

COPYRIGHT LEGAL PROTECTION OF ENGRAVING ART PRODUCTS AS A COLLABORATION BETWEEN VOCATIONAL STUDENTS (COMPARATIVE STUDY BETWEEN INDONESIA, VIETNAM AND MALAYSIA)

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ABSTRACT

Indonesia as a multicultural country has artistic values that play an important role as a cultural inheritor in the present and future, which need to be preserved. The value of art in question is in the form of fine art that can produce marketable products, such as engraving products that can be produced through laser engraving machines. However, it cannot be denied that art engraving products that are traded either in the market or E-Commerce from various regions contain elements of plagiarism. This can lead to copyright disputes. Therefore, it is necessary to study the legal protection of copyright, especially for engraving art products. Copyright is a global issue that must be considered in realizing the goals listed in the Sustainable Development Goals, namely industry, innovation, and infrastructure related to copyright. This compels the authors to conduct a comparative study as an effort to support collaborative research to create legal progressivity between countries related to copyright legal protection arrangements that apply in Indonesia, Malaysia, and Vietnam. The method used in this research is the normative juridical research method. The method examines the law and conceptualizes norms or rules that apply in society and become guidelines for society. The results of this study indicate that the copyright legal protection of engraving art in Indonesia, Malaysia, and Vietnam has the same basic principles, although there are differences because each country has its own rules for providing copyright legal protection for engraving art.

Keywords: *creation, copyright, legal protection, engraving art, legal comparison*

1. PREFACE

Indonesia is a country with a rich cultural heritage, renowned for its diverse arts and culture. It is of paramount importance to preserve the value of art in Indonesia, as it serves as a vital cultural legacy for the present and future (Turnip, 2022). The various forms of art practised in Indonesia include fine arts, dance, music, theatre, and literature. Of these, fine art is a particularly significant area of interest for the Indonesian people. Fine art is a series of elements arranged in a harmonious manner in the form of a unity, which illustrates the expression that the creator wishes to convey. Fine art can be in three-dimensional form, consisting of the element of line, which is formed into a field that is either darkly or lightly coloured, and textured, which is placed according to its space (Fajrie, 2023). The value of fine art can be seen from its aesthetic appeal and its usefulness to society. Fine art is no longer only produced traditionally by hand. In modern times, artists can already use sophisticated technology in their work, such as laser engraving machines which are a type of engraving artwork. A laser engraving machine is a machine that uses a laser beam to vaporize one or more layers of the surface of the base material used, leaving a permanent scratch (Fernando, 2022).

Figure 1

Laser engraver machine



Laser engraving machines represent an advanced technology in the field of arts that can bring benefits to artists in the economic sector. The technology present in this laser enables scalable patterning of graphics on various substrates, mainly through direct laser-induced carbonization of polymer substrates, resulting in satisfactory products (Wang, 2021). This laser engraving machine is only capable of making small engraving art, such as name pins and brooch accessories.

The utilization of the laser engraving machine can be used in a programmed to improve the quality of education of students, especially Vocational High Schools (SMK). The subject is aimed at SMK students to increase creativity by utilizing the use of technology. The introduction and utilization of technology is necessary for SMK students, because after graduating students are expected to work directly.

However, the thing that needs to be considered is the production of the machine in the form of carved art that will be traded. It is undeniable that art carving products that are traded either in the market or E-Commerce from various regions contain elements of plagiarism. This can lead to copyright disputes that violate the ownership of exclusive rights owned by artists. Many audiences have paid attention to copyright with the aim of increasing legal compliance and awareness, but there are still copyright disputes found in various countries (Adu, 2021). The emergence of copyright disputes is due to a lack of understanding of the public regarding the meaning and function of copyright, as well as the obstruction of copyright infringement from law enforcement officials (Hutagalung, 2022).

The issue of copyright has become a significant global concern that must be taken into account in the pursuit of sustainable development. The concept of sustainable development has become a global commitment, as declared at the United Nations (UN) General Assembly in September 2015. This commitment is known as the Sustainable Development Goals (SDGs), which include 17 goals.

One of the objectives of SDG 16, which encompasses industry, innovation, and infrastructure, and comprises multiple targets, is to foster sustainable development through the expansion of value-added, labour-intensive sectors and technological innovation, thereby enhancing economic productivity. This objective is closely intertwined with the domain of copyright, as elucidated by Bappenas (n.d.). Secondly, there is a need to enhance public comprehension of the policies that facilitate creativity and innovation within companies. The objective of these efforts is to foster

public awareness of the significance of product copyrights that will be traded, as well as to stimulate innovation and creativity in order to achieve efficient and effective economic productivity.

SDGs as a global commitment has been signed by 193 countries in the world, including Indonesia. The Southeast Asian countries that signed and recognized the SDGs are Malaysia and Vietnam. Malaysia and Vietnam have art and culture with its own characteristics in the art of carving. Seeing the above description that the dispute over the copyright of carved art does not only occur in Indonesia, but also occurs in Malaysia and Vietnam. This is evidenced through studies that have been conducted in analyzing the settlement of copyright disputes in the art of carving in both countries. Therefore, in this study the author will examine and analyses the legal protection of copyright in carved art products in Indonesia, Malaysia and Vietnam. The author conducts a comparative study as an effort to support collaborative research to create progressivity between countries related to copyright law protection arrangements in Indonesia, Malaysia, and Vietnam.

2. RESEARCH METHOD

The research employs the normative juridical method, which examines the law and conceptualizes it as norms or rules that apply in society and become the basis for societal guidelines. The research methodology employs a systematic approach to examine the coherence and consistency between one piece of legislation and other related legislation. The data collection techniques entail an examination of books, journals, and other references pertinent to the subject of trademark rights (Marzuki, 2021). The laws and regulations employed in this study are the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, the Copyright Corporation of Malaysia Copyright Act 1987 (Act 332), and the Law on Intellectual Property (No. 50/2005/QH11). It should be noted that Indonesia, Malaysia, and Vietnam have different legal systems. Indonesia adheres to a civil law or European continental legal system (Chandra, 2023). Malaysia adheres to the Common Law legal system, also known as Anglo-Saxon (Abdullah, 2023). Meanwhile, Vietnam adheres to the Civil Law system (Le et al., 2021). Notwithstanding the discrepancies in the degree of adherence to the legal system, comparative studies can still be conducted by examining and analyzing the laws and regulations recognised by each country.

3. RESULT AND DISCUSSION

Indonesia adheres to the Continental European legal system, where this system prioritizes the tradition of written law (Saputri, 2021). The legal basis of copyright in Indonesia is set out in the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (hereinafter referred to as "UUHC"). In his research, Yixin Liu cites the work of Jeremy Bentham, who posits that property rights are born simultaneously and must die together. Prior to the enactment of legislation, there is no concept of property, and thus no copyright law (Liu et al., 2022).

Based on the UUHC, Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Article 1 section 2 of the UUHC explains:

"That the creator is a person or several people who individually or jointly produce a distinctive and personal creation. The article means that the creator

of an art carving product is a person or several people who individually or jointly produce an art carving product.”

The creator of an engraved art product is granted an exclusive right to publish or reproduce the work. Nevertheless, it is not within the power of any individual to reproduce a copyrighted work. If other parties are permitted to imitate and sell various works that they own, they may not benefit from the proceeds of their endeavours (Rachman, 2023). Article 1 section 3 UUHC explains:

“Creation is any creative work in the field of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in tangible form.”

The concept of copyright protection in the UUHC must comprise two elements: firstly, moral rights, which must remain inextricably linked to the creator; and secondly, rights that can be transferred or assigned to other parties, with the creator retaining economic benefit (Saragih, 2023). Engraving is one of the protected creations in the UUHC as stated in Article 40 of the UUHC which basically reads as follows:

“Protected creations include creations in the fields of science, art and literature, consisting of: works of fine art in all forms such as paintings, drawings, engravings, calligraphy, sculpture, statues, or collages.”

The procedure for copyright applications is overseen by the Directorate General of Intellectual Property and the Regional Office of the Ministry of Law and Human Rights. Applications may be submitted in either online or offline formats (Findhayanti, 2023). Copyright applications can be filed by a person or several people who are simultaneously entitled to a creation or legal entity as stated in Article 67 UUHC.

In accordance with Article 58 of the UUHC, copyright protection for carved art products is valid for the lifetime of the creator and continues for 70 years after the creator's death, commencing on 1 January of the following year. The period of copyright protection for creations owned or held by legal entities is valid for 50 years from the date of the initial announcement by the Directorate General of Intellectual Property.

The subject of copyright disputes will be addressed in the context of the protection of copyright in Indonesia, with a particular focus on the Jepara carving crafts. The case commenced when an individual named Christopher Harrison from England filed a report with the police, accusing H. Muhammadi Jepara, a businessman specializing in carved furniture, of criminal activity. Christopher's legal action was based on the accusation of copyright infringement, specifically the replication of the product design of carved furniture belonging to PT Harrison & Gil, which has been duly registered and copyrighted by the Directorate General of Intellectual Property Rights.

Christopher has asserted ownership of the Jepara Mabel's. Collaboration of Ecology and Centre Information to Us (Celsius) initially issued a subpoena, but there was no response from Christopher. Consequently, the police issued a DPO (Wanted Person List) on behalf of Christopher. In this instance, Christopher asserted ownership of the Jepara carvings, despite the fact that the Jepara carving design is an Indonesian work that is protected under Indonesian law and may not be copied by any foreign party for any purpose (Tempo Interaktif, 2007).

Given that copyright disputes are still prevalent in Indonesia, alternative dispute resolution mechanisms, such as arbitration or the commercial court, may be employed to resolve such disputes. Nevertheless, should the outcome of the commercial court's decision prove unsatisfactory, recourse may be sought through an application for cassation, which must be filed within 14 days of the court's decision.

The author presents evidence that copyright protection for carving art products in Indonesia can be readily obtained through either electronic or non-electronic applications. Once a copyright has been granted, the exclusive rights of the copyright owner are valid for the lifetime of the creator plus 70 years after their death. In the event of a dispute, three avenues for resolution are available: alternative dispute resolution, arbitration, and the commercial court. Should an objection be raised to the decision of the commercial court, legal remedies may be sought in the form of a cassation on the decision of the commercial court that decided the case. Moreover, the author will examine the legal protection of copyright in carved art products in Malaysia.

Malaysia adheres to the Common Law legal system, which is commonly referred to as the Anglo-Saxon legal system (Zeno, 2022). Malaysia has implemented restrictions and policies on copyright based on the Anglo-Saxon legal system (Wulandari, 2021). Copyright in Malaysia is protected by the Copyright Act 1987 (Act 332). This legislation stipulates that copyright is an exclusive right granted to the copyright owner for a specified period of time. The Copyright Act 1987 (Act 332) also regulates the concept of "future copyright," which means that the copyright that will exist will still apply in accordance with the Copyright Act 1987 (Act 332). This is essentially defined as follows:

"Future copyright" means copyright which will or may come into existence in respect of any future works or class of works or other subject matter, or on the coming into operation of any provision of this Act, or in any future event."

The Art of Engraving is regulated in the Copyright Act 1987 (Act 332), Graphic Works are divided into 2 types, namely paintings and engravings. The paintings referred to are drawings, diagrams, maps and charts. Meanwhile, engravings are etchings, lithographs, woodcuts or similar works. An eligible person to apply for copyright is a person having Malaysian citizenship, who is associated with a legal entity under the laws of Malaysia. This statement is contained in Part I of the Copyright Act 1987 (Act 332) which basically reads as follows:

"Qualified person, in relation to an individual, means a Malaysian citizen, or a permanent resident in Malaysia and in relation to a corporate entity, means a corporate body established in Malaysia and incorporated or given legal personality under the laws of Malaysia."

The types of works protected in Malaysia are literary works, musical works, artistic works, films, sound recordings and broadcasts. The exclusive rights or protection obtained is to be able to publish works created in Malaysia and to be published in a building located in Malaysia. Furthermore, creators who are not Malaysian citizens are entitled to the same rights as Malaysian citizens and permanent residents. Their works can be held in Malaysia and are legally protected in the Copyright Act 1987 (Act 332).

The term of legal protection of copyright is set out in Part III of the Copyright Act 1987 (Act 332). The term of copyright regarding works of art is valid during the lifetime of the creator and

will continue for 50 years after the death of the creator. If a work of art has never been published before, then the copyright will continue to be valid for 50 years, counting from the beginning of the work being published. In the event that the artwork is published anonymously, the copyright is valid for 50 years from the beginning of the year following the year of publication of the work, provided that the identity of the creator is known. Applications for copyright are submitted to a society or organization that operates to grant licenses to creators who apply for this can see at Perbadanan Property Intellect Malaysia (Intellectual Property Corporation of Malaysia, 1987).

The infringement of copyright occurs when a person performs an act regulated and controlled by copyright without the authorization of the creator, as set out in Part VI of the Copyright Act 1987 (Act 332). Where a person commits an offence under this Act and is found guilty, the offender shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years.

One of the most significant copyright disputes in Malaysia concerns the commercialisation of wood carvings within the Iban culture. The Iban people consider carvings to be sacred works. However, during the reign of King Brooke, carvings that had become artefacts were removed or deemed invalid due to their perceived incompatibility with religious teachings. Although these carvings symbolize the embodiment of the Iban people in managing the lives and sources of sustenance of the Iban people, they should be legally protected. The removal of copyright protection for these carvings has resulted in the Iban people losing their cultural identity and historical heritage (Keai, 2023).

In accordance with the provisions of the Copyright Act, the Court may order the infringer to pay compensation, account for profits, and/or damages not exceeding twenty thousand ringgits for each work. However, the total amount of damages awarded may not exceed five hundred thousand ringgit. Furthermore, the Court may issue other orders deemed appropriate. In light of the aforementioned explanation of the legal protection of copyright in carved art products in Malaysia, it can be observed that the copyright protection in Malaysia is comparable to that in Indonesia.

This is evidenced by the exclusive rights of the creator and the subsequent delineation of the scope of protection afforded to works. The divergence between the regulations in Malaysia and Indonesia is evident in the procedures for submitting copyright applications, the duration of copyright protection, and the enforcement of copyright infringement. Furthermore, the author will proceed to discuss the legal protection of copyright in relation to carved artwork in the State of Vietnam.

The legal regulation of intellectual property rights in Vietnam is divided into three parts as stipulated in the Law on Intellectual Property No. 50/2005/QH11 (2005) (hereinafter referred to as the "*Vietnam Intellectual Property Law*"). The intellectual property rights of Vietnam are divided into three categories: copyright, managed by the Vietnam Copyright Administration; industrial property rights, managed by the State Intellectual Property Office (NOIP), and plant variety rights, managed by the Plant Variety Protection Office (Putri, 2022).

Article 4, section 2 of the Vietnam Intellectual Property Law defines copyright as the exclusive right of organizations and individuals to a work created or owned. The principal copyrights protected by Article 3 section 1 of the Vietnam Intellectual Property Law are literary, artistic, and

scientific works. The types of artworks protected by copyright in the Vietnam Intellectual Property Law are outlined in Article 14, one of which is the art of carving.

Article 13 of the Vietnam Intellectual Property Law delineates the prerequisites for the protection of works as copyright. Primarily, the work must be a legal subject regulated by this law, namely, organizations and individuals who have registered as copyright holders. Secondly, the work must be first published in Vietnam and have not been simultaneously published in Vietnam and in other countries within 30 days. Additionally, the law protects moral rights and economic rights associated with a work under the umbrella of copyright. The moral rights in question are set out in Article 19 of the Vietnam Intellectual Property Law, which states that:

“The moral rights of the creator include the following rights:

- 1) Title of the work;*
- 2) Putting real or pseudonyms on their works. The real or pseudonym used will be recognized when the work is published or used;*
- 3) Publish their work or authorize others to publish their work;*
- 4) Protect the integrity of his/her work and prevent others from modifying, damaging or distorting his/her work in any form to the detriment of his/her honor and reputation.”*

The economic rights protected in Article 20 of the Vietnam Intellectual Property Law are as follows:

“1) Economic rights include the following rights:

- a. Creating derivative works;*
 - b. Publicizing his/her work to the public;*
 - c. Reproduce their work;*
 - d. Distributing or importing original works or copies thereof;*
 - e. Communicating his/her work to the public through wired or wireless, electronic or other technical means;*
 - f. Renting out original cinematographic works and computer programmers or copies thereof.*
- 2) The rights specified in Article 1(1) shall be exercised exclusively by the copyright holder or granted by the copyright holder to another person for exercise under the provisions of this Act.*
 - 3) In the exercise of one or more of the economic and moral rights specified in Articles 19 and 20, organizations and individuals must seek permission from and pay royalties, remuneration and other material benefits to the copyright holder.”*

The registration of a copyright can be initiated by the creator, copyright holder, or a related party. Article 49(2) of the Vietnam Intellectual Property Law stipulates that the filing of a copyright application is not a prerequisite for the enjoyment of copyright by creators. An application for copyright registration is outlined in Article 50 of the Vietnam Intellectual Property Law, which can be submitted in writing in Vietnamese, accompanied by a registered copyright certificate issued by the Vietnam Ministry of Culture and Information.

With regard to the term of copyright protection provided for in Article 27 of the Vietnam Intellectual Property Law, the term of copyright protection in economic rights is limited to fifty

years. In contrast, moral rights will be protected for life as long as the creator lives and for fifty years after the death of the creator. If the work is a joint creation or more than one person, then the term of protection also applies for fifty years after the death of the last surviving author.

The settlement of copyright disputes in Vietnam is subject to the provisions of the Vietnam Intellectual Property Law. Article 198 of the aforementioned law confirms that in the event of a dispute, the aggrieved parties may request the offending organization or individual to cease the infringement of the relevant rules and make a public statement of apology, and pay compensation. Secondly, dispute resolution efforts can be made by submitting to the state agency authorized in intellectual property rights as stipulated in the Vietnam Intellectual Property Law. Thirdly, those who have suffered harm as a result of copyright infringement may pursue legal action through the courts or arbitration bodies in order to vindicate their rights and interests.

It should be noted that the copyright law arrangements of Vietnam are not limited to the provisions of the Vietnam Intellectual Property Act. Furthermore, Vietnam has acceded to the International Conventions on Copyright, also known as the Berne Convention. Furthermore, this convention has been ratified by Indonesia and Malaysia. In the context of a comparative analysis of the legal protection of copyright between Indonesia, Malaysia, and Vietnam, the author presents a table containing salient points that differentiate the legal protection of copyright as set forth in the legislation of each country.

Table 1

A comparative analysis of the legal protection of copyright in Indonesia, Malaysia and Vietnam

Countries	Legal Foundation	Protected Works	Time Frame	Copyright Application	Dispute Resolution
Indonesia	Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright	Engraving Art Products	The copyright lasts for the lifetime of the creator and for a period of 70 years following their demise.	Directorate General of Intellectual Property / Regional Office of the Ministry of Law and Human Rights	The following are examples of alternative dispute resolution, arbitration and commercial court.
Malaysia	Intellectual Property Corporation of Malaysia Copyright Act 1987 (Act 332)	Engraving Art Products	The copyright lasts for the lifetime of the creator and for a period of 50 years following their death.	Perbadanan Harta Intelek Malaysia (<i>Intellectual Property Corporation of Malaysia</i>)	The following section will examine the various forms of dispute resolution, including arbitration and the court system.
Vietnam	Law on Intellectual Property (No.50/2005/QH11)	Engraving Art Products	The copyright lasts for the lifetime of the creator and for a period of 50 years following their death.	Ministry of Culture and Information Vietnam	The following forms of dispute resolution are available: alternative dispute resolution, arbitration, courts and authorized state institutions.

4. CONCLUSIONS AND RECOMMENDATIONS

The principles of copyright protection in Indonesia, Malaysia, and Vietnam are comparable, although there are discrepancies in the specific provisions. This is due to the fact that each country has its own copyright protection legislation, which includes registration procedures, time periods, and dispute resolution. These three countries place a premium on the protection of moral and economic rights for creators and impose penalties on individuals who engage in copyright infringement. The author recommends that further research be conducted to enhance public awareness and understanding of the significance of copyright in fostering sustainable development. This is particularly relevant in the context of the arts and other fields.

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