CHAPTER I

INTRODUCTION

1.1 Background

Indonesia is a pluralistic country in terms of culture underneath the city lights, in which each province and region has their own culture and development. Simple example can be seen in variation of local dialect, food, and traditions between Jakarta and Bandung, contrary to the short distance between those two cities, and such example does not represent the totality of Indonesian culture. There's also some matter such as traditional music (including its instrument), dance, shadow puppet (such as *wayang*), batik (in which there's a lot of type of batik based on its geographical significance and historical background), and many more, makes Indonesia in possession of priceless intangible assets. As such, it is such a waste of potential that Indonesian government and society does not maximize these assets for economical benefits. Indonesia with all of these rich culture that we have, definitely has protection in terms of law which is none other than Copyright law that can be applied to said cultural expression. Even so, the theory is different with the field practices. There are often some efforts by neighboring countries to steal said assets, ignoring the existence and purpose of copyright law itself.

The dispute of self-proclamation towards ownership of various culture, according to Suyud Magrono affected by the indefinite regulations that governs

the protection and preservation of traditional cultures a.k.a. folklore.[1] Traditional cultures also lack in popularity and attention by both Indonesian society and government. It desperately needed to publicize and registered the cultural arts subjected to international intellectual property rights protection which the government and society almost never confront. The effects of protection would avoid dispute between countries.[2]

According to WIPO, Copyright is a legal term describing rights given to the creator for their literary and artistic works.[3]Copyright itself is part of the Intellectual property rights, that is also known as intangible property, creative property, and incorporeal property. Copyright protection is the protection of rights that refers to the first known model in the western world (America and Western Europe). The first developed countries in developing science and technology, followed by advances in industry and commerce, all of which gave rise to economic rights (property rights) to seek for those rights to be protected by legal history and then came the protection in the form of protection Intellectual Property Rights embodied in the form of normative rules. The West is the first part of the world to introduce models of legal protection of his work in science, art, and literature, known as copyrights.[4] According to M. Djumhana and R.

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[1]Suyud Margono. *Hukum Hak Kekayaan Intelektual (HKI)*. (Bandung, Jawa Barat: Penerbit Pustaka Reka Cipta, 2015), page 1
[2]Suyud Margono. Ibid, page 2
[3] "Copyright." WIPO - World Intellectual Property Organization. Accessed June 7, 2017. http://www.wipo.int/about-ip/en/copyright.html.
[4] OK Saidin. Sejarah dan politik hukum hak cipta. (Jakarta: Divisi Buku Perguruan Tinggi, PT RajaGrafindo Persada, 2016), page 3

Djubaedillah, Copyright is the right of nature, and according to this principle is absolute, and protected its rights as long as the creator lives and a few years after. They also argued that the nature of Copyright is part of an abstract property, which is the mastery of the outcomes of work, of ideas, of thoughts, of which the protection has limited time, and the owner of the copyright has exclusive character (rights that's owned by the creator to announce or reproduce the Works, which arises automatically after a Work is born without prejudice to restrictions under applicable legislation).[5] According to Suyud Margono, what should be the principle to differentiate Copyright Protection with other Intellectual Property Right is that copyright protects literary works and artistic works with all of its development in this world.[6] WIPO, as an international organization that manage international property rights, gave explanation on Intellectual property, in which:

"intellectual property (IP) refers to creations of the mind: inventions, literary, and artistic works, and symbols, names, images, and designs used in commerce."[7]

Quoting from Convention of Establishing the World Intellectual Property Organization, Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979, in article 2 paragraph (viii), it is stated that "intellectual

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[5] Muhamad Djumhana and R. Djubaedillah. *Hak milik intelektual: sejarah, teori dan prakteknya di Indonesia.* (Bandung: Citra Aditya Bakti, 1993), page 70

[6] Suyud Margono. *Hukum Cipta di Indonesia: Teori dan Analisis Harmonisasi Ketentuan World Trade Organization (WTO) – TRIPs Agreement.* (Ciawi, Bogor: Ghalia Indonesia, 2010), page 21

[7] "What is Intellectual Property?" WIPO - World Intellectual Property Organization. Accessed June 7, 2017. http://www.wipo.int/about-ip/en.

property" shall include the rights relating to:[8]

– literary, artistic and scientific works,

– performances of performing artists, phonograms, and broadcasts,

– inventions in all fields of human endeavor,

– scientific discoveries,

– industrial designs,

– trademarks, service marks, and commercial names and designations,

– protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

The scope of Intellectual Property rights above is basically divided into 2 (two) categories as follows:[9]

a. Industrial Property Right

This category involves invention (patent), trademark, Industrial Design, and Geographical Indication.

b. Copyright

This category covers literary and artistic works, such as novels;

[8] "Convention Establishing the World Intellectual Property Organization." WIPO-Administered Treaties: Convention Establishing the World Intellectual Property Organization. Accessed June 7, 2017. http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283833.
[9] Muhamad Djumhana and R. Djubaedillah. *Opcit, p*age 17

poetry; drama; film; Music work; Artistic works, such as drawings, paintings, photographs, and sculptures, as well as architectural design related matter. With copyright including artists performing in their performances, record producers in their recordings, and people from radio broadcasters and television programs.

For the grouping, TRIPs has categorized that Intellectual Property Rights includes Copyright Trademarks; Patent; Industrial Design; Geographical Indication; Layout design of Integrated Circuits; and Protection of Undisclosed Information. As such, in the view of Indonesian Law, the field of Intellectual Property Rights consists of:[10]

a. Copyright, and other rights related to copyright, including traditional knowledge in the field of culture, such as folklore that can be in form of expression of folktale, music, dance, or song.

b. Industrial Property right, consist of:

1) Patent, including traditional knowledge in the field of medical, industry. Agriculture, and other relevant field.

2) Industrial Design, including traditional knowledge in the field of design, handicraft and symbols.

3) Trademark, including indication of origin or indication of source, and appellations of origin.

4) Layout Design of Integrated Circuits.

[10] *ibid*, page 23-24

5) Trade Secrets.

6) Varieties of Plants.

Copyright is the exclusive rights of the creator that arise automatically based on the principle of declarative after an invention is embodied in a tangible form without prejudice to the restrictions in accordance with the provisions of the legislation,[11] whereas creator is a person or people that by independently or collectively, produce a creation that has a unique and personal character.[12] In theory, Copyright gave rights towards the creator to use their creation themselves, or gave permission to other party to use their creation. Copyright protection, universally, is to provide protection for art works, literary works, and science.[13]

At first, the definition of Copyright is a sentence to describe right to duplicate or multiply a copyright works. In England, the definition of Copyright is used as a word to depicts the right to duplicate or multiply a copyright works. In the United Kingdom the use of the term copyright first evolved to illustrate the concept of protecting publishers from duplicating books by others who have no right to publish, where the protection is granted not to the author but to the publisher. This protection is intended to provide guarantee for the publisher's infestation in funding the printing of a work.[14] After going through various developments, furthermore, protection in copyright law places more emphasis on the protection of authors, not only publishers, which also protects not only the

[11] Article 1 paragraph (1) of Law no. 28 year 2014 regarding Copyright
[12] Article 1 paragraph (2) of Law no 28 year 2014 regarding Copyright
[13] Suyud Margono. *Hukum Hak Kekayaan Intelektual (HKI)*. *op.cit*, page 132
[14]Muhamad Djumhana and R. Djubaedillah. *op.cit*, page 47

field of books, but is extended to the field of music, drama, and artistic work. Then touch the field of technology along with the development of the said field, for example from copyrighted technology is cinematography, photography, voice recording, and broadcasting.

Later on, in formulating a system that can be implemented globally, United Kingdom, as a large country that embrace common law system; France and Germany as party from large countries that submitted to Civil Law system, and other country, agree to make a convention that was made from the result of compromise spirit from both system, hence the Berne Convention 1886 (International Convention for the Protection of Literary and Artistic Work) was made.[15] Berne Convention 1886, that last time got revised at 1979, has three basic principle that it embraced, which are as follows:[16]

1) Principle of "national treatment"

Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals.

2) Principle of "automatic" protection”

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[15] *ibid*, page 53

[16] "Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)." WIPO - World Intellectual Property Organization. Accessed June 10, 2017. http://www.wipo.int/treaties/en/ip/berne/summary_berne.html.

Protection must not be conditional upon compliance with any formality.

3) Principle of "independence" of protection

Protection is independent of the existence of protection in the country of origin of the work. If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.

In the America continent, a few years after the Berne convention was made, the jurist congress was held in Montevideo, January 11, 1889. The result of the congress later on adopted as Principles of American international law, which is recognized through the Pan-American conference, that was held starting from October 2, 1889 until April 1890.[17] On April 14, 1890, Pan American Union was created by the United States and several Latin American countries to address matters of common interest.[18] This Union made Convention regarding the protection of Copyright namely Inter-American Convention on the Rights of the Author in Literary, Scientific, and Artistic Works, in which includes the mater of the use of copyright notice (© symbol) and "All Right Reserved" words.[19] Whereas it is written in Article X of the said convention that:

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[17] Muhamad Djumhana and R. Djubaedillah. *op.cit*, page 54

[18] "Pan American Union." Library of Congress. Accessed June 18, 2017. https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0129.pdf.

[19] Muhamad Djumhanaand R. Djubaedillah. *op.cit*, page 54

"In order to facilitate the utilization of literary, scientific, and artistic works, the Contracting States agree to encourage the use on such works of the expression "Copyright" or its abbreviation "COPR." or the letter "c" enclosed within a circle, followed by the year in which the protection begins, the name and address of the copyright owner, and the place of origin of the work. This information should appear on the reverse of the title page in the case of a written work, or in some accessible place according to the nature of the work, such as the margin, on the back, permanent base, pedestal, or the material on which the work is mounted. However, notice of copyright in this or any other form shall not be interpreted as a condition of protection of the work under the provisions of the present Convention."[20]

Post World War II, at 1947, arises the idea to make the legal system of copyright to be universal, hence, at September 1952 in Geneva, the Universal Copyright Convention (UCC) was made. this convention includes the set of rules regarding the obligation for every works that want to be protected to use the © symbol including the name of the creator, in order to show that the said works has been protected by the copyright from their home country, and has been registered under the protection of copyright.[21] Afterwards, other conventions that dealt with specific aspects of copyright were created, such as the European Agreement on the Protection Television Broadcast in 1960 (Strasbourg); International

[20] "Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works." IP Regional Treaties: Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works. Accessed June 18, 2017. http://www.wipo.int/wipolex/en/other_treaties/text.jsp?file_id=215229.

[21] Muhamad Djumhana and R. Djubaedillah. *op.cit*, page 56

Convention for Performers, Producers of Phonograms and Broadcasting Organization in 1961 (Rome); Convention for the Protection of Phonograms Against Unauthorized Duplication of their Phonograms in 1971 (Geneva); Agreement for the Protection of Type Faces and their International Deposit in 1973 (Vienna); and the Convention Relating to the Distribution of the Program Signals Transmitted by Satellite in 1974 (Brussels).

In December 1996, the World Intellectual Property Organization (WIPO) invited 160 countries to discuss the modification of conventional norms and make it a new norm for regulating intellectual property rights, in which the scope proposed to be modified is the creation, adoption, transmission and distribution of works through digital medium. The result of the meeting is the Copyright Treaty and Performance and Phonogram Treaty, in which at the same year, WIPO also made treaty that rules about Copyright in the Performance and Phonogram, called WIPO Performances and Phonogram Treaty.[22] Indonesia, according to WIPO, is part of Berne Convention, as Indonesia ratify the convention in June 5, 1997, and the convention started to be in force at September 5, 1997.[23]

As for Culture, or in Netherland called Cultuur, is based on Latin word "Colere", which means cultivate, work, fertilize, and develop, especially in cultivates land and farming. From this meaning develops the culture that is "all the power and human activity to cultivate and change". From Indonesian language

[22] *ibid*, page 58
[23] "WIPO-Administered Treaties." WIPO - World Intellectual Property Organization. Accessed June 18, 2017. http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=15.

itself *budaya* (culture) came from Sanskrit *buddhayah*, which is the plural from *buddhi* that means mind (*budi*) and reason (*akal*).[24] M.M Djojodiguno propose a theory that culture, is the power of the mind, which is in the form of *cipta*, *karsa*, and *rasa*. *Cipta* is the human desire to know the secrets of all things in his experience, including the experience of the birth and the mind; *Karsa* is the human longing to realize about "*sangkan paran*", which is from where the human before birth (sangkan), and where human after death (*paran*), which results in the form of religious norms / beliefs, and; *Rasa*, which is the human longing for beauty, giving rise to the urge to enjoy beauty.[25]

According to Koentjaraningrat, many people interpret the concept of culture in a limited sense, as it is the mind, work, and result of human beings who fulfill their desire for beauty, which if we put it briefly, culture is art. On the other hand, there are certain group of society that define the concept of culture to be really broad, considering that they define culture as a whole cognitive, creation, and human's output that weren't rooted from their conscience, and only able to be triggered by man after the learning process.[26] The results of human culture can be detailed as follows:[27]

1) Material culture (physical, corporeal), means culture in form of tangible material, that the characteristic includes matter made by human, such as house, building, machine,

[24] Joko Tri Prasetya. *Ilmu budaya dasar*. (Jakarta: Rineka Cipta, 1991), page 28
[25] Djoko Widagdho. *Ilmu budaya dasar*. (Jakarta: Penerbit Bumi Aksara, 1999), page 20
[26] Koentjaraningrat. *Kebudayaan Mentalitas dan Pembangunan*. 1974, page 1
[27] Djoko Widagdho. *op.cit*, page 21

clothes, and others.

2) Immaterial culture (inward, spiritual) means all things that can't be seen or feel (intangible), such as civilization (culture), customs, religion, language, science, and so on.

As for traditional culture, the definition of it can be seen from the definition of traditional knowledge, since traditional culture is one of the product, and part of traditional knowledge. Since, according to Suyud Margono, the scope of traditional knowledge can be categorized into five major groups, namely:[28]

1) Agricultural Knowledge (Biodiversity);
2) Knowledge of Environmental Management;
3) Knowledge of Medicines;
4) Manufacturing Knowledge;
5) Knowledge of Expression of folklore, where traditional culture belongs to this category.

The protection of traditional knowledge within the scope of Intellectual Property Rights is essentially a system of protection and respect for the work of the results of human intellectual. The development of intellectual property rights has brought various interests, especially the interests of modern life and industry, in which later forget the interests of the indigenous people, whereas many of the results used by modern society and industry is a actually a traditional indigenous

[28] Suyud Margono. *Hukum Hak Kekayaan Intelektual (HKI)*. Op.cit, page 187

knowledge and technology.[29] A knowledge can be categorized as traditional knowledge when such knowledge:[30]

a. Taught and implemented from generation to generation

b. It is knowledge of its environment and its relationship to everything

c. It is holistic, so it can not be separated from the people who build it

d. It is a way of life, which is used jointly by the community, and hence there are values of society

The basic definition of traditional knowledge is still debated, even within the international sphere, and is heavily dependent on the specific characteristics and circumstances of a country. One of the many definitions referred by people is that the one by World Intellectual Property Organization (WIPO), namely:[31]

"Traditional based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition-based innovations and creations resulting form intellectual activity in the industrial, scientific, literary or artistic fields".

From the above understanding it can be seen that the definition of traditional knowledge is a traditional knowledge owned by local communities or areas that are hereditary. Understanding traditional knowledge can be seen in more detail in article 8 J Traditional Knowledge, Innovations, and Practices

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[29] *Ibid, page* 179
[30] ibid, page 180
[31] WIPO. *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.* Geneva: The Secretarist. 2002, page 11

Introduction, which states:[32]

"Traditional Knowledge refers to the knowledge, innovations, and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs folklore, proverbs, cultural values, beliefs, ritual, community laws, local language, and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields such as agriculture, fisheries, health, horticulture, and forestry".

Meanwhile, the indigenous people themselves have their own understanding of traditional knowledge. According to them, traditional knowledge are:[33]

1) Traditional knowledge is the result of practical thinking based on teaching and experience from generation to generation.
2) Traditional knowledge is knowledge in the village area.
3) Traditional knowledge can not be separated from the community that holds it, including health, spiritual, culture and language from the community that holds. This is a way of life. Traditional knowledge gives credibility to the community that holds.

As for folklore, until now, folklore finds it difficult to find the perfect

[32] Suyud Margono. *Hukum Hak Kekayaan Intelektual (HKI)*. Op.cit, page 182
[33] *ibid*, page 183

place in the domain or intellectual property domain, due to its impersonal and overriding nature, where folklore has more communal character, because folklore lives as a tradition or part of tradition. To be sure, when initially a folklore may be the result of a creation or an individual creation, in the development of these kind of works loses its identity and becomes a communal expression. From this sequence of facts comes the idea of establishing a "new" IPR standard to maintain a fair claim of mastery and ownership.[34]

Folklore can be generally defined through Model Provisions 1985, regarding Protected Expression of Folklore, Section 2 states:[35]

"*For the purpose of this (law), "expressions of folklore" means production consisting of characteristic elements of traditional artistic heritage developed and maintained by community of [insert name of country here] or by individuals reflecting the traditional artistic expectation of such a community in particular:*

i. Verbal expression, such as folk tales, folk poetry and riddles

ii. Musical expression, such as folk songs and instrumental music

iii. Expression by actions such as folk dances, plays, artistic forms r ritual, whether or not reduced to a material form; and

iv. Tangible expression such as:

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[34]Henry Soelistyo. *Hak kekayaan intelektual: konsepsi, opini, dan aktualisasi*. (Jagakarsa, Jakarta: Penaku, 2014), page 22

[35] "Model Provisions for National Laws on the Protection pf Expressions of Folklore Against Illicit Exploitation and other Prejudicial Actions" Accessed September 28, 2017. http://www.wipo.int/edocs/lexdocs/laws/en/unesco/unesco001en.pdf.

a. *Productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basket, basket weaving, needlework, textile, carpets, costumes;*
b. *Musical instruments*
c. *Architectural forms*"

Note that Model Provisions 1985 does not provide the definition of folklore for the purpose of avoiding conflict with other law documents.[36]

According to Danandjaja, the form of folklore are as follows:[37]

- Tales, saga, stories, folklore, ancient literature, verbal expression
- Folk songs, ethnic music (voice expression)
- People's dance, drama, ritual senim (expression by action)
- Picture, Painting, Carving, Sculpture, Ceramics, Fabrics (tangible expression)
- Handcrafted works

According to Model Provisions 1985, folklore expressions are subjected to authorization of the state with the exception of educational purposes.

According to Article 10 verse (2) of Copyright Law year 2002, the state owns the copyright towards all folklore originated from the geographical area of

[36] Henry Soelistyo. *Op.cit, p*age 24
[37] *ibid*, page 25

the nation. The status of the ownership shall become public property such as tales, saga, stories, folklore, ancient literature, hand crafted works etc. The ownership comes from the status of 'inheritance of geographical area' thus explain the argument of state-owned. The reason behind the concept of public property is to avoid monopolistic use in terms of economical value.[38] In Article 10 verse (3) for international (or non-citizen) exploitation it is stated that:[39]

"*... Non-citizen is required to obtain license from an institution in regards to said problem (exploitation).*"

The First problem of this definition comes from the fact that non-citizen does not include the existence of legal entity (although arguably personhood includes legal entity from Indonesian Civil Code), and secondly there are no clear definitions of the instance.[40] This creates a problem with authority which at minimum relates to four different Ministries which are Ministry of National Education, Ministry of Law and Human Rights, Ministry of Culture and Tourism, Ministry of Internal Affairs. Even the Model Provision 1985 acknowledge such fact according to Section 3 and Section 5.[41]

Folklore has a unique legal status provided by the Indonesian Intellectual Property Law. These expressions are considered as Public Domain, which suggest that the citizen may freely utilize it in any way possible. However, the

[38] *ibid*, page 26
[39] Article 10 paragraph (3) of Law no. 19 year 2002 regarding Copyright
[40] Henry Soelistyo. *Op.cit*, page 27
[41] *ibid*, page 28

contradiction comes from the 'whom' that utilize said folklore with economical. The problem comes from the appropriateness and fairness of utilization, in example, how much compensation must be given to the community who preserve the folklore may benefit from an entrepreneur who utilizes it from the business side.[42] It is why such topic is the pressure of international community to create regulations on folklore exploitation.

In itself, folklore is an inherited intellectual property thus it is owned publicly by the community.[43] The concept creates two sides of parties whom utilize and whom provide the folklore. Thus it needs equality towards the use and conservation as both acts must be rewarded justly.

Also, as we know Indonesia had a wide variety of folklore collection and source roster. With too many 'property' to keep track of, the threat of exploitation increases with more collection. The solution to this is inventory and documentation, or in general terms, registering the property with proof. The form shall be in data base (**Copyright Law 2002 Article 12 letter l**) which is defined as any form of data that may be displayed in a computer (or other digital devices). The protection of database does not diminish the rights of the creator. [44]

Considering the fact that we have so much beautiful culture, and we got protection called copyright law in our hand, it is considerably safe to say that we

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[42] *ibid*, page 29
[43] *ibid.*
[44] *ibid*, page 31

could be able to spread the identity of our culture, by doing a worldwide commercialization, as such commercialization has been covered in Internationally recognizable trade agreements, such as TRIPs and WTO agreement. By doing commercialization, it is hoped that another country would know or recognize the pattern/type/form of Indonesia's cultural product, in which could lead for such culture to become well known, and would attract people to buy it, use it, or at least be attract to it. By then, it would result to Indonesia's economic growth, Macro and Micro. However, the commercialization of culture has become quite an issue in the past, considering the case of *batik*, *rasa sayange* song, *Pendet* dance, angklung, and the latest one are *tortor* dance and musical instrument called *gondang sambilan*, that our neighbor country, Malaysia, proclaimed as their cultural inheritance. Even though, historically speaking, it is probable for countries to share same or similar culture, considering the history of it, as culture usually came from trading activities done from one county to another, for example batik actually brought and spread by traders from Deli to Indonesia, Malaysia, others, yet some other of the culture are somehow really similar, in terms of pattern, or any other thing that shall distinguished our culture than other countries, in which doesn't set aside the probability that our culture was indeed claimed as theirs. Such things would result in economical loss, considering that the said assets are one of the main reasons for tourist to visit Indonesia, or for consumer to buy/use our cultural product.

The really fits example regarding this matter is the case of I La Galigo. "*Sureq Galigo*" is an epic creation of myth of the Bugis from South Sulawesi. It

was written down as a manuscript around the 18th to 20th century which constitute as folklore. I La Galigo was a play that was inspired by the tale of *Sureq Galigo* appointed by the institution of Change Performing Arts, Milan, Italia. The story caught the attention of many audiences and successfully achieved international layer popularity since it was first performed in Esplande Main Theater Singapore. The performance was casted by Indonesian actors and artist for originality. The problem with the play comes from the fact that it was performed without the acknowledgement and license from the Indonesian Government. Considering the fact that the folklore originated from Bugis, thus the play was taken from the intellectual property own by Indonesia.[45]

The Concept of Copyright Law 1982 in article 10 states that:[46]

(1) State owns copyright over the works of historical. Prehistorical relics; paleo anthropology and other national cultural objects.

(2) A. The result of cultural works which owned by the public (such as stories, fairytales, sagas, legends, chronicles, calligraphy, arts etc.) is maintained and protected by the state.

B. The state owns copyright over it (everything mentioned above) towards international boundaries.

(3) Copyright over a work of art may be given to the state for national purposes with the acknowledgement of the creator by Presidential Decree on the basis of Council of Copyright's consideration.

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[45] *ibid*, page 274-276
[46] Article 10 of Law no. 6 year 1982 regarding Copyright

(4) The creator will be given compensation and appreciation set by the President

(5) Other regulation shall refer to Government Regulation

In 1987, fossils (paleo anthropology) are defined as objects that doesn't 'created' nor the result of human's intellect, thus excluded from the copyright law.[47] The contradiction comes from the concept of 'creator' and 'publicly owned' since a creation of art may in time lost its original creator and automatically falls under 'publicly owned' copyright. Even until 2002 the law never clearly refers the procedure of licensing.[48] The concept of national property in essence is any works in which the identity of the creator is unknown, where national property would be annulled when someone can prove the status of creator. Although the status of State Ownership towards copyright was created for the purpose of 'protection' against theft, in which applies to the status of ownership of I La Galigo in general sense, the status of exploitation is unclear since the actors, cast, and art director comes from the Indonesian.[49] The second problem comes with the conservation of culture since Indonesia had a terrible record of conservation, thus leaving the I La Galigo in a controversial status in terms of 'purpose' and 'use'. However, in other terms, the I La Galigo was proven to have high economic value in terms of profit thus might be proven beneficial to the state if it was licensed, thus makes us to be the actual party in loss.

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[47] Henry Soelistyo. *Op.cit,* page 277
[48] *Ibid,* page 278
[49] *Ibid,* page 279

From the statement above, it is shown that by having a commercial culture would lead to the issue of another country want to have it as their own personal cultural identity, and this is the matter that shall be disclosed and research about, in which whether or not the current copyright law that has been existed has and will be efficient to do such prevention and problem solving regarding this issue. There have been some changes, or amendment, of law regarding copyright, and the newest one when this thesis was written, is Law no. 28 year 2014, in which this law has clearly said in article 38 that the Copyright of the nation's traditional expression are holds by the country, and that the country should inventory, maintain, and preserve these traditional expressions. However, the new law that scoping this theme, law no. 28 year 2014, can be considered as weaker than the previous law, law no. 19 year 2002, in regards of the protection of traditional culture, considering the new law doesn't put any implication for anyone who use the traditional expression to ask for permission, unlike article 10 of the old law, as it "only" emphasize protection of traditional cultural expression in terms of the country to do inventory, preserve, and maintain those cultural expressions. Also, Traditional Cultural Expression could not be considered as can be protected by law no 28 year 2014 as it exceeds the time limited of copyright (as usually traditional expression aged more than hundred years old). Article 38 can be more likely to be considered a deposit article, until there's new law that cope this matter. The draft bill of traditional knowledge and traditional cultural expression is currently not yet ratified. After the draft bill is ratified, the matter written in art. 38 of the said law will be considered as dead letter.

1.2 Formulation of Issue

Based on the background above, it can be concluded that the issue could be formulated as follows:

1. How does the Copyright law provide legal protection in Indonesian culture?
2. How effective the implementation of Article 38 of Law No. 28 year 2014 to defend infringement?

1.3 Purposes of Thesis

The author proposes the purposes of the thesis, considering the subchapter that has been explained, are as below:

1. To find, elaborate, and analyze the protection given by the current copyright law regarding Indonesia's culture.
2. To explore the option on commercialization of Indonesian culture.

1.4 Merits of Thesis

The writer wishes the thesis to be able to provide several benefits, which are as follows:

1. Academic Point of View

   The thesis is hoped to be able to give benefit in the academic field, as an addition of

   knowledge or as a reference of what has already exist.

2. Legal Point of View

   The author wishes that this thesis could contribute in the development of the existed law, exploration of option regarding Indonesian culture's commercialization, and the protection of the local culture provided by the copyright law.

3. Business Point of View

   This thesis is hoped to be able to provide deeper understanding for legal practitioner and business opportunist, regarding the benefits provided in having copyright as protection of the cultural assets, and the opportunities of commercialization of Indonesian cultural asset.

1.5 Systematic Writing

To facilitate understanding of the content of the thesis, the writing is divided into 5 (five) chapters with the following systematics:

CHAPTER I INTRODUCTION

In this chapter the author will describe things about the background of writing, what issues to discuss, the purpose and objective of the thesis, the benefits of the thesis from the view of theory / academic, as well as in terms of practice, and the systematic of writing used in the thesis.

CHAPTER II LITERATURE REVIEW

In this chapter the author will give a deeper explanation of the theories of intellectual property used in this thesis, especially in Copyright, that later on will be used as the basis of research, which there will be a discussion on the description of the theoretical foundations related to the formulation of the problems contained in this study, and conceptual foundation that underlies this research, in order to help answer the problem in this study.

In writing the theoretical basis, that has a deep relevance with the framework of thinking and the problem that has been brought up, also knowledge, which uses the deductive logic method, whereas this method is a method of thinking with the commencement from something that was initially general, then drawn a special conclusion.

While in writing the conceptual foundation, the definitions of the terminologies used in this study are obtained from various books, expert opinions, and rules on Copyright.

CHAPTER III RESEARCH METHOD

In this chapter, the author will discuss about research approach methods, types of research, research methods, legal materials, and techniques that the authors use in this study, with qualitative normative legal research methods, by seeking answers using legal formulas, Opinion experts,

theories, and legal provisions, which have relevance to the author's topic.

CHAPTER IV RESEARCH RESULT AND ANALYSIS

In chapter four, the author will explain the research problem including the solving of the problem, which is based on the theoretical foundations, principles, and foundation of related laws and legislation. Thus, in this chapter, the author will analyze:

a. How does the Copyright law provide legal protection in Indonesian culture?
b. How effective the implementation of Article 38 of Law No. 28 year 2014 to defend infringement?

CHAPTER V CONCLUSION AND SUGGESTION

The fifth chapter is covered with the end of this study, which includes the conclusion of the study, as well as the suggestions and opinions of the author based on the relationship between the formulated problems and the analysis that has been done.