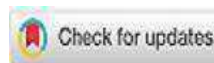


APPLICATION OF THE ORIGINALITY PRINCIPLE OF COPYRIGHTED WORKS BASED ON LAW NUMBER 28 OF 2014

(CASE STUDY OF PLAGIARISM WARKOPI VS WARKOP DKI)



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Abstract

The originality principle is very fundamental in copyright protection as stipulated in Law No. 28 of 2014. This principle asserts that copyrighted works must be created directly by the creator and have distinctive characteristics that distinguish them from other works. This type of research is normative with a legislative approach. The data used is secondary data consisting of primary, secondary and tertiary legal materials. This research analyzes that Warkopi's plagiarism violates the principle of originality as stipulated in Law No. 28 of 2014 in Article 1 numbers 2 and 3 and Article 40 paragraph (1) which protects photographic, portrait and cinematographic works. Warkopi's imitation of characters and concepts not only violates moral rights, but also potentially violates the economic rights of Warkop DKI. Thus, this research is expected to be a reference to prevent plagiarism of copyrighted works and respect the economic and moral rights of creators in the future.

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1. INTRODUCTION

Copyright is one form of legal protection for copyrighted works covering various fields of science, art, and literature.¹ In Indonesia, this protection is regulated in Law Number 28 of 2014 concerning Copyright. One of the main principles in copyright protection is the principle of originality, which provides a requirement that the copyrighted work must be original and the result of the creator's creativity.² This principle serves to ensure that any protected work is the result of unique creative effort and skill, not an imitation or duplication.³

Law Number 28 of 2014 concerning Copyright does not specifically explain the originality of a work. However, Article 1 point 2 states that the creator is a person or several people who individually or jointly produce a distinctive and personal creation. In addition, Article 1 point 3 also explains that a copyrighted work is produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in real form. Originality of copyrighted works can be found in the explanation of Law No. 19 of 2002 which states that copyright protection is given to copyrighted works that have a distinctive form, are personal, showing "originality" as a creation born based on the ability, creativity, or expertise so that the creation can be seen, read or heard.

In the Indonesian entertainment world, the principle of originality has a very important role to maintain the economic rights and moral rights of the creator. This becomes especially relevant when there is a case involving alleged plagiarism of copyrighted works by Warkopi. This case arose because Warkopi was considered to have copied the concept and characters that characterized the legendary comedy group Warkop DKI, which already has a great reputation in the Indonesian entertainment world.

Warkopi consists of Alfin Dwi Krisnandi, Alfred Dimas Kusnandi, and Sepriadi Chaniago. The similarity with Warkop DKI was finally utilized by the three young men to create a number of parody content uploaded on social media platforms such as Youtube. Indro Warkop and the Warkop

¹ Awatari, Putu Devya Chevy, *Perlindungan Hukum Terhadap Hasil Karya Seni Transformasi Berdasarkan Undang-Undang Hak Cipta*, Jurnal Kertha Semaya, Vol. 9 No. 1, 2020, p. 162-164, <https://doi.org/10.24843/KS.2020.v09.i01>

² Absi, Warmiyana Zairi, *Perlindungan Hukum Hak Cipta Atas Karya Tulis Yang Diterbitkan Melalui Media Elektronik*, Jurnal Solusi Universitas Palembang, Vol. 21 No. 3, 2023, p. 299-302, <https://doi.org/10.36546/solusi.v21i3.1057>

³ Purukan, Wulan, *Perlindungan Hukum Neighboring Rights Sebagai Hak Yang Berdampingan Dengan Hak Cipta Menurut Undang-Undang Nomor 28 Tahun 2014*, Lex Et Societas, Vol. 5 No. 5, 2017, p. 45, <https://doi.org/10.35796/les.v5i5.17695>

DKI Institution as the owner and copyright holder of Warkop DKI responded that the existence of Warkopi is a violation of copyright, because Warkopi has committed plagiarism by creating parody content with a style and appearance similar to the legendary comedy group Warkop DKI without permission.⁴

The case of plagiarism of Sketches Warkopi content that violates the copyright of Warkop DKI will examine the application of the principle of originality of copyrighted works based on Law Number 28 of 2014 by referring to the provisions in Article 1 point 2, Article 1 point 3 regarding the originality of a work as well as Article 40 Paragraph (1) which protects photographic, portrait and cinematographic works. The analysis will focus on relevant legal aspects, such as moral rights and economic rights, as well as how doctrines in copyright such as *Sweat of the Brow*, *Creativity School*, *Skill*, *Judgment*, *Labour*, *Substantial Similarity* and *Independent of Creation* can be used to criticize the plagiarism committed by Warkopi.

2. METHODS

This type of research is normative, which is research that aims to find and formulate legal arguments through analysis of the subject matter.⁵ Normative legal research or also called library legal research is legal research conducted by examining library materials or secondary data only.⁶ The approach in this research is a statutory and conceptual approach and the nature of the research is descriptive analytical, namely research that explains the application of the principle of originality of copyrighted works based on Law Number 28 of 2014 (case study of plagiarism Warkopi VS Warkop DKI).

3. DISCUSSION

Originality in a copyrighted work is very important in copyright protection. Basically, the originality of a work shows that a copyrighted work is not a copy or imitation of another creator but rather becomes the

⁴ Januarsa Adi Sudarma, Kadek, *Pelindungan Hukum Atas Pelanggaran Hak Cipta Berupa Konten Parodi Pada Kasus Warkop DKI*, Binamulia Hukum, Vol. 12 No. 2, 2023, p. 242-243, <https://doi.org/10.37893/jbh.v12i2.604>

⁵ Ali, Zainudin, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2009, p. 14

⁶ Marzuki, Peter Mahmud, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2017, p. 34

original work of the creator.⁷ The Berne Convention specifies that the parameters of originality of a corresponding work must be based on the creativity of the author. In addition, for copyright to be upheld in a work, it must be embodied in tangible form unless the member state specifies otherwise. However, the problem is that the Berne Convention does not provide regulations or set limits on the originality of creations and leaves it to each participating country to determine what constitutes originality.⁸ Originality is used as a benchmark in Copyright to test whether a work can be granted copyright protection. The term originality is not explicitly defined or described in the Berne Convention but can be interpreted by each ratifying country as outlined in the legislation.⁹

Black Law's Dictionary gives definitions of the originality of a copyrighted work, that are:¹⁰

- a. *The quality or state of being the product of independent creation and having a minimum degree of creativity (originality is a requirement for copyright protection, but this is a lesser standard than that of novelty in patent law: to be original, a work does not have to be novel or unique);*
- b. *The degree to which a product claimed for copyright is the result of an author's independent creation.*

From these two definitions, originality is the result of the author's creativity, and can be said to require independence in the process. In other words, these works are created independently and can reflect the personality of the author as a result of initiative, creativity, or imagination. This means that the originality of the copyrighted work includes: (1) whether the work comes from the creator, (2) where the work comes from, who deserves to be called the author, and (3). Whether the creator of the work has expressed his creativity in his work.¹¹

Law Number 28 of 2014 concerning Copyright does not specifically explain the requirements for the originality of a work. However, Article 1 point 2 states that the Creator is a person or several people who individually

⁷ Shtefan, Anna, *Creativity and Artificial Intelligence: A View from the Perspective of Copyright*, *Journal of Intellectual Property Law & Practice* 16, No. 7, 2021, p.720-728, <https://doi.org/10.1093/jiplp/jpab093>

⁸ Lindsey, Tim dan Eddy Damian, *Hak Kekayaan Intelektual: Suatu Pengantar*, Bandung: Alumnii, 2011, p. 123-124.

⁹ Kumala Sari, Nuzulia, *Orisinalitas Karya Cipta Lagu Dan/Atau Musik Yang Dihasilkan Artificial Intelligence*, *Jurnal Ilmiah Kebijakan Hukum*, Vol. 17 No. 3, 2023, p. 370, <http://dx.doi.org/10.30641/kebijakan.2023.V17.365-384>

¹⁰ Larasati, Desrezka Gunti, *Revealing Originality of Song Works: An Analysis To The Copyright Law*, *Indonesia Law Review* No. 2, 2014, p. 285, <https://doi.org/10.15742/ilrev.v4n3.121>, p. 282.

¹¹ *Ibid.*

or jointly produce a distinctive and personal creation. It is further explained in Article 1 point 3 that Creation is any creative work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form. This is different from the explanation of Law No. 19 of 2002 which states that copyright protection is given to copyrighted works that have a distinctive form, are personal, showing “originality” as a creation born based on the ability, creativity, or expertise so that the creation can be seen, read or heard.

From these regulations, it can be used as a guideline to determine that a work is said to be “original”, it must fulfill several provisions that have been set by the Law including:

- a. Personal and distinctive; and
- b. Creation is generated by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in tangible form.

Copyrighted works resulting from inspiration, ability, thought, imagination, dexterity, skill, or human expertise is a form of creativity that is closely related to the originality of a creation. Creativity encourages authors to create unique and innovative copyrighted works that reflect the characteristics of the author so that it is different from other authors.

The principle of originality requires that a copyrighted work must be created directly by the author, having new characteristics and not the result of plagiarism from other works. In this context, the case of Warkopi VS Warkop DKI can be used as an example of copyright infringement and violation of the principle of originality in a work. Warkop DKI, a legendary Indonesian comedy group, felt aggrieved by the existence of Warkopi, which had plagiarized its comedy without any consent. This case began when Warkopi, which consists of three personnel, namely Alfin Dwi Krisnandi, Alfred Dimas Kusnandi, and Sepriadi Chaniago, performed with the same face, style, and comedy concept identical to the legendary comedy group.¹²

The similarity with Warkop DKI was then utilized by the three young men to create various parody content on social media platforms such as YouTube. Indrojojo Kusumonegoro (Indro Warkop) and the Warkop DKI Institution gave a strong reaction and stated that the existence of Warkopi was a form of copyright infringement.¹³ This is due to the fact that in making parody content, Warkopi displays a comedy style that is very

¹² Januarsa Adi Sudarma, Kadek, *Op.Cit*, p. 243

¹³ Kariza, Nindya Cipta, *Bentuk Pelanggaran Hak Cipta Atas Penggunaan Hak Cipta Warkop DKI*, *Journal of Intellectual Property*, Vol. 5 No. 2, 2022, p. 160, <https://doi.org/10.20885/jipro.vol5.iss2.art4>

similar to Warkop DKI without permission. The Directorate General of Intellectual Property (DJKI) confirmed that in 2004, Warkop DKI had registered its trademark with registration numbers IDM000047322, IDM000551495, IDM000557440, and IDM000557441.¹⁴ The DJKI also said that Warkopi has the potential to infringe copyright if it makes stories by taking scenarios from previously produced comedy films. Warkopi has the potential to infringe intellectual property in the form of copyright by creating parody content by following pre-existing movie scenarios and uploading it in YouTube content.¹⁵

From the case of plagiarism committed by Warkopi, there are several doctrines and theories that are specifically used to test and analyze the requirements and criteria for originality of a copyrighted work, which are:¹⁶

a. *Sweat of The Brow (Industrious Collection);*

Sweat of the Brow is a doctrine that presumes that a copyrighted work has originality, if it has the productive effort of its author, even without any creativity. For example, a 'phone book' is considered to have originality because it is created by the author's painstaking efforts in collecting information and compiling a directory of numbers. The criterion rests only on the fact that the directory came from the authors, and in its creation, they did not copy someone else's work. Thus, even though the labor required in this case is technical (without creativity), the effort of the author or creator in collecting and compiling the phone number information makes the work considered original.¹⁷ This doctrine has been criticized for creating overly broad copyright protection. By relying solely on hard work rather than creativity, the doctrine has the potential to stifle innovation and access to information. Many legal scholars argue that copyright protection should be focused on the embodiment of an original idea, rather than the mere repetition or organization of a copyrighted work that has already been created.

b. *Creativity School;*

The Creativity School considers a work to have originality, if it not only contains the productive effort of the author, but also fulfills the element

¹⁴ Agung Pratama, Victor, *Analisis Yuridis Normatif Pelanggar Hak Cipta dan Penegakan Hukum Hak Kekayaan Intelektual (Studi Kasus Polemik Keberadaan Warkopi)*, Jurnal Kewarganegaraan, Vol. 6 No. 2, 2022, p. 3340

¹⁵ Januarsa Adi Sudarma, Kadek, *Loc.Cit.*

¹⁶ Fanny Kusumaningtyas, Rindia, *Prinsip Originalitas Karya Adaptasi: Pengaturan dan Perlindungan Fanfiksasi*, Semarang: BPFH UNNES, 2021, p. 73-80

¹⁷ Drassinower, Abraham, *Sweat of The Brow, "Creativity and Authorship: On Originality in Canadian Copyright Law"*, University of Ottawa Law and Technology Journal, 2004, p.107-108

of creativity, albeit in a minimal standard. This doctrine emerges as an opponent of the Sweat of the Brow doctrine, because to consider a work as “original”, there must be at least an element of creativity, and in this case the effort or energy of the creator in the process of creating a work is not enough.¹⁸ *Creativity School* encourages innovation and creative expression in various forms of copyrighted works. By setting a standard of creativity, the doctrine ensures that only works that make a unique contribution to the development of culture and science are protected by copyright. It also limits copyright protection to not cover common facts, ideas or elements that are already in the public domain.

c. *Skill, Judgment, and Labor*;

According to the *Skill, Judgment, and Labor* doctrine, a work is considered to have originality if it is created based on the skill, judgment or independent thinking of the author. The assessment of these standards in this case is qualitative.¹⁹ *Skill* is a special ability possessed by a person that is produced through training. *Judgment* relates to one's critical discernment, while *Labor* is a productive effort in creating a copyrighted work.²⁰ A case as jurisprudence from an UK court dealt with a catalog containing a compilation of information on motorcycle parts. The *skill, judgment, and labor* required can be seen from the selection process, which information is included or compiled in the catalog. This means that the selection process must show some level of skill and judgment, which in this case is through the selection or arrangement of the compiled information.²¹ Another option also considered by the UK courts is to consider skill and judgment in relation to the individuality and personality of the author. In the French copyright regime, the criteria of individuality and personality in a work can be seen as the work reflecting “*the stamp of the author's personality, irrespective of its genre, form of expression, merit of its purpose, but taking into account the level of freedom the author has to exercise his creative choices...how much such intellectual contribution was put into the work*”.²² Therefore, this principle can be said that individuality and personality have an important relationship with the creativity and intellectuality of the author, from how much intellectual creativity is poured into a work while still

¹⁸ Larasati, Desrezka Gunti, *Op.Cit*, p. 285.

¹⁹ Mckeough, Jill, *Intellectual Property, Commentary and Materials*, Sydney: Lawbook Co, 2002, p. 58.

²⁰ Muhamad, Ramadhan, *Indikator Plagiarisme Karya Musik Dalam Doktrin Orisinalitas; Bagaimana Plagiarisme Di Tentukan?*, Jurnal Kertha Semaya, Vol. 10 No. 4, 2022, p. 937, <https://doi.org/10.24843/KS.2022.v10.i04.p16>.

²¹ Larasati, Desrezka Gunti, *Loc.Cit*.

²² *Ibid*.

taking into account the value of freedom, including the criteria of skill, judgment, and labor are useful for providing references to the originality of literary works, such as compilations.

d. *The Idea Expression Dichotomy;*

This doctrine reveals that the originality of a copyrighted work does not come from the “*idea*”, but rather on the “*expression*” of the copyrighted work where this expression is made without copying from other pre-existing works.²³ The *Idea-Expression Dichotomy* doctrine is set out in Article 9 paragraph (2) of TRIP's, and also Article 2 of the WIPO Copyright Treaty.²⁴ Copyright does not provide protection to ideas, so to prove that a work is not original or copied from others, the plaintiff must claim that the “*expression*” of his work has been copied by the defendant. This confirms that the act of plagiarism is on the “*expression*”, and not the “*idea*” of a copyrighted work.

e. *Theories of Circumstantial Evidence; and*

The *Theories of Circumstantial Evidence* have two criteria used to test the originality of a copyrighted work, namely through “*Access*” and “*Substantial Similarity*”. These criteria are used to support the argument of non-mechanical imitation, because sometimes imitation of copyrighted works is done through non-physical means, such as memory. Therefore, they serve as indirect evidence in Copyright infringement cases. *First, Access*, is used to observe whether the imitator had a reasonable opportunity to see, hear, or copy the original copyright work either directly or indirectly.²⁵ For example, a popular song will often be played on Radio or broadcast on television, and there will be a high probability for the person alleged to be infringing the Copyright to listen to the song. The copycat will not be able to deny by saying that he never got access to the song. On the other hand, if the song is not popular and is only distributed in a few small areas, then exposure and access to the song will be quite difficult. On the other hand, if the song is not popular and is only distributed in a few small areas, then exposure and access to the song will be quite difficult. In this case, the counterfeiter may not have had access to the work so it can be argued that he did not copy a pre-existing copyrighted work. Another way it can be used to prove the existence of access is when the complainants have evidence that the counterfeiter has had direct 'Access' to a copyrighted work. For example, during an audition or selection to judge a copyrighted work, or

²³ Pradana, Bhaladika Adhibrata, *Tinjauan Yuridis Terhadap Hak Cipta Karakter Sherlock Holmes Yang Dikisahkan Dalam Novel Dan Film Enola Holmes*, Jurnal Ilmu Sosial dan Pendidikan, Vol. 6 No. 4, 2022, p. 2779, <http://dx.doi.org/10.58258/jisip.v6i4.3831>.

²⁴ Muhamad, Ramadhan, *Op.Cit*, p. 929.

²⁵ Larasati, Desrezka Gunti, *Op.Cit*, p. 286.

if the complainant has provided a copy of the work for a specific purpose, such as a 'demo' recording to a music producer or record label. Secondly, **Substantial Similarity**, is to observe the similarity between the original and the imitated copyright work. While there is no specific definition of substantially similar, a work can be considered similar to another, if any part of it is the same or similar to another work, and the similarities do not have to be in great number. *Substantial similarity* is less than identical, but more than slightly similar, and it can indicate a high likelihood of copying. However, *Substantial Similarity* alone is not enough to satisfy indirect evidence, where Access evidence is also required. It could be that the two works are similar, coming from the same inspiration or idea, but neither had access to the other's work, so copying activity can hardly be proven.²⁶

f. *The Independent Creation Theory*

This theory considers a work to have originality, if the creator creates the work independently, and does not imitate other pre-existing works. This means that the work does not have to be new. As long as the work is created independently, it can be considered as 'original'. Independent creation means that a copyrighted work must be free from mechanical copying or conscious copying, and the creator must be able to prove the independence of their work.²⁷

Based on the doctrine and theory of originality of copyrighted works described above, it can be said that what is done by Warkopi is a form of plagiarism of a copyrighted work. This is due to the content of Sketches Warkopi shown in the Youtube platform does not have originality and novelty and just take fragments of the movie scenario Warkop DKI only. The parody sketches shown by Warkopi on television and social media do not show distinctive characteristics and lack of creativity where copyrighted works should have elements of originality and novelty resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise as stipulated in Article 1 point 2 and point 3 of Law Number 28 of 2014 concerning Copyright.

According to Article 40 paragraph (1) of Law Number 28 of 2014, protected creations include the fields of science, art, and literature consisting of photographic works, portraits and cinematographic works.²⁸ Warkopi has infringed copyright by parodying videos/films by lypsync using Warkop DKI's original voice, taking cinematographic fragments of Warkop DKI

²⁶ *Ibid*, p. 287.

²⁷ *Ibid*.

²⁸ Rachman, Tasya Putri, *Perlindungan Hukum Terhadap Peralihan Hak Cipta Menurut Undang-Undang Hak Cipta No. 28 Tahun 2014*, Unes Law Review, Vol. 6 No. 2, 2023, p. 4670, <https://doi.org/10.31933/unesrev.v6i2>

films, using photos of Warkop DKI personnel and placing them side by side so that they look similar to be displayed in Youtube content and television programs with the aim of obtaining economic benefits.

PLAGIARISM WARKOPI VS WARKOP DKI	
	
Warkop DKI	Warkopi

The *Sweat of the Brow* doctrine states that the originality of a copyrighted work is determined by hard work or effort. In the case of Warkop DKI, their reputation as a legendary comedy group was built through a long process that involved hard work in creating characters, storylines, and a distinctive comedy style. Meanwhile, Warkopi created copyrighted works in an instant way by piggybacking on Warkop DKI's fame. In accordance with the *creativity school* doctrine, copyright legal protection is given to copyrighted works that have creativity. The name Warkop DKI can be recognized by the wider community is not only the result of their hard work in the entertainment industry, but also because of the creativity reflected in each of their works. Meanwhile, Warkopi only imitates existing works without adding new creative ideas. This does not meet the creative standards required by the Copyright Law, so it can be considered as copyright infringement.

In addition to hard work and creativity, the originality of copyrighted works also requires *skill, judgment and labor* where in making parody content, Warkopi only imitates the style of Warkop DKI without being accompanied by qualified acting skills, without creativity in developing comedy skills and without efforts to build the reputation of their own comedy group. They only rely on the facial resemblance of Warkop DKI personnel to attract viewers and get economic benefits from advertisements posted on YouTube.

Warkopi also violates the principle of Substantial Similarity stipulated in Law Number 28 of 2014 on Copyright. Violation of this principle is in the form of taking pieces of cinematographic works of Warkop DKI films to be displayed on YouTube content and television programs. This is regulated in Article 44 Paragraph (1) of the Copyright Law which explains that the use, retrieval, duplication, and / or alteration of a Creation and/or product of Related Rights in whole or in substantial part is not considered an infringement of Copyright if the source is stated or listed in full for the purposes of:

- a. Education, research, writing scientific papers, preparing reports, writing criticism or reviewing a problem without harming the reasonable interests of the Author or Copyright Holder;
- b. Security and the administration of government, legislature, and justice;
- c. Lectures that are only for educational and scientific purposes; or
- d. Performances that are free of charge provided that they do not harm the reasonable interests of the author.

The explanation of the substantial part sentence in Article 44 paragraph (1) is the most important and distinctive part that characterizes the work. It can be concluded that in Article 44 Paragraph (1) above, the act of taking a substantial part is not prohibited as long as it is for non-commercial purposes and must include the source. Meanwhile, the act of plagiarism committed by Warkopi through social media by creating the Warkopi Sketch was done consciously and without the consent of Warkop DKI and the Warkop DKI Foundation.

Warkopi's plagiarism also violates the principle of ***Independent Creation*** where a copyrighted work is called original if the creator creates the work independently or jointly based on his creativity and expertise and does not imitate the work of others so that it deserves copyright protection. In the Law Number 28 of 2014 on Copyright, the principle of Independent Creation is contained in Article 1 paragraph 2 of Law Number 28 of 2014 which explains that the Author is a person or several persons who individually or jointly produce works that are unique and personal. In addition, the Warkopi Sketches uploaded on social media also do not show anything new and only repeat scenes that have been shown in Warkop DKI films so that there is no novelty in the appearance of the Sketches where original copyrighted works should be produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise in accordance with Article 1 paragraph 3 of Law Number 28 of 2014 concerning Copyright.

In the US Courts, this principle states that a copyrightable work must also be an “*original work of authorship*” to receive protection.²⁹ The original work must be created independently and have at least an element of creativity. The work that is considered original in Copyright is an independent work of the creator himself and does not come from imitation of the work of others. An original work is not a work that must have novelty, but rather the work is produced from the creativity, ability or expertise of a creator and has a distinctive nature and does not come from imitation of the work of others.³⁰

Warkop DKI owns copyrights to the works it creates independently, and has exclusive rights consisting of moral and economic rights. Thus, if there are similarities or plagiarism in Warkopi's content, it can be seen whether the content of Warkopi Sketches is an independently created creation and has creativity in it. We need to note that *Independent Creation* can be used to avoid or eliminate allegations of copying.³¹ *Independent Creation* is evidence as a full defense of copyrighted works against acts of imitation.³²

In addition to violating the principle of originality in copyright, the content of Sketches Warkopi also violates the moral rights to the performance work owned by Warkop DKI as stipulated in Article 5 paragraph (1) of Law Number 28 of 2014 concerning Copyright. Moral rights do not only concern copyright protection but also in related rights. Such moral rights owned by performers are actors who are in the performance have rights related to it that cannot be revoked for any reason. In a movie the performers are protected actors, such as: speech style, walking style, and the characters they play each have unique characteristics.³³

²⁹ Muthoharoh, Dian Ayu Nurul, *Iconic Fictional Object As Separately Copyrighted Work From The Original Work*, Jurnal Media Hukum, Vol. 28 No. 1, 2021, p. 63, <https://doi.org/10.18196/jmh.v28i1.11045>.

³⁰ Siswoyo, Amelia Angriany, *Dilematika Hukum Prinsip Deklaratif Hak Cipta Dalam Skema Pembiayaan Berbasis Kekayaan Intelektual*, Governance: Jurnal Ilmiah Kajian Politik Lokal dan Pembangunan, Vol. 10 No. 2, 2023, p. 63.

³¹ Arewa, Olufunmilayo, *The Freedom to Copy: Copyright, Creation, and Context*, Davis: Journal University of California, Vol. 41, 2007, p. 534.

³² Putri, Rahmi Aulia, *Independent Creation SEbagai Salah Satu Dalil Untuk Membantah Tuduhan Peniruan Ciptaan*, Jurnal Sosial dan Budaya Syar'i, Vol. 8 No. 6, 2021, p. 1866, <https://doi.org/10.15408/sjsbs.v8i6.23377>

³³ Entjarau, Valencia Gabriella, *Tinjauan Yuridis Pengalihan Hak Moral Dan Hak Ekonomi Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta*, Lex Privatum Vol. 9 No. 6, 2021, p. 221-231.

It is further explained in Article 20 that the neighbouring rights in Article 3 letter b are exclusive rights that include moral rights of performers, economic rights of performers, economic rights of phonogram producers and economic rights of broadcasting institutions. In accordance with Article 21 of Law Number 28 of 2014, the moral rights of performers are inherent and cannot be removed for any reason, even until the economic rights are transferred.³⁴ Therefore, in creating parody content, Warkopi should still include the name Warkop DKI in every performance and should not distort, mutilate, and modify the creation that is detrimental to Warkop DKI.

Warkopi's parody sketches also caused losses to Warkop DKI's economic rights. This is due to Warkopi violating economic rights by not asking permission to use all the attributes, styles, appearances, and movie fragments that they parody in various television shows and social media to Warkop DKI as regulated in Article 9 paragraph (2) of Law Number 28 of 2014. Warkopi violates copyright because it has benefited by creating plagiarized content and disseminating it to the wider community. If Warkopi profits from every performance on television and social media, they should be obliged to give royalties to Warkop DKI in accordance with the provisions of Article 35 paragraph (2) of Law Number 28 of 2014 concerning Copyright.

4. CONCLUSION

From this research, it can be concluded that based on Law No. 28 of 2014, copyrighted works must have an originality element that comes from the intellectual ability of the creator and does not imitate the work of others. Copyrighted works are said to be original if they have distinctive characteristics and are made based on creativity so that they have elements of originality and novelty resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise of the creator in accordance with the provisions of Article 1 point 2 and point 3 of Law No. 28 of 2014. The case of Warkopi VS Warkop DKI shows a violation of the originality principle where the original copyrighted work should be made by the creator based on expertise, hard work, creativity, and is distinctive in accordance with the doctrine of *sweat of the brow, creativity school, skill, judgment, labor, and independent creation*. Based on the substantial similarity principle in Article 44 paragraph (1) of Law Number 28 of 2014, Warkopi is considered to have plagiarized the concept, style, character and taken cinematographic fragments of Warkop DKI without permission. In addition,

³⁴ Januarsa Adi Sudarma, Kadek, *Op. Cit.*, p. 245.

Warkopi also violates the moral rights to performance works stipulated in Article 5 paragraph (1) and economic rights in Article 9 paragraph (2) of Law Number 28 of 2014 concerning Copyright.

5. LIMITATION

In order for this research to be directed, it is necessary to make a limitation, namely the discussion in this study is a predetermined problem, namely the application of the principle of originality of copyrighted works based on law number 28 of 2014 (case study of plagiarism Warkopi VS Warkop DKI). This research can be used as expected to provide insight, especially in understanding intellectual property law relating to the application of the principle of originality in copyrighted works so that in the event of plagiarism of pre-existing copyrighted works, the principle of originality can be used as a parameter to determine copyright infringement.

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