


# Legal Efforts Undertaken by the Owners or Holders of Batik Tabir Riau Copyright in Seeking Justice

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**Abstract.** In the process of resolving cases in court, including copyright disputes, the parties involved naturally seek justice. Therefore, if there is a judge's decision that they believe is unjust, the parties will certainly file a legal remedy against the court's decision so that if there is a mistake by the judge in the ruling, it can be corrected by a higher court. Metode yang digunakan dalam penelitian ini melibatkan beberapa kasus pelanggaran hak cipta. El enfoque para analizar los problemas existentes implica examinar varias leyes y regulaciones relacionadas con el copyright. Luego, basado en el análisis de los datos primarios existentes, se lleva a cabo una clasificación de los elementos de la infracción de derechos de autor y los elementos para garantizar la propiedad de derechos de autor. Hasil analisis dan klasifikasi memberikan jawaban atas isu-isu yang dibahas dalam penelitian. This research addresses the issues related to the legal efforts undertaken by the owners or copyright holders of Batik Tabir Riau in seeking justice. The results of this study explain that the legal efforts undertaken by the Creator or Copyright Holder of Batik Tabir Riau have not been maximized because the Creator only pursued criminal legal action. Although mediation was attempted during the process, it did not yield optimal results as the value of the claim did not reach an agreement. The perpetrator only agreed to pay Rp. 150,000,000 (one hundred fifty million rupiah) out of the total value of Rp. 500,000,000 (five hundred million rupiah) requested by the Creator or Copyright Holder. Additionally, other legal efforts, such as filing a compensation lawsuit in the Commercial Court, were not pursued.

## 1. INTRODUCTION

Indonesia, as an archipelagic country, has a very rich diversity of arts and culture. This is in line with the ethnic, tribal, national, and religious diversity that as a whole constitutes a national potential that needs to be protected. The wealth of art and culture is a source of intellectual works that need to be protected by law that wealth is not solely for art and culture itself, but can enhance capabilities in trade and industry involving its creators. Thus, the protected wealth of art and culture can enhance the welfare not only of its creators but also of the nation and state (Kabanda, 2014).

Indonesia has participated in the global community by becoming a member of the Agreement Establishing the World Trade Organization, which also includes the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), through Law No. 7 of 1994. Additionally, Indonesia ratified the Berne Convention for the Protection of Literary and Artistic Works through Presidential Decree No. 18 of 1997 and the World Intellectual Property Organization Copyright Treaty through Presidential Decree No. 19 of 1997.

In facing the globalized market era now, the Indonesian government and its apparatus should take action to eradicate and prosecute all copyright violators, as Indonesia is currently categorized as a country with poor protection and enforcement of intellectual property rights, especially in the field of copyright. What needs to be a principle in distinguishing copyright protection from other intellectual property protections is that copyright protects literary works and artistic works in all forms of development in this world. For example, literary works can include songs/music, dances, paintings, and others. Copyright is part of a set of rights known as Intellectual Property Rights (IPR), which are regulated within the field of law and referred to as IPR Law (Savale & Savale, 2016). What is called Intellectual Property Law (HAKI) encompasses a field of law that deals with the legal rights of works or creations resulting from human thought processes, related to economic and moral interests. The field covered by intellectual property rights is very broad, as it includes all intellectual property that can consist of creations in literature, art, and science (Dutfield, 2017).

The importance of providing protection in the field of copyright, theoretically, there are several underlying theories, namely:

1. The Reward Theory states that creators should actually be protected and rewarded for their hard work in producing their discoveries. It contains the understanding from society regarding the appreciation for someone's hard work or recognition of the success achieved.
2. The Recovery Theory states that an inventor or creator, after expending effort and costs, must have the opportunity to regain something from what has been spent.
3. The Incentive Theory states that in order to attract funding efforts for the implementation and development of creativity, an "incentive" is needed that can refer to the activities in question so that they can take place.

In line with that theory, John Locke stated that the right to intellectual property arises as a logical consequence of people working (Hughes, 1988). Creators or copyright holders are like workers; they are entitled to receive compensation for their creations. In this case, John Locke associates copyright with the theory of natural law, where the theory of natural law grants exclusive ownership rights over a creator's work, giving individuals the right to defend and oversee their works and receive fair compensation for their intellectual contributions to society. In other words, someone who has put effort into creation has a natural

right to own and control what they have created (Guo et al., 2021). This approach emphasizes honesty and fairness. It is seen as an act of dishonesty and injustice to take someone's effort without first obtaining their consent (Green, 2001).

Furthermore, John Locke stated that it is a natural right for humans, through their hard work and intellect, to create something, and thus the creation becomes the property of the creator. The creator has the right to enjoy the results of their creation, including the profits derived from it. In addition, the creator also has the right to defend their rights, so copyright is a form of granting exclusive rights over a creation. John Locke also stated that generally, everyone has an obligation not to harm others, except in special cases and urgent needs that can be justified (Kilcullen, 1983). The right not to be harmed already existed before that as a natural right. Two key freedoms, namely: "everyone has the right to freely pursue their efforts according to their desires and everyone has the right to use common property; the earth and all its fruits given by God to humanity". Therefore, no one may demand from others the use that does not harm them or the community (Ripstein, 2006).

In line with this, S.M. Stewart presented several reasons or arguments about the necessity of copyright protection. Among the various reasons presented, the most substantial ones are the cultural and social reasons. According to Stewart, creators have contributed to the development of national culture and social progress. The works produced by creators, whether they are songs, literary works, or paintings, will undoubtedly enrich the national culture. Then, the dissemination of creative works to a large number of people forms connections (links) between groups/levels, racial groups, age groups, thereby creating social integration.

## 2. METHOD

The method used in this research employs several cases of copyright infringement. The approach to analyze the existing issues involves examining several laws and regulations related to copyright. Then, based on the analysis of the existing primary data, a classification of the elements of copyright infringement and the elements in ensuring copyright ownership is carried out. The results of the analysis and classification provide answers to the issues discussed in the research.

## 3. DISCUSSION

### 3.1. The Basic Concept of the Birth of Copyright in Providing Legal Protection for a Creation

The basic concept of the birth of copyright will provide legal protection for a work that has a distinctive form and demonstrates originality as a creation of an individual based on their personal ability and creativity. The personal nature contained in copyright gives rise to the conception of moral rights for the creator or their heirs (Roeder, 1939). The moral rights are considered personal rights possessed by a creator to prevent any deviation from their work and to receive respect or recognition for their creation (Lomasky, 1987). The moral rights are a manifestation of the ongoing relationship between the creator and their work, even if the creator has lost or transferred their copyright to someone else. Therefore, if the rights holder removes the creator's name, the creator or their heirs have the right to demand that the creator's name be retained in their work (Joffrain, 2001).

In addition, copyright holders are not allowed to make changes to a creation without the approval of the creator or their heirs, and if the creator has transferred their copyright to another party, then as long as the creator is still alive, their approval is required to make changes. However, if the creator has passed away, permission from their heirs is required. Thus, even if the moral rights have been fully or partially transferred to another party, the creator or their heirs still have the right to sue someone who, without their consent: 1) Removing the creator's name from the creation; 2) Including the creator's name in the creation; 3) Changing or altering the title of the creation; and 4) Altering the content of the creation.

Moral rights are also regulated in the International Convention on copyright, namely the Berne Convention, which among other things states that the creator has the right to claim ownership of their work and to object to any changes, cuts, reductions, or other modifications, as well as other infringing actions related to the work, which harm the honor or reputation of the creator. Article 6 of the Berne Convention states, "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, would be prejudicial to his honour or reputation."

The relationship between the creator and their heirs regarding moral rights is so close that these moral rights cannot be separated or detached from the creator (Strauss, 1955). Therefore, the copyright owned by the creator, which after the creator's death, becomes the property of the heirs or the legatees. Similarly, according to Article 4 of Law Number 28 of 2014 on Copyright, unpublished or unannounced copyrights that, after the creator's death, become the property of their heirs or the beneficiaries of their will, cannot be seized unless the rights were obtained unlawfully. This is because copyright is inseparable from the creator and is intangible, so in principle, it cannot be seized from them. Thus, the moral rights of the creator are one of the limitations of the copyright that has been transferred to someone other than the creator themselves. Others besides the creator themselves, such as a copyright recipient, even if they have been fully transferred the copyright of a creation, are clearly bound by several provisions encapsulated in the understanding of the creator's moral rights.

Regarding this moral right, even though the copyright (economic right) has been fully or partially transferred, the creator still has the authority to file a legal claim to obtain compensation from someone who violates the creator's moral right. This is in accordance with the provisions of Article 1365 of the Civil Code, which states that any unlawful act that causes harm to another person obliges the person who caused the harm to compensate for it.



Figure 1. Batik Motif Tabir Sunflower Layered Curves. Source of Data: Dekranasda Riau Province.



Figure 2. Batik Kuntum Motif Bujang Kuntum Setangkai. Source of Data: Dekranasda Province of Riau



Figure 3. Batik Motif Kuntum Bersanding Kuntum Berlenggek. Source of Data: Dekranasda Riau Province.

The development of batik motifs is not free from disputes, as seen in Mojokerto, where local entrepreneurs exploit Wonokusumo batik. Similarly, in Riau, there is a dispute involving the unauthorized copying and reproduction of 8 (eight) types of Tabir Riau batik motifs created and registered with the Ministry of Law and Human Rights of Riau by Agil Tohir Baagil, a private party who is the copyright holder of Batik Riau. Agil Tohir Baagil is the Director of PT. Baagil Dwi Tunggal, which operates in the field of textile and garment production and is based in the city of Bandung. The incident began in 2012 when Enang Suharti (Owner of Rumah Batik Inggid Modesta) approached Agil Tohir Baagil to request the creation of a Tabir Riau batik motif to be used in mandatory uniforms for elementary, middle, high schools, and vocational schools in Pekanbaru City and Pelalawan Regency. This was part of a collaboration program between the perpetrators and the Education Office of Pekanbaru City and Pelalawan Regency. However, Enang Suharti did not provide any samples of the batik fabric. Subsequently, Agil Tohir Baagil, using his imagination, knowledge, and thinking, designed the batik fabric, resulting in a distinctive Riau batik motif with various unique designs. Eventually, the designs were approved, and an order was placed with Agil Tohir Baagil for a total of 5,000 meters at a price of Rp. 18,000 per meter. The orders were placed annually until October 2016.

Because the batik motifs were the work of Agil Tohir Baagil, he submitted a request to the Ministry of Law and Human Rights of the Republic of Indonesia to validate or confirm his creation. Eventually, a Copyright Registration Certificate was issued in the name of Agil Tohir Baagil, signed by the Director General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia, which consisted of 8 (eight) types of Riau batik. In its course, the defendant no longer ordered Riau batik from the creator, Agil Tohir Baagil. Instead, since early 2017, the perpetrator appointed another party at a lower price with the hope of gaining a larger profit to produce the Riau batik motifs registered by Agil Tohir Baagil, which were then resold by the defendant to schools in Pekanbaru City and Pelalawan Regency.

### 3.2. Review of Copyright Criminal Offenses

The occurrence of copyright crimes can cause losses to creators and copyright holders; therefore, legal efforts are needed through the criminal justice process against copyright crime perpetrators, carried out in stages of investigation, inquiry, prosecution, and trial in court. Law enforcement to eradicate types of acts that can be categorized as copyright crimes can be carried out through investigations, which are one of the stages in the criminal justice process (Broadhurst, 2006). Through investigations, sufficient evidence can be obtained to carry out legal proceedings against the perpetrators of crimes, especially copyright crimes. For that reason, it is necessary to understand the various forms of copyright offenses as part of substantive criminal law (Moohr, 2003).

Criminal law in the material sense contains articles that prohibit certain acts accompanied by criminal penalties for anyone who violates those prohibitions. In Law Number 28 of 2014 concerning Copyright, several acts are mentioned that fall into the category of criminal offenses as regulated in Articles 112 to 120, as follows: 1. Without the right to perform acts of commercial use of a creation, 2. Without the right to violate rights for commercial use of a creation, 3. Without the right and/or without the permission of the Creator or the copyright holder, committing an infringement of the Creator's economic rights, 4. Committing acts of piracy on a creation, 5. Managing a place of trade in any form that intentionally and knowingly allows the sale and/or reproduction



of goods resulting from Copyright and/or Related Rights violations at the place of trade they manage.<sup>6</sup> Without the consent of the person photographed or their heirs, engaging in Commercial Use, Duplication, Announcement, Distribution, or Communication of the Photograph for advertising or promotional purposes for Commercial Use in both electronic and non-electronic media.<sup>7</sup> Collective Management Institutions that do not have operational permits from the Minister conduct royalty collection activities.

Article 120 explicitly states that the crimes as referred to in this Copyright Law are Complaint Crimes, meaning that all crimes in the copyright law can only be prosecuted after a complaint from the aggrieved party. The prosecution is entirely dependent on the will and desire of the victim or the interested party, in other words, the victim has a decisive role in whether the perpetrator of the crime is prosecuted or not (Goldstein, 1982).

Besides the issue of the need for a complaint, as is known, a person can only be sentenced if their actions match all the elements of the criminal offense as formulated in the articles of the criminal law. It is a normative requirement that must be fulfilled when someone can be held accountable for committing a crime, namely that the act must be proven to match all elements of the crime. If one of the elements of the crime is not fulfilled or cannot be proven, then the consequence is that the crime charged against the perpetrator is not proven and the charge can be annulled by law (Jeffries Jr & Stephan III, 1978).

In the examination of a criminal case, the most important thing is whether there is a criminal event in the incident (Becker, 2004). Criminal events are incidents that contain elements of actions prohibited by law, so that anyone who causes such an event can be subject to criminal sanctions (punishment). The elements of a criminal event can be viewed from two aspects (Meier et al., 2001), namely the subjective aspect and the objective aspect:

- a. From an objective standpoint related to actions, a criminal event is an act that violates the current law, the consequence of which is prohibited and punishable.
- b. From an objective standpoint, a criminal act is an action committed by someone incorrectly. The elements of the perpetrator's fault are what cause the occurrence of a criminal event. The element of wrongdoing arises from the intent or will of the perpetrator. So the act is known to be prohibited by law and is punishable by a penalty. So there is indeed an element of intent.

The results of the investigation into copyright crimes conducted by Investigators in Copyright Crime Cases (Marturana et al., 2012) namely officials of the Indonesian National Police, certain Civil Servants within the ministry that handles government affairs in the legal field, who are given special authority as investigators as referred to in the Law governing criminal procedural law, will be able to gather evidence of the suspect's involvement, so that they can be examined through the criminal justice system. The enhancement of investigators' capabilities in copyright criminal cases needs to be supported by the government and society so that legal protection of copyright can be effective, including facilitating investigators in exercising their authority to cooperate with government agencies in the field of copyright and non-governmental organizations to obtain information, reports, and complaints regarding copyright law violations, so that these cases can be processed through the criminal justice system. If proven in court, the suspects can be subjected to criminal sanctions in accordance with the applicable laws and regulations (Fellmeth, 2005).

Usually, copyright crimes are committed by individuals or legal entities related to the fields of economics and trade (Boyle, 2020). The motive is to seek the maximum profit by breaking the law. The most common *modus operandi* is to produce in large quantities for sale to the public. The tools used are quite advanced in technology, such as computer equipment, industrial machines, chemical instruments, transportation tools, and other supporting documents to ensure the success of their business. The quality of their pirated productions is so good that it is difficult to distinguish between original works and pirated ones (Peitz & Waelbroeck, 2006).

The impact of copyright infringement crimes has generally become so significant on the nation's life order in the fields of economy, law, and socio-culture. In the socio-cultural field, the impact arising from the increasing piracy is becoming increasingly diverse. For the perpetrators of criminal acts or pirates (Dutton, 2010), the prolonged situation without any firm action will increasingly foster the attitude that piracy has become a common occurrence and is no longer considered a violation of the law. For creators, such a situation increasingly fosters apathy and significantly dampens the enthusiasm to create. For publishers, they will lose interest in their profession of publishing books.

For society as consumers, there is a growing attitude that no longer sees the need to question whether a certain item is the result of a legal violation or not (Fullerton & Punj, 2004). The growing indifference towards knowing what is good and what is bad, what is legal and what is illegal, poses a challenge for our country, which is a state based on law. For a country with a high incidence of piracy or criminal acts in the field of copyright, when viewed from the perspective of state revenue through income tax from copyrights (Varian, 2005), it is clear that the country is greatly disadvantaged, as it does not receive income from that sector, which is a potential source of funds for development.

#### 4. CONCLUSION

The legal efforts undertaken by the Creator or the Copyright Holder of Batik Tabir Riau have not been maximized because the Creator only pursued criminal legal action. Although mediation was attempted during the process, it did not yield optimal results as the value of the claim did not reach an agreement. The perpetrator only agreed to pay Rp. 150,000,000 (one hundred fifty million rupiah) out of the total value of Rp. 500,000,000 (five hundred million rupiah) demanded by the Creator or the Copyright Holder. Additionally, other legal efforts such as filing a compensation lawsuit in the Commercial Court were not pursued.

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