

ABSTRAK

Perlindungan Hak Cipta diawali dengan Konvensi Bern tentang Perlindungan Karya Seni dan Sastra. Hak Cipta sebagai bagian dari HAM, tercantum dalam Pasal 27 Paragraf 2 Deklarasi HAM Sedunia, dan juga dalam tujuan Pembangunan Nasional Indonesia tercantum dalam Pembukaan UUD 1945. "menyejahterakan kehidupan bangsa".

Dalam rangka mencapai masyarakat adil dan makmur dan mampu memajukan kesejahteraan umum, negara Indonesia harus berupaya meraihnya dengan berbagai strategi, salah satunya adalah ikut serta dalam WTO dan RIPS

Presiden Susilo Bambang Yudhoyono pada tahun 2009 telah mencanangkan bahwa Ekonomi Kreatif menjadi "Tulang Punggung" perekonomian Indonesia. Hal ini karena Ekonomi Kreatif merupakan "soft power" yang unik bagi Indonesia, mengingat Indonesia memiliki potensi besar karena kaya akan sumber daya manusia, sumber daya alam dan keanekaragaman budaya.

Fakta bahwa banyak orang Indonesia memiliki reputasi tingkat dunia dalam bidang animasi/film. Nama-nama seperti *Andre Surya*, *Michael Reynold Tagore Rini Triyani Sugianto*, *Griselda Sastrawinata*, *Ronny Gani Teja* terlibat dalam pembuatan berbagai film besar seperti *Spiderman* atau *The Avenger*. Namun sayang banyak animator yang masih kurang menyadari perlindungan hak cipta animasi sebagai kreasi intelektual mereka,

Penelitian disertasi ini merupakan penelitian hukum dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual, dengan perbandingan hukum Amerika (tradisi 'common law') dan Jepang (tradisi civil law) karena kreasi animasi di kedua negara tersebut sangat maju.

Hasil penelitian menunjukkan, **pertama**, landasan filosofis hak kekayaan intelektual adalah sebagai hak milik. Hal ini karena Indonesia mewarisi tradisi hukum civil dipengaruhi oleh GWF. Hegel, dilengkapi kekhususan Pancasila. Prinsip hukum perlindungan hak cipta karya animasi mencakup: *standard of copyright ability*, *automatic protection*, *terms of protection - life +70 years after the death of the author*, *substantive exclusive rights* yang berdimensi hak ekonomi dan hak moral, dengan batasan (*limitation 10 copyright*), *fair dealing* atau *fair use*. **Kedua**, kendala doktrinal perlindungan hak cipta animasi dalam rangka ekonomi kreatif adalah: (a) doktrin perlindungan otomatis, (b) doktrin dikotomi ide dan ekspresi, dan (c) doktrin *limitation*, *fair dealing*, *fair use*. Sedangkan, kendala normatif meliputi: (a) ketiadaan norma originalitas, (b) kekaburan norma fiksasi, (c) ketiadaan norma larangan ciptaan yang melanggar hukum, (d) kekaburan norma hak substantif, dan (e) ketiadaan norma *resale royally*. Akibatnya, kendala praktik adalah: (a) penegakan hukum kurang, akibat kurang pahamiannya para penegak hukum tentang perlindungan hak cipta yang otomatis, sehingga mereka selalu meminta sertifikat Hak Cipta dan (b) budaya hukum lemah, akibat kurangnya perhatian tentang hak cipta oleh pencipta dan/atau pelaku ekonomi kreatif, sekaligus hilangnya apresiasi masyarakat terhadap kreasi intelektual orang lain, serta minimnya peran industri untuk mendukung pelaku ekonomi kreatif.

Ketiga, dua contoh *best practice* yang dapat ditiru: Amerika melindungi karya animasi melalui perlindungan program komputer termasuk pelaksanaan *beta test*, *copyright clearance*, dengan menggunakan standar *sufficient Delineation* dan *Story Being Told*, dsb. Sedangkan, contoh terbaik berdasarkan *triple helix* adalah yang dilakukan Jepang yang sukses menggalang kolaborasi, sinergi dan integritas antara pemerintah, industri, dan universitas dalam pengembangan ekonomi kreatif.

Kata kunci: perlindungan hukum, hak cipta, karya animasi, ekonomi kreatif.

ABSTRACT

Copyright protection begins with the Berne Convention on the Protection of Art and Literature. Copyright as part of human rights, as stated in Article 27 Paragraph 2 of the World Declaration of Human Rights, and also in the objectives of the National Development in Indonesia it is stated in the Preamble to the 1945 Constitution. "to purpose the life of the nation".

In order to achieve justice and prosperity and be able to advance the general welfare, the Indonesian state must strive to achieve it with various strategies, one of which is to participate in WTO TRIPS.

President Susilo Bambang Yudhoyono in 2009 declared that the Creative Economy would become the "backbone" of the Indonesian economy. This is because the Creative Economy is a unique "soft power" for Indonesia, considering that Indonesia has great potential due to its richness in human resources, natural resources and cultural diversity.

The fact that many Indonesians have a worldwide reputation in the animation / film field. Name-nya. Like Andre Surya. Michael Reynold Tagore Rini Triyani Sugianto Griselda literary. Ronny Gani Teja is involved in making various major films. as. Spidermen. Or the Avenger. However, unfortunately many animators are still not aware of the protection of animation copyright as their intellectual creation,

This dissertation research is a legal research with a statutory approach and a conceptual approach, with a comparison of American law ('common law tradition) and Japanese (civil law tradition) because animation creations in the two countries are very advanced.

The results show, **first**, the philosophical foundation of intellectual property rights is as property rights. This is because Indonesia inherited a civil law tradition influenced by the GWF. Hegel, equipped with the specialty of Pancasila. The legal principles of copyright protection for animated works include: standard of copyright ability, automatic protection, terms of protection · life +70 years after the death of the author, substantive exclusive rights with the dimensions of economic rights and moral rights. with limitation (10 copyright), fair dealing or fair use.

Second, the doctrinal constraints of animation copyright protection in the creative economy are: (a) the doctrine of automatic protection, (b) the doctrine of the dichotomy of ideas and expressions, and (c) the doctrine of limitation, fair dealing, fair use. Meanwhile, normative constraints include: (a) the absence of originality norms. (b) vagueness of fixation norms, (c) absence of norms of prohibition of works that violate the law, (d) vagueness of norms of substantive rights, and (e) absence of resale royalty norms. Finally, the practical constraints are: (a) lack of law enforcement, due to the lack of understanding by law enforcers about automatic copyright protection, so that they always ask for Copyright certificates and (b) weak legal culture, due to lack of understanding of copyright by creators and / or creative economy actors, as well as the loss of public appreciation for other people's intellectual creations, as well as the minimal role of industry in supporting creative economy actors.

Third, two examples of best practices that can be imitated: America protects animation works through the protection of computer programs including the implementation of beta tests, copyright clearance, using the standards of sufficient delineation and Story Being Told, etc. Meanwhile, the best example based on the triple helix is what has been done by Japan which has succeeded in garnering collaboration, synergy and integrity between the government, industry and universities in developing the creative economy.

Keywords: legal protection, copyright, animated works, creative economy.