

IDEAL CONSTRUCTION OF LEGAL PROTECTION ON BATIK BASED ON PANCASILA JUSTICE VALUES

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ABSTRACT

The purpose of this study is to examine and analyze the problems of legal protection of batik creation; and to formulate the ideal construction of legal protection of works of batik creation based on the value of Pancasila justice. The research method used was social legal research. Data used were primary and secondary data. Data analysis was descriptive qualitative. The study found that the Problems of the legal protection of copyright work batik faced by entrepreneurs and craftsmen Batik not meet the values of justice of Pancasila. This is because the level of knowledge about the importance of protection of copyright works is very minimal, Culture of the creator Batik and the cost of copyright registration are not balanced with productivity in creating batik. Ideal construction of legal protection of batik works based on the value of justice Pancasila concern on communal values for creators and batik craftsmen in the city of Surakarta.

Keywords: Legal Protection, Batik, Pancasila Justice.

A. INTRODUCTION

In line with the globalization¹ of trade, Indonesia since April 15, 1994, along with no less than 124 countries have ratified the Convention on the establishment of the World Trade Organization (WTO) which include agreements on Aspects of trade IPR (Trade Related Aspects of Intellectual Property Rights / TRIPS) which has been ratified by Law No. 7 of 1994. The term of intellectual property is a translation of intellectual Property right (hereinafter referred to as IPR) is described as property rights arising out of human intellectual ability. IPR itself in principle is a legal protection of Intellectual Property which later developed into a legal institution called "Intellectual Property Right".²

¹The word globalization is derived from the word global, whose meaning is universal. Globalization does not yet have an established definition, except for the definition of work (working definition), so it depends on which side people see it. Some see it as a social process, or a historical process, or a natural process that will bring all the nations and states of the world increasingly bound together, embodying a new order of life or unity of co-existence by removing geographical, economic and cultural boundaries community. Globalization is a term that has links to increasing interdependence and interdependence between nations and people around the world through trade, investment, travel, popular culture, and other forms of interaction so that the boundaries of a country become biased. Globalization has many of the same characteristics as internationalization so these two terms are often interchangeable. Some parties often use the term globalization that is associated with reduced state roles or state boundaries. On the other hand, some see globalization as a project carried by the superpowers, so that people may have a negative or suspicious view of it. From this point of view, globalization is nothing but capitalism in its most recent form. Strong and rich countries will practically control the world economy and small countries increasingly helpless because they are not able to compete, dikutip of <http://www.wikipedia.org>, Globalization indeed raises the widespread concern that the sovereignty of a country (nation) in gerogoti. Socialization Team Nationality Insight Secretariat Vice President of the Republic of Indonesia, Himpunan Modul sosialisasi kebangsaan, jakarta 2004. 86. Globalization is basically a far-off act, absenteeism that dominates the presence, not because of space sedimentation, but because of space restructuring. In the present the process of globalization, to a level, still follows some of the early established patterns during the early phases of modern social development. The capitalist enterprise, for example, is a mechanism that extends par excellently, and moves its course across a previously rejected world. Paradoxically, state socialism, which saw itself as a major revolutionary force in history, proved far more accommodative toward tradition than capitalism. Anthony Giddens, traditional post society, IRCiSoD, yogyakarta, 2003, pp. 74-75. Globalization indeed raises the widespread concern that the sovereignty of a nation in gerogoti. Anis Mashdurohatun, *Mengembangkan Fungsi Sosial Hak Cipta Indonesia (Suatu Studi Pada Karya Cipta Buku)*, UNS Press, Surakarta, 2016.

² Andriana Krisnawati dan Ghazalba Shaleh, "Perlindungan Hukum Varietas Baru Tanaman dalam Perspektif Hak Paten dan Hak Pemulia", Penerbit: Radja Grafindo Persada, Jakarta, 2004, Page 13-14, sebagaimana dikutip dalam Afrillyanna Purba, dkk, "TRIP's-WTO dan Hukum HKI Indonesia (Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia)", Penerbit: Rineka Cipta, Jakarta, 2005. Adi Sulistyono, *Mekanisme Sengketa HAKI*, UNS Press, Surakarta, 2004, P.21-22

Copyright is one part of intellectual property that has the widest range of protected objects. Since it includes science, art and literature (art and literary) in which also includes computer programs. The development of creative economy that became one of the mainstays of Indonesia and various countries and the rapid development of information and communication technology require the existence of reform of Copyright Law, considering Copyright becomes the most important base of national creative economy. With the Copyright Act that meets the elements of protection and development of creative economy is expected to contribute the sector of Copyright and Related Rights for the state economy can be more optimal. The development of information and communication technology has become one of the variables in this Copyright Act, as information and communication technology on the one hand has a strategic role in the development of Copyright, but on the other hand also becomes a tool for violation of law in this field. Proportional adjustment is required, so that positive functions can be optimized and negative impacts can be minimized.

A genuine effort by the state is done to protect the economic and moral rights of the creator and the owner of the Related Rights as an essential element in the development of national creativity. The denial of economic rights and moral rights can erode the motivation of the Creator and the owner of the Related Rights to be creative. The loss of motivation like this will have a wide impact on the collapse of Indonesian macro creativity. Reflecting to advanced countries it appears that adequate protection of Copyright has managed to bring significant creative economic growth and make a real contribution to the economy and people's welfare.

Law No.28 of 2014 on Copyright, which outlines, the Better Protection of the economic rights of the Author and / or the Owner of Related Rights, including limiting the transfer of economic rights in the form of sold flat. Creator, Copyright Holder, owner of Related Rights becomes a member of the Collective Management Institution in order to be able to withdraw fees or Royalties.

Protected creations include creation in the field of science, art, and literature, consisting of:

- a. books, pamphlets, writings of published papers, and all other written works;
- b. lectures, lectures, speeches, and other similar creations;
- c. props made for the benefit of education and science;
- d. songs and / or music with or without text;
- e. drama, musical drama, dance, choreography, puppetry, and pantomime;
- f. works of art in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, or collage;
- g. applied artwork;
- h. architectural works;
- i. map;
- j. works of batik art or other motif art;
- k. photography works;
- l. Portrait;
- m. cinematographic works;
- n. translation, commentary, adaptation, arrangement, modification and other works of transformation;
- o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expression;
- p. compilation of Creation or data, whether in a format that can be read by Computer Program or other media;
- q. compilations of traditional cultural expressions during the compilation are original works;
- r. video games; and
- s. Computer program.

Creation is protected as a separate Work by not denying the Copyright to the original Creation. Provision of protection includes the protection of works which has not been announced but it has been manifested in a tangible form that enables the duplication of the works. (Article 40 of UUHC No. 28 of 2014).

Batik in Javanese society is not separated from the teachings of Javanese philosophy that implicitly explain the relationship of microcosm, methacosm and macrocosm. The view of the macrocosm occupies the human part of the universe. Man must be aware of his place and position in this universe. Methachosm commonly called "mandala" is a concept that refers to the "middle world", the world of intermediaries between humans and the universe or God. Meanwhile, the microcosm is the inner world, the world of the human self. Since the Javanese at the time were not yet accustomed to abstract thinking, then all ideas were poured in more concrete symbols. That is why in the culture of Java widely used symbols or symbols.

Classical batik motifs contain several meanings, for the Javanese. In addition to meaning, classic batik ornaments should also be able to give birth to a sense of beauty. In the sense of beauty it is a harmonious addiction between the composition of the color and the arrangement of the ornament form. Motifs on batik should be able to provide the beauty of the soul, the arrangement of ornaments and color settings can provide a complete picture, in accordance with the understanding of life³. There are 3 (three) kinds of cipta Batik, they are: Batik Keraton (Batik Keraton Surakarta, Batik Keraton Yogyakarta, Batik Keraton Sumenep), Batik Pesisiran, Batik Pedalaman. Batik ornament in principle consists of the form of geometric ornaments, flora and fauna, or a combination of these ornaments. In addition, motifs on batik can also be distinguished on the basis of aspects of cultural areas

³ Adi Kusrianto, *Batik : Filosofi, Motif, dan Kegunaan* , Yogyakarta : C.V. Andi Offset, 2013, p. 2-3.

that produce style, style, gagrak. Therefore, there is Yogyakarta style batik, Surakarta style batik, batik style pesisiran consisting of batik Pekalongan, Madura, Lasem, and so forth.

The birth of batik gagrak Yogyakarta and gagrak Surakarta resulted in the occurrence of political events that ultimately affect the cultural aspects that distinguish between the characteristics of Yogyakarta and Surakarta as the center or source of cultural activity. The political event referred to is the Treaty of Giyanti on February 13, 1755. This Giyanti Agreement split the Mataram Kingdom into two, namely the area east of the Opak River (across Prambanan area now) controlled by the heir of the throne of Sri Susuhunan Pakubuwana III) and remained domiciled in Surakarta, while the western region (the original Mataram area) handed over to Prince Mangkubumi as well as he was appointed Sultan Hamengkubuwana I based in Yogyakarta.

The work of batik is produced by the creator and traded so that it can be enjoyed by the creator. With the production of batik art work means that the product has economic value and commercial nature and can increase income and provide prosperity for the creator. Moreover, Surakarta batik is more developed and become a superior product to sustain regional income in general and earnings of creators or craftsmen in particular batik. Based on the above description, it is necessary to provide legal protection against the creators of batik art work so that will foster new creativity and innovation in the field of batik art. Thus, researchers are interested to examine and examine more deeply with regard to the problematics of the protection of batik copyrights and the ideal legal protection of batik-based batik works based on the value of Pancasila justice.

B. RESEARCH METHODS

This research used empirical juridical or social legal research method that is research based on field research to obtain two primers and also conducted library research to obtain secondary data in law field. Empirical law studies are studies in the form of empirical studies to find theories about the process of legal work in society.⁴ The social legal research approach has the ultimate aim in relation to the objectives of the legal essence, namely Pancasila justice which should be presented in Indonesian law which is closely related to the issue of batik copyright.

Method of data analysis was done by way, the data obtained will be analyzed qualitatively. The conclusions are drawn by using deductive way of thinking that is the fundamental way of thinking to things - things that are general and then drawn conclusions that are specific in accordance with the subject matter⁵. After the data analysis is complete, then the results will be presented descriptively, that is by telling and describing what it is in accordance with the problems studied⁶. From these results then the researcher drew the conclusion that is the answer to the problems raised in this study.

C. RESEARCH RESULT AND DISCUSSION

1. Problems of Legal Protection of Batik Creative Works in Surakarta City

Satjipto Rahardjo stated that the rationale given the protection of copyright law to an individual towards his creation stems from a theory that can not be separated from the dominance of the Natural Law Doctrine thought which emphasizes the human factor and the use of reason as known in the Civil Law System (Civil Law System) which is the legal system used in Indonesia.⁷

The law was created for man in the form of rules that contain commands, prohibitions and addressed to all members of society. In addition, the law also regulates relationships among members of the public, among the legal subjects. The subject of the law is that everything that can obtain the rights and duties of the law is only human. Man by law is recognized as a person of rights and duties, as subject or as person. From the day a person has obtained rights and obligations, if he dies then the rights and duties may be transferred to his heirs.⁸

The general public's view to this day is different from the view of the Copyright Act, people still view copyright as a common property (Res Communis) while the Law sees copyright as sole proprietorship (res nullius). Differences in this view is one of the causes of rampant copyright infringement in the community. Indonesian people actually have long known copyright since the time of the ancestors before the invaders came.⁹

⁴ Joko Purwono, *Metode Penelitian Hukum*, Surakarta: Departemen Pendidikan dan Kebudayaan RI, UNS, 1993, page. 17-18.

⁵ Surakhmad Winarno, *Metode dan Teknik dalam bukunya, Pengantar Penelitian Ilmiah Dasar Metode Teknik*, Bandung : Tarsito, 1994, page. 17

⁶ H.B. Sutopo, *Metodologi Penelitian Hukum Kualitatif Bagian II*, Surakarta : UNS Press, 1998, page 37

⁷ Satjipto Rahardjo, *Ilmu Hukum*, Bandung : PT. Citra Aditya Bakti, 1996, p. 292.

⁸ Sudikno Mertokusumo, *Mengenal Hukum*, Yogyakarta : Liberty Yogyakarta, 1988, p. 52-53.

⁹ Anis Mashdurohatun *Problematika Perlindungan Hak cipta*, Yustisia Vol.1 No.1 Januari-April 2012, P.77-78. Anis Mashdurohatun, *Constructing And Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 (Aug.) ISSN 2289-1560, 2015, P.86. Anis Mashdurohatun, *Mengembangkan Fungsi Sosial Hak Cipta, Op.Cit*, P.13.

The concept is a presumption of law in order to facilitate the working of the law. Legal prescriptions also exist in areas of law that specifically regulate Intellectual Property Rights. This is because humans are created by God as the most perfect creature because in man equipped with reason and mind that is not owned by other created beings. With reason, humans are able to create various creations in the field of life. These creations occur in areas such as: Science, technology, art and literature so that creativity requires the recognition of rights and legal protection so as not to be used for commercial purposes by other parties without permission from the creator. By granting legal protection to the copyrighted work, it raises concepts of rights recognition at the onset of legal protection. The concept of copyright, recognition of the time when the copyright arises, is present when the completion of the work is made in a tangible form, without prejudice to restrictions in accordance with the provisions of the laws and regulations so that every work of science, art and literature resulting from inspiration, abilities, thoughts, imaginations, dexterity, skills or skills expressed in a visible form can be seen, heard, or read. Copyright is an exclusive right of the authors that arise automatically on the basis of the declarative principle after a creation is manifested in a tangible form. However, in Indonesia also organized registration of creation as a means to gain recognition as a creator. Although the Copyright Act provides that the registration of a work is not a requirement, the registration of a work is not intended to endorse the contents of a work until proven otherwise (Declarative Principle).

In the concept of copyright law protection, in reality people will experience various kinds of social change process. It includes various life joints that often lead to a shift in value in society. These social changes will inevitably affect the law as well. The study of the relationship between law and social change will include two dimensions: the dimension of the influence of social influence on law and the dimension of the law's influence on social change¹⁰. History notes that since the development of society toward the formation of advanced society has cultivated the need for the enactment of a law that provides more legal certainty. The need for the all-encompassing legal order raises the modern state with the use of modern law which characterizes the division of labor rationally. Modern laws that are widely used in developing countries to date have characteristics, have a written form, and the law applies throughout the country. And that law is a conscious instrument for the realization of legal protection for society. The existence of modern law that is widely used in developing countries has a long historical root, which originated from developments in the Western Europe. Furthermore, Sadjpto Rahardjo emphasized that the development of modern law is always preceded by the collapse or breakdown of one society and followed by another bankruptcy, meaning that the birth of a new legal form begins with the collapse of society and the old social system, resulting in community bankruptcy the old being a prerequisite for the emergence of a new form of law.¹¹

Social change affects and brings changes to the law is self-evident. As if there is social change, then the needs of society also changed both qualitatively and quantitatively. The legal needs of the community change, requires changes and additions to both the rules of positive law and legal institutions. It's just that the process of legal adjustment to social change is usually slow. Often the law has to wait for the process of social change to reach certain stages of crystallization and establishment in order to bring up new rules, institutions, legal institutions, the fact that led to the phrase "The law is staggering by the events. Thus it is the law that has to adapt to reality, not the fact that it must adapt its laws."¹²

In the copyrighted artisans of batik, copyright as an exclusive right form that is the result of human creation in the field of science, art, and literature. It is only natural that the person who creates is fully protected from the pirates in the same field of copyright although in the protection of copyright law is not a right granted by the state because the copyright regime embraces the declarative regime.

The concept of Intellectual Property is based on the idea that the intellectual works that man has produced require labor, time and cost. The existence of these sacrifices makes the work that has been produced has economic value because of the benefits that can be enjoyed. Based on the concept, it encourages the need for an award for the work that has been produced in the form of legal protection for Intellectual Property. The purpose of enforcing this legal protection is to encourage and cultivate the spirit of work and create.

Copyrights Data from Director of Copyright and Industrial Design at Directorate General of Intellectual Property from 2011 - 2015, Registration of Batik created by Creator or Craftsman in Surakarta City as much as 40 (forty) Registration. Hence, it is not in accordance with the results of research. In the study, each creator or craftsman Batik in Surakarta can produce at least 2 works of batik copyrighted. Actually, although the copyrighted work of batik is not registered automatically, it has obtained legal protection because the Copyright Act embraces a negative declarative system. It means "the first use and there must be an element of authenticity of a copyrighted work." Therefore, the creator of Batik in Surakarta should always document all of his or her works if they are not registered. Therefore, if there is a case of copyright infringement then the complete document about the copyrighted work that has been created by the Creator of Batik can be used as evidence if the creation is the work of his creation.

The Copyright Act embraces a negative declarative system which means that without any registration any copyrighted works of batik will be protected like a copyrighted work that has been registered in the Ministry of Law and Human Rights. The most important thing is every new created batik creation must be announced to the community so that from then on the work of

¹⁰ Pernyataan Mochtar Kusumaatmadja dikutip dari buku karya Bernard Arief Sidharta, *Refleksi tentang Struktur Ilmu Hukum*, Bandung : C.V. Mandar Maju, 2000, p. 25.

¹¹ Pernyataan Satjipto Rahardjo dikutip dari buku karya Budi Santoso, *Dekonstruksi Hak Cipta Indonesia*, Semarang : Pustaka Magister, 2012, p. 30.

¹² Budi Santoso, *Dekonstruksi Hak Cipta Indonesia*, Semarang : Pustaka Magister, 2012, p. 30-31.

copyrighted batik will get legal protection. This is very important and useful for the creators of batik as well as batik craftsmen in Surakarta.¹³

It has become a habit of the creators and craftsmen in creating different motifs or patterns of batik and do not feel afraid to be imitated by other batik craftsmen, he has not yet register the work of batik creations because in his opinion he can create more than 10 (ten) batik motifs or patterns a period of one month, if it must be registered then how much money should he spend, besides registration must be done in Semarang which takes a lot of cost and takes a long time to get a certificate of a creation.¹⁴

In his opinion the registration of a work of copyright is necessary, it is used to protect a work of creation of batik art that they created but must prioritize the patterns or motifs of batik what should be registered. Therefore, not all of his or her works are listed, eg motifs or motifs ordered for a company with long term contracts or motifs or patterns used to serve batik orders overseas. According to him, Indonesian Copyright Act is good but, many people, especially batik craftsmen who do not understand or understand the problem of Copyright Law. For that he hoped that the Government of Surakarta more socialize the new Copyright Law is the Law No. 28 of 2014 to the batik craftsmen so as to suppress violations in the field of batik copyrighted works, especially new motifs or patterns.

The application of the Indonesian Copyright Act actually accommodates the creativity of the Creator or the Batik Craftsmen because without registration any pattern or motif of batik will still be protected, besides the legal protection for the work of batik copy is considered sufficient as long as the Creator of life plus 70 (seven tens of years after the creator died).

The craftsmen as well as the creators of batik in particular have tips to keep the market's demand that is done besides limiting the making of motives. For every month he just issued new motifs and motifs of batik motifs that have a pattern or motif that is more interesting and with matching coloring, so that it can attract buyers. Such a move is done to keep the balance between production and domestic market demand. Another step that is done is to replace batik material that is usually used from *mori* and cotton material for every manufacture of cotton, now many who use material of satin and silk fabric for upper middle market demand or demand abroad.¹⁵

These steps are taken to avoid the detrimental things as a result of the practice of imitation of motifs or patterns of batik on the market. According to him, Surakarta batik craftsmen already have their own motifs or patterns that can differentiate between one craftsman and the other craftsmen.

Gunawan Setiawan¹⁶ said that to preserve the batik culture in Kauman Village, both for children, adults, parents, and even foreign tourists can learn batik in Gunawan Setiawan batik place free of charge and free of charge. This is done as a breakthrough for children, adults, parents, and foreign tourists to love as well as appreciate the work of batik art, both old and traditional batik motifs and new batik motifs. It was done by him since 1980 until now. The purpose of appreciating and loving batik art in providing batik training that comes in the gallery is that all visitors who come in addition to learn to make batik at once will buy batik products owned or his creation.

It is further explained that if all his works are registered in the Directorate General of Intellectual Property, then it is also a constraint because of how much money he must prepare. As he said that he created 5 (five) work of batik motif every day. If it is multiplied by 1 (one) year then how much money should be spent for registration. According to him there is a difference in concept between traders and craftsmen or batik creators. If an important sales merchant so much that they prefer to use or sell batik printing instead of batik or cap. But artisans or creators are more focused on the work of batik created, there is aesthetic elements, art or culture, they create batik is the result of casting the story in a sheet of cloth so that a batik cloth will usually tell something experienced by the creator or something that happens to the community or something thematic.

Creator or craftsmen Batik in Surakarta usually spend their time by creating new work whether with new works that are thematic or combine traditional batik with modern motifs. For example *Gordho* batik motifs combined with pictures of *keris*, flowers, and others. So according to him, producing a work of batik will bring the pleasure and personal satisfaction to the works that they have created.

¹³Interviewed with **Satria Graha**, A creator as well as Surakarta Batik Craftsmen who have been exporting batik to several countries and have Graha Batik Gallery located at Jalan Gajah Mada Number 121, Surakarta, on January 5, 2017.

¹⁴Interviewed with **Dempy P.** A creator as well as Batik Craftsmen who have a store Sumber Redjeki located in Klewer Market and also has a Cosmic Collection Store that feels in Jalan Baron Cilik Number 23, Surakarta. On February 10, 2017

¹⁵Interviewed with **Ali Heru**, a batik craftsmen as well as a batik entrepreneur in Klewer Market Surakarta. On Monday February 15, 2017

¹⁶Gunawan Setiawan, Owner of Kampung Wisata Batik Kauman Surakarta, Interview (Surakarta, March 3, 2017).

They also complained about how much money should be provided to register all the works in one year. Then he also complained about the length of getting a list of creations that have been registered in the Directorate General of Intellectual Property Ministry of Justice and Human Rights of the Republic of Indonesia.

They said that the registration of copyright until the release of the creation list from the Directorate General of Intellectual Property of the Ministry of Justice and Human Rights within 3 (three) months is considered to be a long time because they want to start registration until the list of creation should be less than 3 (three) months so will provide a sense of security for the creator. In addition, the Creator or Craftsmen of Batik in Surakarta have not been able to distinguish the copyright or patent, they always say will patent copyrighted works to the Directorate General of Intellectual Property Ministry of Law and Human Rights that should be registered is copyright is not a patent. Their hope all their works can be facilitated by the state.

His experience once registered traditional batik motifs rejected. That's because the traditional batik has become a public domain and controlled by the state according to Law No. 28 of 2014 on Copyright in Articles 38 and 39 which reads:

Article 38

- 1) The copyright over traditional cultural expressions is held by the State.
- 2) The State shall inventory, maintain and preserve traditional cultural expressions as referred to in paragraph (1).
- 3) The use of traditional cultural expressions as referred to in paragraph (1) shall take account of the living values of the carrier society.
- 4) Further provisions concerning the Copyright held by the State over traditional cultural expressions as referred to in paragraph (1) shall be regulated by a Government Regulation.

Article 39

- 1) In the event that a work is unknown to the creator and the work has not been made announcement, the Copyright of the work is held by the State for the benefit of the creator.
- 2) In the event that a work has been made announcement but not known to the Author, or only the alias or alias of the creator is created, the Copyright to the Work is held by the party making the Announcement for the benefit of the creator.
- 3) In the event that a work has been published but is not known to the author and the party making the Announcement, the Copyright to the work is held by the State for the benefit of the creator.
- 4) The provisions referred to in paragraph (1), paragraph (2), and paragraph (3) shall not apply if the creator and / or the party making the Announcement may prove ownership of the Works.
- 5) The creator's interest as referred to in paragraph (1) and paragraph (3) shall be executed by the Minister.

Gunawan Setiawan said that he understands the new Law of Copyright which is Law No. 28 of 2014 but not in detail. He also knows the cause and effect of doing piracy or plagiarizing the work of others. This is because the Office of Cooperatives and SMEs Surakarta always do socialization and coaching of the Craftsmen or Creator Batik in Surakarta. Batik is not only as a fashion, but also as a communication tool for the Java Community. Like for example if someone to a woman, then the man uses batik motif *Satrio Manah* whose purpose is to give a sign that the man is in love with the woman he loves. So batik clothing reflects people who wear batik clothes and show the mood of the wearer. So that batik motif was created to distinguish who wearing batik or ageman kraton different from ageman used by ordinary people. And Pak Gunawan added from the positive side can be interpreted that the batik can show the origin or the rank of someone but from the negative side people can not interpret the batik motif is used. They just assume that batik motif is just a motif or pattern and the meaning and philosophy of what is contained in the pattern or motive. Further, also batik as an insulator.

Gunawan Setiawan also informed if someone or society wanted to enter into the palace complex, anyone should adjust to the clothes that should be worn in the palace. There are no exceptions to who came or visited the palace. If it is applied now, it will be a very big attraction for the increase of tourism in Surakarta City and will have an impact for the Creator or Craftsman Batik to be more creative and innovate to their batik work.

If a region of batik motif many then the area shows prosperity in the area. This can be seen not possible someone working with hungry conditions. If the condition of the community prosperous, it will look many batik motifs created by the Craftsmen or Creator Batik. It happened in Surakarta, starting from Paku Buwono II until the last king in Surakarta Hadiningrat Kasunanan area. The use of batik for now with the grip or rules of motive or existing patterns are still adhered to or used in 2 (two) kingdoms namely Surakarta and Surakarta Keraton Mangkunegaran. According to him, batik is divided into 3 (three) namely

- a) Batik Saudagaran

Batik that can be used by anyone

- b) Batik Pakem

Batik that can only be used by royal citizens

- c) Traditional Batik

Unknown Batik which has not known its creator.

In ancient times prior to the Copyright Act, creators as well as craftsmen batik created batik only for personal satisfaction or pleasure. Most of the creator of batik in Surakarta, they will be proud if his batik creations are used by government agencies such as the Office of Cooperatives and Small and Medium Enterprises Surakarta City because the name of the creator will always be

remembered. Thus, according to him, the award is not only in the form of money but the award can also be immaterial form such as awarding by the Government to the creator of batik on special occasions for example invited on the Independence Day of Indonesia on August 17 at the Office or Keraton by giving awards in the form charter awards about his batik creations, or may be invited to a comparative study to places in the Outer Islands for non-batik copyrighted works such as in West Sumatra or others as an additional reference for the Creator of batik in Surakarta.

He also suggested that the Government make special rules for the use of batik from young to old age using batik not only at certain events but has become a culture for the people of Indonesia. It is emphasized, so that people love the works of batik owned by Indonesia. The Government must make breakthroughs, so that the work of copyrighted batik can be grounded and can increase the export of batik to foreign countries so that it will bring impact to the welfare for the Creator as well as batik craftsmen in Surakarta. There is a special award for the Creator as well as the artisans of batik from the State. He said the payment of copyright registration is considered too expensive and takes a long time, and also the proposal for those who create the latest batik motif or work that one month more than 20 (twenty), only pay Rp 50.000 only. So that the Creator as well as batik craftsmen will compete to create more of his work and register all his works to the Directorate General of Intellectual Property Law and Human Rights of the Republic of Indonesia. Although Copyright involves a negative declarative system which means that registration is a legal presumption only, and is not a proof of ownership of a work. Conversely in this case, industrial rights such as patents, brands, integrated circuit layouts, and industrial designs must first be registered by the Creator (Owner). So that way, will get juridical recognition for example in the case of patent. With the invention in the field of technology applied in the field of industry.

The purpose of legal protection in the field of Copyright is to realize protection in the economic field of the creator. Thus Intellectual Property is a physical manifestation of a practical, creative or artistic idea with certain ways of obtaining legal protection. In the field of economics, the application of various forms of Intellectual Property is applied to produce and market certain goods or services so that it becomes an industrial right.

The problem of legal protection of batik paintwork faced by the businessmen and craftsmen Batik has not fulfilled the value of justice Pancasila. This is due to the low Human Resources creator or craftsman Batik, where the level of education of the Creator or Craftsman Batik in Surakarta is a high school graduate, it affects the level of knowledge about the importance of copyright protection in this case the work of batik is very minimal. Further culture of creator Batik that they think if the creation they created actually comes from Allah SWT. Without the intervention of Allah SWT, a creator or craftsman Batik can not create a very beautiful work of batik and can create at least 2 (two) works of batik in one day. Therefore, if anyone imitates or plagiarizes the work of batik that they create, they will not make any demands to the plagiarizing parties or those who do are small entrepreneurs. And on the other hand the Cost of Copyright Registration is not balanced with productivity in creating batik.

2. Ideal Construction of Legal Protection of Batik Copyrights Based on Pancasila Justice Value

According to the philosophy of European countries belonging to the Bern Convention, the copyright is regarded as a natural right of the author personally, but according to the philosophy of Latin American countries, copyright is seen as a monopoly given to be developed and stimulated works creators in the public interest.¹⁷

According to Sundargo Gautama, the World Copyright Convention (UCC) is an attempt to bring together the flows of Europe and America with respect to Copyright issues. It is undeniable that there are two major fronts, namely European countries incorporated in the Bern Convention and Latin American countries incorporated in various Inter-American Conventions on Copyright.¹⁸

This Continental European conception can be likened to the principles of the French revolution that promote individual rights. In the United States and Latin American countries, one of the reasons why not willing to participate in the Bern Convention because of this convention there are no formalities for the realization of copyright and protection. Conversely, in the American conception required various formalities for the creation of copyright. Precisely to bring these two systems together, UNESCO has held various businesses and has produced the UCC (Universal Copyright Convention).

In the Berne Convention for the Protection of Literary (Art) and Art (Artistic), signed September 9, 1886, stipulates:

"Contracting States establish a union to protect the rights of authors of their literary creations and their artistic creations (Article 1)."

The main reason for the convention of the 1886 Bern Convention is that States parties to the Convention have a wish, such as the reasons of states to grant special rights to the creator, and the right to enjoy material benefits from the creations without the permission of their authors. According to Arpad Bogisch, it is believed that the underlying reason is a sense of justice. *Justitia fundamentum rei publicae*. Justice is the foundation of the republic. Without its preservation, no government can survive.¹⁹

¹⁷ Budi Santoso, *Dekonstruksi Hak Cipta Indonesia*, Semarang : Pustaka Magister, 2012, Page 45-46.

¹⁸ Pernyataan Sundargo Gautama dikutip dari buku karya Budi Santoso, *Dekonstruksi Hak Cipta Indonesia*, Semarang : Pustaka Magister, 2012, Page 4.

¹⁹ Pernyataan Arpad Bogisch dikutip dari buku karya Suyud Margono, *Hukum Hak Cipta Indonesia: Teori dan Analisis Harmonisasi World Trade Organization (WTO-TRIPs Agreement)*, Bogor: Ghalia Indonesia, 2010, Page 31.

On the basis of that thought, the Bern Convention, as a convention in the oldest copyright field in the world, since its birth until January 1, 1886, has many member states. Altogether, 117 countries ratified it. The Netherlands on November 1, 1912 also enacted its participation in the Bern Convention, subsequently applying the implementation of the Berne Convention in Indonesia (Dutch East Indies) based on the principle of concordance in Indonesia. The revision was made on 13 November 1908 in Berlin. The events experienced by Indonesia (Dutch East Indies) at that time, were also experienced by some former colonial countries or under the administration of the British Government which signed the Bern Convention on December 5, 1887. The countries in question are Australia, Canada, India, New Zealand and South Africa.²⁰

The Bern Convention on the Protection of Art and Literature is an international agreement on copyright, first approved in Bern, Switzerland in 1886. The Berne Convention followed the steps of the Paris Convention in 1883, which in a similar way has established an international framework for protection of intellectual property other, that is patent, brand, and industrial design. The Bern Convention was revised in Paris in 1896 and in Berlin in 1908, settled at Bern in 1914, revised in Rome in 1928, in Brussels in 1948, in Stockholm in 1967 and in Paris in 1971, and amended at in 1979. In January 2006, there were 172 member states of the Bern Convention. A full list of participants of this Convention is available, organized by country name or organized by the date of its enactment in the respective country.²¹

Article 3 (three) may also be concluded one notion that in addition to the original works (from the first creator) protected also works which include; translations, adaptations, musical arrangements, other productions in the form of adaptations of a work of literature or art, including photographic works.

One of the most important things in the Berne Convention is about the protection it provides to the creators or rights holders.

Article 5 (five) (after being revised in Paris in 1971) is the most important article. According to this article the participants will enjoy the same protection as theirs in their own country or the protection afforded by this Convention. In other words, the creators who are citizens of one of the countries which are bound by this Convention enjoy the enjoyment of protection in the states of this Union. From the original text of article 5 of the Berne Convention it reads:

Author shall enjoy in the respect of which the country of origin is the right granted by this convention.

The Bern Convention has undergone revision and refinement. Significant improvements are with the introduction of protocols (supplementary or supplementary of a major treaty) concerned with the interests of developing countries and this is accepted in revision in Stockholm on 14 July 1967.

Then this protocol has been published in a separate appendix (appendix) in this Convention. This is affirmed by article 21 of the text of the Bern Convention which says, "Specific provisions pertaining to developing countries are incorporated in their own appendix, this appendix is an integral part of this convention". From the original text of article 21 of the Berne Convention it reads: Special provisions of developing countries are included in the Appendix. These exclusions or reserves shall only be applicable to those States which ratify the protocols in question. A country wishing to make such an exemption may do so for its economic, social or cultural interest.²²

Since its entry into force, the Bern Convention, classified as the Law Making Treaty, is open to all non-member states. Participation as a new member country shall be conducted by ratifying it and submitting the ratification to the Director General of WIPO. The participation of a country as a member of the Bern Convention, raises the obligation of participating countries to apply in its national legislation in the field of copyright, the three basic principles adopted by the Berne Convention give three principles:

- 1) The National Treatment Principle, a Work originating from one of the Contracting States (ie the creation of a citizen, a contracting country, or a work first published in a Contracting State) shall be accorded the same copyright protection as obtained the creation of a citizen creator himself.
- 2) Principle of Automatic Protection, Provision of legal protection must be given directly without having to comply with any conditions (must not be upon compliance with any formality).
- 3) The Principle of Independence of Protection A legal protection is provided without having to rely on the legal protection of the country of origin of the creator.

This arrangement concerns the setting of minimum standards of legal protection of the inventions, the rights of the creator, and the period of protection afforded, the arrangements are:

1. A protected creation is all creation in the field of literature, science, and art in any form of its embodiment.
2. Unless specified by reservation, limitation or exclusion classified as exclusive rights:

²⁰ Suyud Margono, *Hukum Hak Cipta Indonesia: Teori dan Analisis Harmonisasi World Trade Organization (WTO-TRIPS Agreement)*, Bogor: Ghalia Indonesia, 2010, Page 31.

²¹ Popy Komala Sari, "Konvensi Internasional tentang Hak Cipta", 2015, (<https://popykomalasari12.wordpress.com/2015/06/08/konvensi-internasional-tentang-hak-cipta/>, diakses 24 Januari 2017).

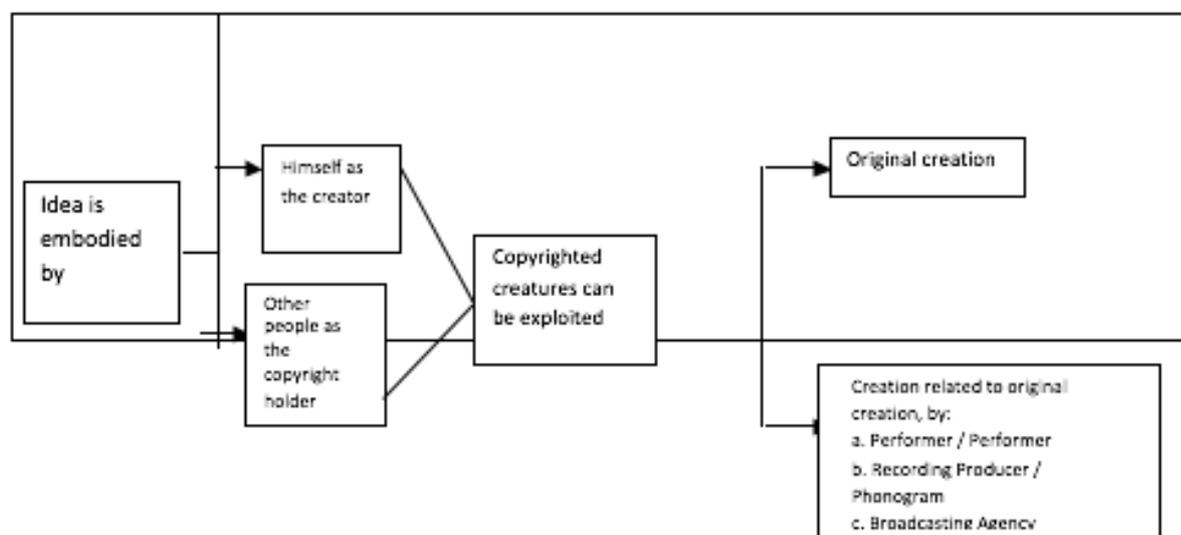
²² H. OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Jakarta: Raja Grafindo Persada, 2013, Page 218.

- i) The right to translate;
- ii) The right to perform in public the creation of drama, musical drama, and musical creation;
- iii) The right to declare (to recite) in public a literary creation;
- iv) Broadcasting rights;
- v) The right to reproduce in any manner and form of embodiment;
- vi) the right to use his creations as material for audiovisual creations;
- vii) The right to make arrangements and adaptations (adaptations) of a work.

The Bern Convention also regulates a set of rights called "moral degradation", the right of the creator to claim to be the creator of a work and the right of the creator to file an objection against any act intended to alter, diminish or add to the authenticity of his creation which may harm the honor and the reputation of the creator.

Copyright under Article 1 Number 1 of the Law of the Republic of Indonesia Number 28 of 2014 is "The exclusive right of the authors that arise automatically on the basis of the declarative principle after a work is manifested in a tangible form without prejudice to restrictions in accordance with the laws and regulations.

TABLE
Ideas That Become Creation and Related Rights



The above table shows an idea that has been translated into a creation and then the creation is exploited so that a creation must have originality or originality in order to enjoy the rights granted by the Copyright Act. While the authenticity of a work of creation is closely related to the form of the embodiment of a creation in this case related to the work of Cipta Batik. In addition, any copyrighted work created with the element of authenticity and not plagiarism or plagiarism is the exclusive right of the creator or holder to announce or reproduce the work of the batik so that no other person may reproduce or duplicate the work except by the author's or receiver's permission the copyright. So the exclusive right contains a limited monopoly meaning to the creative work created by the creator.

By basing the value of justice existing in the Pancasila principles, the granting of exclusive rights to the work of batik created by the creator or right holders that is fairly applicable is a monopoly that is limited. Meanwhile, according to Roscoe Pound's Opinion through "law of tool of social engineering" that law as a means of social engineering, the law is not passive, but must be used to change a certain circumstances in the direction intended by the community. The law creates a relatively new condition and condition, not only regulating the existing state so that law as a tool for the renewal of society which is a philosophical legal objective. The law is a tool of renewal and has been accepted by both developing and developed countries. Thus, in addition to being a law of tool of social engineering, the Law also serves as an "agent of modernization and instrument of social engineering" which means legal development can also go hand in hand with economic development and development.

Constitutionally, the state is obliged to provide legal protection for all kinds of creation including works of batik created through science, technology, art and literature that have strategic role in supporting nation development and prosperity as mandated by the Constitution of the Republic of Indonesia Year 1945. Ideal Construction of Legal Protection of Batik Creature Based on Pancasila Justice Value, that is by applying communal values for batik creator in Surakarta city. It is with the establishment of institutions / container associations of creators and craftsmen batik.

D. CONCLUSION

1. The problem of legal protection of the work of batik creativity faced by the entrepreneurs and craftsmen Batik do not meet the value of justice Pancasila, this is due to the low Human Resources creator or craftsman Batik, where the level of education of the creator or craftsmen Batik in Surakarta is a high school graduate, therefore impact on the level of knowledge about the importance of copyright protection in this case the work of batik is very minimal. Further the culture of creator Batik, that they think if the creation they created actually comes from Allah SWT. Without the intervention of Allah SWT, a creator or craftsman Batik can not create a very beautiful work of batik and can create at least 2 (two) works of batik in one day. Therefore, if anyone imitates or plagiarizes the work of batik that they create, they will not make any demands to the plagiarizing parties or those who do are small entrepreneurs. And on the other hand the Cost of Copyright Registration is not balanced with productivity in creating batik.
2. Ideal construction of legal protection of batik works based on the value of justice Pancasila, namely by mengedapankan communal values for creators and pengarajin batik in the city of Surakarta. It is with the establishment of institutions / container associations of creators and craftsmen batik.

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