period, the site launched in December 2005 and the Nike ad became the first video to receive one million views. After very rapid growth, Google acquired the company less than a year later for an estimated \$1.65 billion. However, the site is still relatively small compared to what we see today and has not even reached the UK and many other countries. In June 2007, the site was finally launched in the UK as well as eight other countries. After more growth, High Definition (HD) video was introduced in December 2008 and now more and more people are finding different uses for the site.

A dance is the result of someone's creativity or idea where when the idea is channeled into a dance or choreography, the idea will automatically get status as a work, and the choreographer who created the choreography will automatically get exclusive rights to the object and will referred to as the creator who owns the copyright. However, Law Number 28 of 2014 concerning Copyright has not regulated the Cover which is then uploaded on YouTube which puts the position of this perpetrator in the gray zone (Grey Area) which means that this action clearly violates the protection of the creator as the copyright holder, but the act cannot be legalized according to the applicable laws and regulations.

Thus, protection for the creator of an intellectual work needs to be given, due to the very rapid development of the times, it provides an opportunity for anyone to re-performance or cover even plagiarism which is an unlawful act. A journalist and music observer, Benny Hadi Utomo, who is better known as Bens Leo, he explained that the cover action taken by the public can have a negative impact on the creator, both in terms of moral rights and economic rights. harm comes from actions or actions carried out without the permission of the creator and for the perpetrators if they have reached the conditions determined by YouTube to get Royalty, then in this case the creator will be harmed economically.

Based on the description of the background that has been described above, the author wishes to conduct further research related to the case and write it in the form of a thesis with the title "Analysis of Legal Protection Against the Creator of Dance Copyrights whose creations are uploaded on YouTube by other parties without Permission from the Creator of the Dance Based on Law Number 28 of 2014 concerning Copyright."

1.1. Related Work

1.1.1. Legal Protection for dance creator whose creations are uploaded on YouTube by other parties without the creator consent based od Law Number 28 of 2014 concerning Copyright

1.1.1.1. Registration of Works and Related Rights Products

The Minister organizes the recording and deletion of works and related rights products, such recording is a condition for obtaining copyrights and related rights. However, the act of recording cannot be carried out on painting in the form of a logo or distinguishing mark used as a mark in the trade of goods/services or used as a symbol of an organization, business entity, or legal entity

1.1.1.2. Procedure for recording

The registration of creations and related rights products is submitted with a written application in Indonesian by the creator, copyright holder, related rights owner, or their proxies to the Minister. Applications are made electronically and/or non-electronically by: Include examples of creations, related rights products, or their substitutes; Attach a statement of ownership of the work and related rights; and Pay registration fee.

If the application is submitted by several people who are jointly entitled to a work or product of related rights, the application is accompanied by a written statement proving ownership of the right, if the applicant is a legal entity, the application is attached with an official copy of the deed of establishment of a legal entity that has been ratified. by the competent authority. Applications submitted by several people, the name of the applicant must be written all down and specify 1 (one) address of the selected applicant, but if the applicant comes from outside the territory of Indonesia, then the application must be made through an intellectual property consultant who is registered as an attorney. After submitting a request by the parties. Then the Minister will conduct an examination of the application, this is done to find out that the work or related rights product being applied for is essentially the same or not the same as the work recorded in the general register of works or other intellectual property objects. Then the Minister will give a decision to reject or accept the application within a maximum period of 9 (nine) months after the application is received.

1.1.1.3. Elimination of the Legal Power of Registration of Works and Related Rights Products

The legal force of recording the creation and related rights products is deleted because, there is a request from a person or legal entity whose name is recorded as the

creator, copyright holder, or related right owner, has exceeded the time limit, a court decision that has obtained permanent legal force regarding the cancellation of the recording of the work or related rights products, or have violated religious norms, decency, public order, state defense and security, or laws and regulations whose abolition is carried out by the Minister.

1.1.1.4. Transfer of Rights to the Registration of Works and Related Rights Products

The transfer of copyright rights and related rights products can be carried out if all copyrights on registered works are transferred to the recipient of the rights, the transfer of rights is carried out by submitting a written application from both parties or from the recipient of the matter to the Minister, the transfer action must be recorded in the general register of work with a fee.

1.2. Our Contributions

To find out the regulations regarding legal protection for dance creators whose creations are uploaded by other parties without the permission or knowledge of the creators on YouTube based on Law Number 28 of 2014 concerning Copyright.

1.3. Paper Structure

The type of legal research used in this research is normative legal research. Normative legal research, often known as doctrinal research, is a legal research carried out with the aim of finding the applicable positive law. If it is related to this research, this research will identify the legal basis related to this problem, namely the legal basis that underlies the protection of one's copyrighted work. [7] When viewed from its nature, this research is a descriptive study, meaning research that describes a particular object, which in this study provides an overview of the protection of copyrights obtained for his work. The types and sources of data in this study are secondary data which includes primary legal materials including statutory regulations, jurisprudence, or court decisions, as well as secondary legal materials and tertiary legal materials. Data collection tools are obtained from literature studies, document studies and interviews from several related sources.

2. DISCUSSION

2.1. Copyright

Copyright protection aims to integrate and combine various interests in society because in a certain cross-interest, protection of interests can only be carried out by limiting the interests of other parties. However, in terms of protection of copyright, the law does not work if it is not accompanied by a complaint first. Therefore, it is said that

the case against copyright protection is referred to as a complaint offense just like any other private law, which can only be given protection or can only run if there are complaints from other parties who feel that they have been harmed. So it can be concluded that the laws and regulations governing private law are static, which means that the law cannot be implemented without the things that trigger the law for or without a complaint then the law cannot run, therefore most cases -Civil law cases or private law cases based on complaint offenses. Unlike public law, where without any support from the aggrieved party, the law can still run, for example traffic law, murder, and other criminal acts. The author does not agree with the concept that copyright is included in private law or civil law where the protection of the infringement can only be carried out or legal remedies can be carried out if there is a complaint from the aggrieved party. According to the author, specifically in the field of copyright, the law must automatically provide protection or law enforcement for creators whose copyrights are seized or violated by other parties who are not copyright holders, copyright license holders, and/or copyrights. if the protection provided by law arises automatically with the publication of copyright, then according to the author, law enforcement must also be carried out automatically without prior supervision from the injured party, in this case the creator of the dance movement. Although there is no sanction for this action, the sanction can only be given if a good legal remedy has been implemented in court or out of court through alternative dispute resolution. no one reports, then the government will assume that the creator feels he is not harmed, in fact the author also does not know that his copyrighted work is being covered.

One of the reasons why a dance must be protected is because in article 40 paragraph (1) of copyright, it is clearly written that a dance is one of the creations protected by law. This is done so that the dance creators will not lose the moral rights as well as the economic rights that were issued when the creation was recorded in the general register of copyrighted works.

Under the protection of copyright law, copyright infringement can be protected by criminal law, which can be classified as an act of theft of movement, which is then uploaded to YouTube. Based on the theory that the author has described above, that the crime of theft is an act in which someone intentionally takes the whole or part of another person's property against the law, which in this case is true that the perpetrator has taken in whole or in part from the goods owned by the another in this case is the creator of the dance movement, and based on the concept of civil law explains that objects are divided into several types, there are movable and immovable, tangible and intangible, and others. Dance in this case is an object that is intangible or abstract, therefore by looking at the two meanings, that action can be said to be a criminal act of theft, namely dance theft.

With the development of a very fast era, then spontaneously human thoughts and actions will follow the era, this is what makes technological facilities develop very quickly so access to work is also getting bigger, this

situation is used by many people to gain popularity and popularity financial stability, this is made possible by the establishment of an online-based field for people who have talent in creating interesting copyrighted works that were previously not protected by law. Like making a video blog or what is known as a vlog, previously this vlog had very few fans and could not generate stable finances, but with the development of a very fast and good era, content like this is highly appreciated, one of which is YouTube, which is very appreciate this work, therefore, now many people are creating vlog content which is then uploaded to YouTube to increase popularity and earn financial income. This even makes some people who make content creation on YouTube their permanent job, because there are so many fans or viewers who use YouTube tools, so the possibility of gaining popularity is very easy. In addition, it is undeniable that there are some people who use YouTube as a place to make money by harming other parties, this is because the opportunities provided by YouTube are very large and varied, people are free to want to create what kind of content, even theft of copyrighted works can also be carried out.

In the case of committing theft of a work which is the work of a foreign citizen, as long as the author does not register in a country concerned, then the copyright cannot be protected by Indonesian law, in contrast to a work that has been registered with the relevant country, then the copyright can be given protection under positive law in force in that country. Talking about foreign copyrighted works, on YouTube there are lots of creators who come from different countries too, and the party doing the cover is also from a different country, in this case the applicable law or positive law can't reach this action, because not everyone has enough time to register their copyrighted works in all countries in the world, therefore, there is an association called Creative common which provides protection for creators from various countries, and has also been recognized by conventions. Internationally, the protection provided by this institution is more widespread in accordance with the very fast development of the times without reducing or harming the rights of the creator. The creative common concept is actually still a foreign thing in society, there are still many general public and other intellectual creators who still do not know about this creative common system, there are still many new creators who are still using the registration system to the Directorate General of Intellectual Property Rights (DIRJEN HKI). in order to obtain legal protection for their copyrighted works. Of course, this is not wrong to do, but for new creators usually their work or their names are still not widely known by the public or collectors both in Indonesia and abroad, so that their works still do not get enough appreciation from the public and art collectors.

It can be seen that many people use the internet as a place to channel talent in the arts but there are still many who do not understand the problems in the copyright field that will affect their work, then an association was created where the community will provide protection for those who are new to the field of protection. intellectual property rights, in addition to providing protection for intellectual works,

different from the protection provided by law, creative common still gives permission for anyone who wants to cover or disseminate the work, for those who do it will not be considered as violating the law due to creative policies common allows for those whose work is known by many people in a fairly short time. Creative commons provides facilities in the form of license terms that can be used by the Creator or Copyright Holder to share the work while retaining some of the rights of the Creator and Copyright Holder in their creations. These creations can later be utilized by users, which can be duplicated, and distributed without having to obtain direct permission from the Creator or Copyright Holder.

The act of theft of copyrighted works on internet-based social networks can occur due to the lack of supervision by the government of content that spreads a copyrighted work online which is then used as content from the YouTube Channel. The government can only work or carry out its duties in closing content only based on complaints from parties who feel aggrieved by the content, without a complaint from the aggrieved party, the government will not close the content. This is what the author considers that there are still shortcomings in law enforcement in terms of copyrights that are distributed via the internet, due to the lack of supervision of public actions carried out online.

3. CONCLUSION

The authors can conclude that in terms of legal protection given to an intellectual work, it is quite effective, but the enforcement or legal remedies provided by the government against this action, and with the Due to the influence of the development of an increasingly modern era, supervision of a copyrighted work is also growing more widely. This is because the acquisition of copyright is not only obtained if you have recorded it, but, since the copyrighted work is published, the copyright for the work will arise automatically.

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