

## COPYRIGHT PROTECTION OF WAYANG KULIT AS A TRADITIONAL INDONESIAN CULTURE

An Arafahan<sup>1\*</sup>, Saidin<sup>2</sup>, Faradila Yulistari Sitepu<sup>3</sup>

<sup>1,2,3</sup>

Law Study Program, Law Faculty, Universitas Sumatera Utara Medan

E-mail: <sup>1)</sup> [anarafahan2000@gmail.com](mailto:anarafahan2000@gmail.com), <sup>2)</sup> [ok\\_saidin@yahoo.com](mailto:ok_saidin@yahoo.com), <sup>3)</sup> [dilasidepu@gmail.com](mailto:dilasitepu@gmail.com)

### Abstract

*This study aims to understand how the Indonesian government and people work to preserve art that has become an integral part of the Indonesian state and nation, especially wayang kulit and the history of wayang itself. This study was done by library research as a research method. In this regard, the study utilizes a variety of connected or relevant sources, including books, journals, magazines, documents, and others, as well as common law jurisdictions such as Law No. 28 of 2014 pertaining to Copyright. The findings reveal that wayang kulit as a traditional Indonesian culture has been legally protected by the state in accordance with Copyright Law no. 28 of 2014 (UUHC), which is irreversible and has been registered by the government at the Convention for the Safeguarding of the Intangible Cultural Heritage on November 7, 2003, so that it can be preserved and protected from claims by other countries as their own culture. It is hoped that in the future, by being protected by law, the Indonesian people will be able to maintain and preserve wayang kulit so that they do not become extinct and are not claimed by other nations.*

Keywords: *Copyrights, Indonesian Traditional Culture, Intellectual Property Rights, Wayang Kulit*

### 1. INTRODUCTION

As time passes and the world has grown closer, cultural practices have become a battlefield for political objectives, such as claims and petitions for recognition from UNESCO. In a nutshell, the purpose of all this activity is to improve the country's international standing. The domino effect of technological, economic, social, and political progress within the framework of a state—here, a contest for the greatness of each country—has an impact on culture. Cultural transmission, ancestral roots, and even a dash of politics are all integral to any and all histories (Sujatmiko, 2014; Tim, 2006).

Malaysia is one of the countries that always has conflict concerns with Indonesia, particularly connected to culture as a result of the rapid development of Malaysia, which demands the original character of the country to be maintained (Henry, 2011). Physical and non-physical aspects of Indonesian culture have always been claimed and recognised by Malaysia. One of these, Malaysia's latest claim to reog ponorogo, is generating controversy and is currently making headlines. Malaysia will propose the Barongan dance, known as Reog, to UNESCO as their intangible cultural heritage. There has been a lot of anger and criticism expressed by Indonesian public, artists, and government officials over Malaysia's assertions in this case. In Malaysia, reog is better known as “Barongan Dance” and may be found in a number of locations in Johor and Selangor. Barongan was brought to Malaysia circa 1722 by roaming Javanese, particularly from Ponorogo, prior to the establishment of the Indonesian state (Sagio & Sunarto, 2004; Sudjarwo et al., 2010).

In this case, not only is reog claimed by Malaysia, but the other cultural heritage belonging to Indonesia that has been claimed for a long time, *wayang* (puppet), has gone viral and provoked anger from the community. This incident arose when one of the shoe models produced by Malaysian graphic designer Jaemy Choong stated that *Wayang Kulit* or shadow puppet was a part of the identity and cultural heritage of Malaysia. Later, Indonesian citizens flocked to Adidas' Instagram account, which was eventually widely discussed and corrected by declaring wayang an indigenous Indonesian tradition. *Wayang Kulit* or shadow puppet has existed since ancient times during the ancient kingdom, and the wayang itself has been preserved for generations. Art performers and scholars such as Wali Songo continue to use wayang performances to promote Islamic sharia on the island of Java.

The fact that this international conflict has dragged on for so long with no end in sight is not news to us. Continually creating conflicts and grudges between communities and fostering negative opinions of unresolved issues (Nugroho, 2006; Simorangkir, 1979). We also wonder how the government protects traditional culture, specifically *Wayang Kulit*, on a national and international level given that we, the younger generation, do not fully comprehend the legal ramifications of *Wayang Kulit's* copyright, which is owned and held by whom the royalties are also the basis for *Wayang Kulit's* ownership as a culture that belongs to Indonesia (Djumhana & Djubaedillah, 1993; Subroto, 2005). Concern and reflection on the part of the author about the copyright for *Wayang Kulit* as a cultural heritage have arisen in this scenario.

*Wayang Kulit*, as a traditional culture, should be maintained as an intellectual work that can be exploited commercially for the community's prosperity and welfare. Efforts to conserve Indonesian traditional cultural expressions gained prominence following the emergence of a disagreement between Indonesia and Malaysia over Malaysia's usage of various traditional cultures. From this perspective, the author is interested in discussing and documenting the topic in this paper. Considering the foregoing, this research seeks to understand how the government and society of Indonesia are working to preserve the arts that have come to represent and constitute an integral part of the Indonesian state and nation, specifically *Wayang Kulit* and the history of wayang itself.

## **2. LITERATURE REVIEW**

### **2.1. Copyright**

In Indonesia, copyright refers to "*Hak Cipta*" which consists of two words, namely "*hak*" and "*cipta*" (Rahayu, 2010). Thus, it can be interpreted that copyright is the right that a creator has over his creation. A creation is the result of each creator's work in a unique form and shows its authenticity in the fields of science, art and literature. At first, the term for known copyright was the right that an author had over his creation (Dalimunthe et al., 2022). Creation is the result of each creator's work in a distinctive form and shows its authenticity in the fields of science, art and literature (Sartono, 1992; Sterling, 2003).

Intellectual Property Rights, or in Indonesian refers to HKI (IPR), are legal rights that are exclusive (in particular) owned by the creator or inventor as a result of intellectual and creative activities that are unique and new. This intellectual work can be in the form of copyrighted works in the fields of science, art, and literature, as well as inventions in the field of technology (Holt & Mas, 2000; Isma'un, 1989). Understanding Intellectual Property

Rights in the legal concept is a set of legal rules that guarantee exclusive rights to exploit Intellectual Property Rights within a certain period of time based on the types of Intellectual Property Rights (Fishman, 1996). Meanwhile, according to the Director General of Intellectual Property Rights, Intellectual Property Rights or IPR is a process that is useful for humans (Amir, 1991).

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations (Ayu et al., 2014; Nur, 2020; Prabowo, 2015). In Bahasa Indonesia, the word "*Hak*" which is often associated with obligations is an authority given to certain parties which are free to use or not. While the word "*Cipta*" or creation refers to the work of humans by using the mind, feelings, knowledge, imagination and experience, so that it can be interpreted that copyright is closely related to human intellectuals.

### **2.1. *Wayang Kulit* as a Part of Copyright Protected in Indonesia**

Wayang or Puppets have been claimed several times, while according to the Minister of Culture of Malaysia 2004-2008, namely Dr. Rais Yatim said that "*Wayang Kulit*, which is often performed in Malaysia, has nothing to do with Indonesia because the art comes from the Hindu tradition." It is true that in the current era of globalization, *Wayang Kulit* has been assimilated with other cultures such as Balinese, Malay and others. However, it is not appropriate to claim that the *Wayang Kulit purwa* which is usually played by Malaysians is considered to be theirs.

Copyright Law No. 28 of 2014 contains provisions pertaining to cultural matters. When there is no derivative law that explains and outlines aspects of traditional culture, especially *Wayang Kulit*, it poses an issue for society. Article 38, paragraph 2, of Law No. 28 of 2014 declares that the state is required to register, preserve, and protect traditional cultural forms (Pandam, 1996).

The controversy over the existence of wayang that has been hot lately has given rise to pro-contra debates (Arifin, 2013). In the end, many displayed expressions of anger and led to prolonged debates. Starting from Malaysia's claim to a statement from a famous cleric, Ustad Khalid Basalamah, who said that shadow puppets were forbidden and should not be played. In Islam, it is not allowed to resemble humans while *Wayang Kulit* itself is iconographically described above that it is much different, only the anatomy of the body but face to face is very different until finally Gus Miftah as a cleric and artist acted by playing a wayang play entitled Dalang Ngjuang .

In this case, we know that Article 60 Paragraph (1) of Law No. 28 of 2014 concerning Copyright states that the Indonesian state holds the copyright to traditional culture, specifically wayang, but the government has not drafted and enacted a comprehensive and complex law on this subject. As a result, it is expected that the responsibility of the state in conserving and caring for cultural variety will be more real if an acceptable and relevant law exists. In addition, citizens feel secure in their ability to observe local traditions (Kusmawan, 2014). Correspondingly, art actors are more at ease with their job when they are not interrupted by provocations on behalf of opposing ideas and different beliefs.

### **3. RESEARCH METHOD**

This research method involves library research. Research that makes use of multiple sources of material, such as books, journals, magazines, documents, and others that are related or relevant to the problem in the object of the research study, as well as related laws, such as Law No. 28 of 2014 Concerning Copyrights, is considered to be multi-source research.

### **4. RESULT AND DISCUSSION**

#### **4.1. Legal Protection for *Wayang Kulit***

According to Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The State shall advance Indonesian national culture in the middle of international civilization by safeguarding the freedom of the people to preserve and develop their cultural values." Therefore, these two cultural identities must interact in a dynamic manner. The tension between the two parties must constantly be controlled effectively.

The responsibility of the state in fulfilling this matter is carried out based on state legal politics to achieve the goals of the nation and state in the dimension of achieving broad welfare. Based on article 18B paragraph (2), 28C paragraph (2), 28I (3) of the 1945 Constitution, the government is obliged to fulfill the Cultural Rights owned by the local community for their intellectual assets, with regulations that support the implementation of these rights. In relation to Article 33 paragraphs (3) and (4) of the 1945 Constitution, the state is responsible for managing biological resources for the welfare of its people without exception, including managing folklore.

In Article 39, paragraph 1, of Law No. 28 of 2014 on Copyright, *Wayang Kulit* is implicitly listed as one of the works protected by copyright law, indicating that leather enjoys complete legal protection. The first reason is because *Wayang Kulit* is a sort of copyrighted work that falls under the categories of art, literature, and science, which is also the scope of copyright's operation. Second, Article 38 of the UUHC also addresses the position of traditional cultural expressions such as *Wayang Kulit*, stating that the state holds the Copyrights for such expressions. As stated in the UUHC, the state is the sole holder of people's copyrights that are explicitly mentioned, namely the "takeover" of these copyrights. However, this regulation is ambiguous on the subject so long as it is known that the takeover in this case is carried out directly by the state without consultation with indigenous peoples/stakeholders in certain indigenous communities. It was explained upon observation that the state has the authority to do so. In this provision, the state's ownership of the copyright to folklore can also be viewed as an advanced step of the folklore protection scheme, whose basic stage is to identify the production as a tool. The state maintains the copyright on folklore and folk culture items, including *Wayang Kulit*. Under addition, in Article 60 paragraph (1) of Law No.28 of 2014 about Copyright, which limits the duration of legal protection for shadow puppets, it states: "Copyright on traditional cultural expressions held by the state pursuant to Article 38 paragraph (1) applies in perpetuity."

#### 4.2. Indonesian Government Policy on *Wayang Kulit* as Indonesian Traditional Culture

The government through the Ministry of Education and Culture (*Kemendikbud*) takes steps to protect Indonesian culture. One of them is by registering intangible cultural heritage with the United Nations of Educational, Scientific, and Cultural Organization (Unesco). The preservation of cultural heritage, both material and immaterial (intangible) is based on international legal instruments issued by UNESCO. The convention that regulates and "protects" the cultural heritage is the UNESCO convention on the preservation of intangible cultural heritage 2003 (Convention For The Safeguarding of Intangible Cultural Heritage / ICH) (Adawiyah & Rumawi, 2021).

On November 7, 2003 UNESCO has included *Wayang Kulit* in the Master Piece of Oral and Intangible Heritage of Humanity as a world cultural heritage originating from Indonesia, and after the ICH came into force/entered in 2006 the culture or folklore previously included in, including *Wayang Kulit* The Master Piece of Oral and Intangible Heritage of Humanity was incorporated into the International Convention for The Safeguarding of Intangible Cultural Heritage.

Through Presidential Decree of the Republic of Indonesia Number 30 of 2018, dated December 17, 2018, the Government has set November 7 as National Puppet Day (HWN). The government's desire to immediately set the momentum so that the wayang community can commemorate the puppet day has long been a discourse. The establishment of the National Puppet Day is the peak momentum of awareness, unity, and love of the Indonesian people for wayang in preserving, developing, and studying wayang in its contribution to realizing a dynamic and modern national culture. The determination of the National Puppet Day is expected to be a trigger for the wayang community to increase appreciation as well as a means of forming national identity and character.

#### 4.3. Public Policy Theory Analysis of Government Policy to Maintain National Culture

*Wayang Kulit* or Shadow puppet was registered as a representative list in the ICH. This convention has been ratified by Indonesia not in the form of a law, but in the form of Presidential Regulation Number 78 of 2007. Following the culture that has been registered with UNESCO there are 12 intangible cultural heritages that have been officially recognized by the world as originating from Indonesia, namely: Wayang, Keris, Batik, Batik Education and Training, Angklung, Saman Dance, Noken Bag, Three Genres of Balinese Traditional Dance, Pinisi Ship, Pencak Silat, Pantun and Gamelan.

Public policy regarding government policies to maintain national culture where Indonesian intangible culture has been recognized by the world and cannot be recognized by other countries. We can also see how policy analysis in theory and the explanation of its sequence according to William N. Dunn in making and shaping a policy so that policies that are arranged from upstream to downstream can be carried out easily and completed well. This is the government's effort to protect Indonesian culture and sovereignty from other parties or countries who want to take over and unilaterally claim the property rights of that culture.

Wayang as a cultural heritage can be destroyed if there is no good enough appreciation from the community and the government for the puppet art actors. The puppeteer (*dalang*) as the main player in wayang as the owner of related rights in wayang performances needs to get guaranteed protection of economic rights when the show is broadcast on electronic

media so that they can still earn sufficient income even though the schedule of events is reduced as a result of the development of electronic media and telecommunications.

The existence of wayang cannot be separated from the central character of a puppet show, namely the Dalang. A dalang is someone who plays wayangkulit and acts as the leader of the show. Famous puppeteers including the late Ki Nartosabdo, the late Ki Anom Surata, the late Ki Manteb Sudarsono, the late Ki Entus Susmana, the late Ki Purba Asmara, the late Ki Hadi Sugita, the late Ki Timbul, the late Ki Seno Nugroho S.Sn., Hadiprayitna, the late Ki Gina Purwacarita and others. Each of these puppeteers has a characteristic in playing wayang that makes people love every puppet show he does (Intarti, 2013). Each puppeteer has his own character, such as a serious nature, comedy and even performing puppet shows such as boxing and fighting like a hollywood movie.

## **5. CONCLUSION**

Law No. 28 of 2014 concerning Copyright has regulated the protection of folklore or traditional culture in Indonesia and is a form of the state's seriousness in maintaining its culture even though it is still classified as not regulating the shadow puppets themselves. In Article 60 UUHC No. 28 of 2014 Copyright on traditional cultural expressions held by the state as referred to in Article 38 paragraph (1) is valid indefinitely and Copyright on Works whose Author is unknown which is held by the state as referred to Article 39 paragraph (1) and paragraph (3) shall be valid for 50 (fifty) years since the first Publication of the Work is made.

Based on history, *Wayang Kulit* or shadow puppets has existed since 1500 BC, starting from ancient Javanese ancestral scholars and derived from grass that is formed and tied. In this case, there are Hindu cultural influences, but Javanese shadow puppets themselves have significant differences in characteristics such as story plays, characters and even how to play them. As in the case of Javanese puppets in Malaysia, because in the 1700s when colonialism under the VOC at that time sent Javanese workers to all regions including Malaysia, the overseas Javanese brought their ancestral culture and were preserved from generation to generation to this day. It can be said that there are only carrying out and maintaining ancestral customs.

As a large country and rich in culture, the country has also registered *Wayang Kulit* in ICH with Unesco. This convention for the protection of intangible cultural heritage has also been ratified by Indonesia in the form of a Presidential Regulation No. 78 of 2007 and Law No. 5 of 2017 concerning the Advancement of Culture was ratified on April 27, 2017 in this Law there will be strategies to maintain and promote culture.

## REFERENCES

- Adawiyah, R., & Rumawi, R. (2021). Pengaturan hak kekayaan intelektual dalam masyarakat komunal di Indonesia. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 10(1), 1–16.
- Amir, H. (1991). *Nilai-nilai etis dalam wayang*. Pustaka Sinar Harapan.
- Arifin, F. (2013). Wayang kulit sebagai media pendidikan budi pekerti. *Jantra: Jurnal Sejarah Dan Budaya*, 8, 75–81.
- Ayu, M. R., Alexander, H., & Puspitasari, W. (2014). Hukum Sumber Daya Genetik, Pengetahuan Tradisional dan Ekspresi Budaya Tradisional di Indonesia, Bandung: PT. Alumni, 148.
- Dalimunthe, S. R., Pujawati, S. A., & Sitorus, A. S. A. (2022). Technical Security In Ite Law And Copyrights Of Devices And Systems. *Policy, Law, Notary And Regulatory Issues (POLRI)*, 1(2), 27–36. <https://doi.org/10.55047/polri.v1i2.124>
- Djumhana, M., & Djubaedillah, R. (1993). *Hak Milik Intelektual: Sejarah, Teori dan Prakteknya di Indonesia*. Citra Aditya Bakti.
- Fishman, S. (1996). *The copyright handbook: How to protect and use written works*. ERIC.
- Henry, S. (2011). *Hak Cipta Tanpa Hak Moral*. Jakarta: PT. Raja Grafindo.
- Holt, C., & Mas, S. (Raden. (2000). *Melacak jejak perkembangan seni di Indonesia*. Masyarakat Seni Pertunjukan Indonesia.
- Intarti, R. D. (2013). Konsep Sakti Dalam Lakon Sawitri: Analisis Pertunjukan Wayang Ki Nartosabdo. *LITERASI: Indonesian Journal of Humanities*, 2(2), 150–162.
- Isma'un, B. (1989). *Peranan koleksi wayang dalam kehidupan masyarakat*. Direktorat Jenderal Kebudayaan.
- Kusmawan, D. (2014). Perlindungan hak cipta atas buku. *Perspektif*, 19(2), 137–143.
- Nugroho, R. (2006). Kebijakan publik untuk negara-negara berkembang. *Jakarta: PT Elex Media Komputindo*, 213.
- Nur, H. (2020). Perjuangan Harun Bin Said Dalam Konfrontasi Militer Ganyang Malaysia Tahun 1963-1966. *Avatara*, 9(1).
- Pandam, G. (1996). Wayang kebudayaan Indonesia Dan Pancasila. *Jakarta: Universitas Indonesia Terbitan Kedua*.
- Prabowo, N. N. (2015). Perlindungan Hukum Karya Cipta Fotografi Yang Tidak Didaftarkan Menurut Undang Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. In *Fakultas Hukum, Universitas Jember*.
- Rahayu, K. (2010). Arti Penting Folklore Dan Traditional Knowledge Bagi Indonesia Sebagai "The Country Of Origin". *Cermin*, 047.
- Sagio, & Sunarto. (2004). Wayang Kulit Gaya Yogyakarta: Bentuk dan Ceriyanya. *Yogyakarta: Pemerintah Provinsi Daerah Istimewa Yogyakarta*.
- Sartono, K. (1992). Pendekatan ilmu sosial dalam metodologi sejarah. *Jakarta: Gramedia Pustaka Umum*.
- Simorangkir, J. C. T. (1979). *Hak cipta: lanjutan*. Djambatan.
- Sterling, J. A. L. (2003). World Copyright Law: Protection of Authors' Works. *Performances, Phonograms, Films, Video, Broadcasts and Published Editions in National, International and Regional Law: With a Glossary of Legal and Technical*, 882.

- Subroto, M. A. (2005). *Eksplorasi Konsep Kekayaan Intelektual Untuk Penumbuhan Inovasi*. LIPI Press. Jakarta.
- Sudjarwo, H. S., Sumari, & Wasito, W. U. (2010). *Rupa & karakter wayang purwa: dewa, Ramayana, Mahabharata*. Kakilangit Kencana.
- Sujatmiko, E. (2014). *Kamus Ips*. Surakarta: Aksara Sinergi Media Cetakan, 1.
- Tim, L. (2006). *dkk, Hak kekayaan Intelektual Suatu Pengantar*. Penerbit PT Alumni, Bandung.