



# Protection of Tattoo Artworks in the Perspective of Intellectual Property Rights

I Putu Andika Pratama<sup>1\*</sup>, I Made Artana<sup>2</sup>, Anak Agung Gede Agung Indra Prathama<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, Ngurah Rai University, Denpasar, Bali  
andika.pratama@unr.ac.id\*

**ABSTRACT.** Tattoos in each region have their own characteristics, both in terms of design and in terms of manufacturing techniques. Tattoos are included as works of art because they involve drawing patterns or designs. Each region or country has its own characteristics for tattoo images. However, how tattoo artworks are legally protected in Indonesia is the object of this study. This research specifically addresses the method of tattoo artwork protection from the standpoint of intellectual property rights. This research is a doctrinal research. Data or legal materials were collected using the documentation study technique. In addition, there are three approaches used such as the statute approach, the fact approach, and the conceptual and analytical approach. The results of the study show tattoos as an object of copyright protection in images receive protection automatically provided as stipulated in the Indonesian Copyright Law. The Indonesian Copyright Law requires that tattoo designs be preserved as one of the Traditional Cultural Expressions. The patterns and methods used to create tattoos are frequently strongly linked to the values or traditions that are practiced in society, therefore protection of these traditional cultural manifestations in tattoos is offered. As one of the country's traditional cultural expressions, Indonesians are required to catalog, maintain, and protect tattoo usage.

**Keywords:** Tattoo, Protection, Traditional Cultural Expressions, Copyrights.

## 1 Introduction

Tattoos are works of art that have their own beauty for their fans. It presents in the form of pictures or symbols which are generally made or tattooed on the surface of the limbs (skin) using a needle or similar tool [1]. Tattoos are often made using colored pigments to produce individual shapes and designs. Tattoos were originally considered to be the characteristics of a person who was considered a criminal and thug. Today, however, getting tattoos among the public is considered a "trend" as well as the actualization of individual self-expression within society. In terms of the manufacturing process, there are tattoos made with permanent, semi-permanent and temporary (stickers) effects with breath-taking pictures, which are made according to one's preferences.

Based on its history, tattoos were originally developed in China and functioned as a sign to determine the character of a person from a certain entity. Around the 17th

century, history records that tattoos were first brought by James Cook and his troops on their way from England to Polynesia [2]. Since then, the use of the term tattoo is known and the term is derived from the Tahitian “tattau” [3]. Etymologically, the term tattoo was introduced by Captain Bougainville, a British sailor who gave the translated “tattau” into English as ‘tattoo’, which means permanent painting on the human body [4]. Tattoos are part of body decorating by drawing on the skin of the human body using sharp objects such as needles, bones and others and the part of the body drawn is then given a coloring agent or colorful pigment.

Tattoos in each region have their own characteristics, both in terms of design and in terms of manufacturing techniques. Tattoos are included as works of art because they involve drawing patterns or designs. Each region or country has its own characteristics for tattoo images. For example, tattoos of the Dayak tribe of Kalimantan are known as “turutang” with traditional motifs and the manufacturing process that carries spiritual values [5]. Japan is a country that is rich in the characteristics of tattoos with Japanese culture such as images of a samurai, shinigami, dragons, sakura, geisha and so on. Mexico is a country with a tattoo design characteristic of “chicano style”, which characterizes the culture of the Mexican people. France is also famous for its parlor style tattoos, which have their own characteristics, especially the design and color composition. In Indonesia, Bali is famous for its distinctive “barong” and “rangda” tattoo designs, which contain elements of the spiritual value of “Rwa Bhineda” (balance) in them.

Tattoos also experience development in the manufacturing process. At first, tattoos were made with natural materials using traditional techniques. Along with the times and technology, now the majority of tattoos are made using modern techniques with colored pigment inks and using electronic equipment, so the resulting images are distinctively attractive and show the value of art itself. Many tattoo studios are found in various places. They offer their respective creative designs that always adopt and reflect cultural elements from other regions or other countries.

In the present, tattoos have become a reflection of the existence of society. Tattoos are more synonymous with works of art. They signify that people have the courage and confidence to show something attached to their body which is a symbol of the owner’s expression. Tattoo business actors often make tattoos based on the culture of other regions or countries.

Based on the trends described above, there is a need for an in-depth study of legal protection for works of tattoo art. Therefore, this study examines the form of protection of tattoo artwork from the perspective of Indonesian intellectual property rights. Specifically, this study identifies, analyzes, and elaborates on arrangements regarding legal protection of works of tattoo art based on the provisions of Indonesian Law Number 28 of 2014 concerning Copyrights (in Indonesian it is Undang-undang Hak Cipta or abbreviated as UUHC).

## 2 Research Methods

This research is doctrinal research [6]. Doctrinal research produces a systematic explanation of the legal norms governing a particular legal category. In this paper this research method is used to examine the relationship between legal norms, explain difficult areas and provide an overview in the form of predictions regarding the future development of legal norms (*ius constituendum*).

These include elementary, secondary, and tertiary legal texts, which are all used in this study. The laws and ordinances that are applicable on both a national and local level are the research's main source of legal information [7]. The secondary legal materials used are materials in the form of literature, journals or papers related to these issues. The tertiary legal material used is a dictionary that is used to find out the meaning of foreign terms that need to be translated.

The research data were collected through document study by browsing, reading and taking note of some important contents of the literature related to the problem under study [8]. This study uses several approaches to make the description of the substance of scientific work clearer. The approaches referred to are the statute approach, fact approach and conceptual and analytical approach

## 3 Result and Discussion

A tattoo is described as “a permanent picture, pattern, or word on the surface of the skin, created using needles to put colors under the skin” by the Cambridge Dictionary [2]. According to the Cambridge Dictionary, a tattoo is an image, pattern, or word that is inked under the skin using a needle that serves to deposit color pigment. Tattoos refer to images that are tattooed under human skin using colored pigments and are a concrete manifestation of the ability of human creativity and activity to think and produce works. Tattoos can be considered intellectual property that should be covered by copyright laws as a creative and intellectual endeavor.

The provisions of Law Number 28 of 2014 respecting Copyright safeguard works from an Indonesian copyright standpoint. Referring to the provisions in the said law, there are several objects of copyright protection in various fields. As stated in Article 40 subsection (1) of the Indonesian Copyright Law, the fields referred to are (1) science; (2) arts; and (3) literature. Protection of copyright is provided by referring to the principle of originality, that is to say, the authenticity of the idea embodied by the author without elements of plagiarism.

Tattoos are classified as pictures are protected as an object of copyright under the rules of Article 40 letter f of the Indonesian Copyright Law. Regarding the clarification of Article 40 letter f, “picture” encompasses motifs, diagrams, drawings, logos, color components, and lovely letter forms. The explanation expressly provides an affirmation regarding the protection of tattoo artwork, including motifs, sketches, and color elements.

Regarding copyright protection, tattoos can be automatically protected as long as they have been realized in a tangible form that can be enjoyed by the five senses (ex-

pressed work). This is in line with the definition of Copyright specified in the provisions of Article 1 subsection 1 of the Indonesian Copyright Law, as explained below.

“In line with the terms of laws and regulations, copyright refers to an exclusive right of the author that becomes vested automatically on the basis of the declarative principle when works are embodied in a physical form.”

Article 1 of the Copyright Law explicitly states that protection relates to the declaratory concept, which was put into effect in 1886 with the establishment of the Berne Convention. According to the convention, the provision of protection for copyrighted objects does not place an obligation on the Author and/or Copyright Holder to register their work. Copyrighting as specified in the Indonesian Copyright Law is not mandatory for creators and/or copyright holders to do.

The copyrighting of works and goods with associated rights is not a necessity for authors, copyright holders, or owners of related rights, according to the clarification of Article 64 subsection (2) of the Indonesian Copy-right Law. Protection of a work begins when it is created or realized, not when it is registered. Thus, a form of creation, both registered and unregistered, is still protected automatically.

Copyright protection adheres to the principle of first-to-use, so that protection will be given to any work automatically since the idea was first put into practice or implemented in a tangible form [9]. This makes it clear that Copyright or Related Rights, both registered and unregistered, receive the same protection.

The notion of intellectual property protection developed by Robert M. Sherwood has a tight relationship to the protection of tattoo artwork that is classified as an image. Additionally, the provision of copyright protection is underpinned by the reward theory, recovery theory, risk theory, incentive theory, and economic stimulus growth theory [10].

The idea sparked by Sherwood confirms that tattoo protection is given to the Creator as a form of appreciation for the work they have produced. The terms of Article 4 of the Indonesian Copyright Law, which essentially provide protection in the form of exclusive rights comprised of moral rights and economic rights, demonstrate how Sherwood’s theory is put into practice. Moral rights regulated in the Indonesian Copyright Law are understood as rights that are personally inherent in the Creator and are still recognized and respected as well as remain inherent even if the Author dies.

Protection of moral rights is given indefinitely. The limitations regarding moral rights are specified in Article 5 subsection (1) of the Indonesian Copyright Law, which in essence gives the Author the rights to:

- a. Regarding the public usage of their Works, they may still choose to have or not have their name on the copy;
- b. Employ an alias or a pseudonym;
- c. Change their works to reflect what is acceptable in society;
- d. Alter the works’ subtitle and title;
- e. Defend their rights in the case that the works are altered, mutilated, modified, or subjected to other actions that might be detrimental to their honor or reputation.

Setting off from Sherwood’s thoughts regarding the theory of copyright protection, especially with regard to incentive theory, the Indonesian Copyright Law also regulates provisions associating with the protection of economic rights that are inherent in

a work and can be enjoyed by creators and copyright holders as regulated in the provisions of Article 8 and Article 9 of the law. Article 9 subsection (1) of the law specifies:

The author or copyright holder is entitled to the financial benefits of engaging in the following activities: performing the works, publishing the works, communicating the works, performing the works, and renting the works.

Execution of the author's or copyright holder's economic rights must be authorized by the author or copyright holder. The provision regarding this is explicitly regulated in the provisions of Article 9 subsection (2) of the Indonesian Copyright Law. It states that anybody using the economic rights mentioned in Section 1 is required to request permission from the author or the copyright holder. The law's Article 9 subsection (3) specifically forbids the use of reproduction and/or commercial usage without the author's or the copyright holder's consent. The Indonesian Copyright Law specifically defines the duration of picture copyright protection in terms of copyright protection. According to Indonesian Copyright Law's Article 58 subsection (1), picture protection is in effect while the author is alive and lasts for 70 (seventy) years after his or her passing.

In accordance with the justification provided, tattoos are automatically protected by the Indonesian Copyright Law as objects of copyright protection in the form of pictures. Copyright associating with tattoo artwork includes moral rights and economic rights. Thus, if one creates a new tattoo motif without imitating the culture of another region or country, the creation of the person receives protection for his or her creation in the form of a tattoo motif for the rest of his or her life and continues for 70 (seventy) years after they die.

Even though they are seen as images that can be protected by copyright, most of these tattoos both in terms of design and the manufacturing process are works of art that are traditional in nature, so the form of protection that is given is Traditional Cultural Expressions. Protection of Traditional Cultural Expressions is explicitly regulated in the provisions of Article 38 of the Indonesian Copyright Law. Referring to the provisions of Article 38 subsection (1) of the law, the copyright to Traditional Cultural Expressions is held by the State. The State's authority over Traditional Cultural Expressions gives birth to the its obligation to inventory, protect and maintain these Traditional Cultural Expressions.

Indonesian government's protection of Traditional Cultural Expressions is carried out to increase public and government awareness of the existence of Traditional Cultural Expressions and to prevent recognition of Traditional Cultural Expressions by other countries, an action that has recently occurred frequently and become a problem that can affect diplomatic relations between countries. Concept and definition of Traditional Cultural Expressions are explained in Article 38 subsection (1) of the Indonesian Copyright Law, as explained below.

What is meant by "traditional cultural expressions" includes one or a combination of the following forms of expression:

- a. Verbal text, both oral and written, in the form of prose or poetry, covering a variety of subjects and relating to the message; this text may take the shape of a literary work or an informative tale;

- b. Any type of music, including, but not limited to, vocal, instrumental, or a mix of the two;
- c. Motion, including, among others, dance;
- d. Theater, including, among others, puppet shows and folk plays;
- e. Traditional rituals and fine art composed of several sorts of materials, such as leather, wood, bamboo, metal, stone, pottery, paper, cloth, etc., in two-dimensional or three-dimensional form.

In addition to the things mentioned above, protection of traditional cultural expressions has a very strong and close relationship with the values living in the society that bears it. For instance, tattoo artwork typical of the Dayak tribe has been a hallmark of the Dayak people from generations to generations. Balinese tattoo designs with traditional motifs have become tourism icons that can bring tourists to Bali. In accordance with the Elucidation of Article 38 subsection (3) of the Indonesian Copyright Law, they include traditions, customary law norms, customary norms, social norms, and other noble standards preserved by the community of origin that sustain, develop, and conserve traditional cultural manifestations.

Protection of traditional cultural expressions is provided from a copyright perspective, bearing in mind that the creation of a traditional cultural expression is closely related to creativity originating from human intellect in the fields of knowledge, literature and art which is then realized in a tangible form, so that it can be seen, read, heard and so on. Indigenous peoples in Indonesia have the potential to preserve intellectual creations that have been passed down from generation to generation by having their traditional cultural manifestations protected [11]. Considering that traditional cultural expressions contain qualities of customs, moral standards, and culture that are strong and grow, live, develop, and are trusted by the local community, it is necessary to conserve traditional cultural expressions.

## 4 Conclusion

Tattoos are automatically covered under the Indonesian Copyright Law as an object of copyright protection in the form of pictures. Regarding intentions, tattoos should be protected as one of the traditional cultural manifestations recognized by the Indonesian Copyright Law. The protection of traditional cultural expressions for tattoos is given considering that the designs and techniques of making tattoos are mostly closely related to living values or traditions in society. As one form of Indonesia's traditional cultural expression, tattoos need to be inventoried, maintained, and preserved by the state.

## REFERENCES

1. G. Gumilar, "Makna Komunikasi Simbolik di Kalangan Pengguna Tato Kota Bandung," *Mediat. J. Komun.*, vol. 9, no. 1, pp. 51–62, 2008, doi: <https://doi.org/10.29313/mediator.v9i1.1140>.

2. P. P. V. Kumara and I. K. Westra, "Perlindungan Motif Tato Suku Dayak dalam Dimensi Hukum Hak Cipta di Indonesia," *J. Magister Huk. Udayana*, vol. 10, no. 3, pp. 655–665, 2021, doi: <https://doi.org/10.24843/JMHU.2021.v10.i03.p16>.
3. B. Satria, J. N. Matheosz, and W. E. Mamosey, "Nilai Budaya Tattoo pada Kalangan Anak Muda Kota Manado," *J. Holistik*, vol. XI, no. 22, pp. 1–17, 2018, [Online]. Available: <https://ejournal.unsrat.ac.id/index.php/holistik/article/view/22566>
4. L. Hendrawan, "Tato dalam sebuah Generasi," *J. Seni Rupa Desain*, vol. 2, no. 1, pp. 1–15, 2001, [Online]. Available: [https://www.academia.edu/3804945/TATO\\_DALAM\\_SEBUAH\\_GENERASI](https://www.academia.edu/3804945/TATO_DALAM_SEBUAH_GENERASI)
5. Get Borneo, "Mengenal Tato Suku Dayak Kalimantan," *getborneo.com*, 2015. <https://www.getborneo.com/mengenal-tato-suku-dayak-kalimantan/> (accessed Jul. 10, 2023).
6. P. M. Marzuki, *Penelitian Hukum*. Jakarta: Kencana, 2008. [Online]. Available: <https://simpus.mkri.id/opac/detail-opac?id=6869>
7. S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2007. [Online]. Available: <https://opac.perpusnas.go.id/DetailOpac.aspx?id=560317>
8. S. Y. Sudikni, *Pengantar Karya Ilmiah*, 3rd ed. Jakarta: Aneka Ilmu, 1983.
9. M. F. Saputra, "Hak Cipta Dance Challenge yang Diunggah ke Aplikasi TikTok," *J. Penengakan Huk. Indones.*, vol. 2, no. 1, pp. 69–91, 2021, doi: <https://doi.org/10.51749/jphi.v2i1.16>.
10. P. T. Dwijyanthi and N. K. S. Dharmawan, "The Responsibilities of Influencers in Promoting Tie-Dye Motif Products Based on Copyright Law," *Subst. Justice Int. J. Law*, vol. 3, no. 2, pp. 167–179, 2020, doi: <http://dx.doi.org/10.33096/substantivejustice.v3i2.90>.
11. Y. E. Widyanti, "Perlindungan Ekspresi Budaya Tradisional Indonesia dalam Sistem yang Sui Generis," *Arena Huk.*, vol. 13, no. 3, pp. 388–415, 2020, doi: <https://doi.org/10.21776/ub.arenahukum.2020.01303.1>.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

