

Legal Protection Of The Ramayana Ballet As The Part Of Indonesian Copyright



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ABSTRACT

Indonesia has the famous traditional arts, particularly Ramayana Ballet is generally known in Yogyakarta and Central Java people. It combines with dances and dramas that influence the Indian epic story of Ramayana. Many creators and artists create and develop new creation, such as dances, choreographies, and gamelan instruments. It makes uncertainty case in people, artists, and cultural experts claimed that who has the copyright in The Ramayana Ballet. This type of research is normative with a legislative approach. The data used is secondary data consisting of primary, secondary and tertiary legal materials. The results of the research Ramayana Ballet is a work protected by copyright because it includes derivative works (adaptations) in accordance with the provisions of Article 40 paragraph (1) section n of Law Number 28 of 2014 concerning Copyright. Ramayana Ballet is an Indian literary work which is then adopted by the Indonesian people and made a new version (consisting of drama and dance) combined with Indonesian culture and art. Ramayana Ballet is a work or creation that has originality because it has elements of originality such as knowledge, skill, effort, value, taste, and also creativity that distinguish it from previous works

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1. INTRODUCTION

Generally, Intellectual Property is divided into two categories : copyrights and industrial property rights which include patents, industrial

designs, trademarks, repression of unfair competition, layout designs of integrated circuits, and trade secrets.¹ Protection of Intellectual Property is necessary as a consequence of Indonesia's participation as a member of the World Trade Organization (hereinafter referred to as WTO), so that Indonesia is bound to adjust all its laws and regulations in the field of Intellectual Property to the TRIPs (Trade Related Aspects of Intellectual Property Rights) standard.²

Copyright is a legal term to refer to the results of human creation or copyrighted works in the fields of science, literature, and art. The term is a translation of the English copyright, the Dutch equivalent is *auteur recht*. The parties directly related to copyright are scientists, writers, and artists.³ Copyright aims to protect works of art created by artists. These forms of art include: song and music creations with or without text, including musical scores and sound recordings; drama, dance (choreography), puppetry, pantomime, works whose creators are unknown, and works whose copyright rests with the state.

A work in principle consists of two elements, namely the elements of the Creator and the Creation. The creator is a person or several people together who, based on their inspiration, create a work based on the ability of thought, imagination, dexterity, skill, or expertise that is poured into a distinctive and personal form. Meanwhile, a creation is the result of any work of the creator that shows its originality in the field of science, art, or literature.

In relation to art, Indonesia as an archipelago has a very rich diversity of arts and culture. The diversity of arts and culture in society is reflected in various forms of culture, both intangible and tangible.⁴ This is in line with ethnic, tribal and religious diversity, which as a whole is a national potential that needs to be protected. Art and cultural wealth is one source of intellectual property that can and needs to be protected by law.

Humans with their intellectual abilities produce works of art through a process of creation, also called the creative process, which is a series of activities of an artist in creating his works of art as an expression of his ideas and desires. This creation process does not occur and is derived from an

¹ Firmansyah, Muhammad. *Tata Cara Mengurus HAKI*, Jakarta: Visimedia, 2008, p.7

² Saidin, OK. *Aspek Hukum Hak Kekayaan Intelektual*, Jakarta: Rajawali Press, 2004, p.26

³ Luthan, Salman. *Makalah Diskusi Dosen Fakultas Hukum UII Yogyakarta: Delik-Delik Hak Cipta*, 1989, p.1

⁴ Rabbani Rahim, Arief. *Makalah Pengelolaan Keanekaragaman Budaya Nasional*, Departemen Pendidikan Nasional, p.1

empty space, but is essentially just an effort to modify (change / adjust) something that has existed before.⁵

The art form of ballet that is famous among the people of Indonesia, especially Yogyakarta or the people of Central Java is Ramayana Ballet. "Ramayana Ballet" is a performance that combines the arts of drama and dance that tells the Ramayana story. The Ramayana story in Ramayana Ballet is the embodiment of an Indian legend that is beautifully carved on the wall of Shiva Temple, which is one of the temples in the Prambanan area.

The Ramayana is actually not an original Indonesian story. Ramayana is an epic that originated in India and is also famous in Southeast Asia. In Indonesia, the Ramayana story is known through comics, prose, drama, puppet shows and television series. The Ramayana has been known and loved by the ancestors of the Indonesian people since the 9th century (nine) and has even been known by Southeast Asian countries such as Burma, Thailand, Laos, Cambodia, Myanmar and Malaysia since the first century AD.⁶

The Ramayana literary work is a heroic story written by a Rishi from India named Walmiki. In Indonesia, there is also a Ramayana story written in the form of Old Javanese song, the Ramayana Kakawin, which was allegedly written by Yogiswara around 870 AD. The Ramayana Kakawin story has differences with the Ramayana written by Walmiki. In Walmiki's version of Ramayana, Rama and Sinta return to Ayodya but they are separated again. Whereas in Ramayana Kakawin Rama and Sinta live together in Ayodya.

In Indonesia, the Ramayana literary work is used as a basic idea to create a performance involving hundreds of dancers and dozens of Javanese gamelan music artists entitled Ramayana Ballet. The Ramayana Ballet involves a lot of creators to create something new and different from other arts and has never existed before either in Indonesia or in the world. The creation by the artists includes the performance stage, lighting and stage layout, storyline, dances, choreography, and Javanese gamelan music as accompaniment in the performance. To realize the performance, the creators are required to spend everything they have based on their experience and intellectual abilities in creating something creative and innovative.

In a legal context, artworks are part of Intellectual Property, which is a right arising from human creative actions that produce innovative works that can be applied in human life. The law provides protection to artists and their works that are born from a process of creation; the intellectual power, passion,

⁵ Santoso, Budi. *Pengantar HKI*, Semarang: Pustaka Magister, 2008, p.10

⁶ Moehkardi, *Sendratari Ramayana Prambanan*, Jakarta: Kepustakaan Populer Gramedia, 2011, p.1

and taste of an artist.⁷ Arrangements for the protection of one's copyrighted works in the fields of science, art and literature are regulated in Law No. 28 of 2014 concerning Copyright. The Copyright Act is intended to protect works of art created by artists and protect intellectual works created by scientists. Given that the results of the thought and mind is not short and spend energy, thought and not a small amount of money.

Ramayana Ballet as one of the Indonesian cultures basically also requires legal protection, considering that the ballet is the result of the artist's creativity and can be said to be an intellectual property for the artist. Although Law No. 28 of 2014 does not expressly mention that copyright protection in the field of art also includes the Ramayana Ballet, but in the Ramayana Ballet there are dances, choreography and gamelan music that are protected under the Copyright Act. This means that the Ramayana Ballet in the form of a combination of art, drama and dance becomes the object of protection in the Copyright Act.

Ramayana Ballet performances involve many creators or artists who create dances, choreography, and gamelan music in new creations. This has led to uncertainty in various circles of society, artists and culturists regarding who actually owns the copyright to the Ramayana Ballet. Timbul Haryono also said that lately there have been a lot of claims to copyrighted works that have artistic and cultural value by Malaysians. This raises concerns if the Ramayana Ballet is claimed by another country if the creator or copyright holder is unknown, moreover in each fragment of the Ramayana Ballet there are many dances, choreography of new creations both known and unknown creators. Furthermore, the original idea to create the storyline of the Ramayana Ballet was to use Walmiki's Ramayana Literature. This means that there has been a change in Walmiki's original creative work from the original literary work into a new form that is more adapted to the arts, customs and culture of the Indonesian people.

2. METHODS

This type of research is normative, which is research aimed at finding and formulating legal arguments through analysis of the subject matter.⁸ Normative legal research, also known as library legal research, is legal research conducted by examining library materials or secondary data only.⁹ The approach in this research is a statutory and conceptual approach and the

⁷ Erlinayanti, Anindita, Jurnal Pemuda Indonesia: Hak Cipta Karya Seni Milik Siapa ?, 2012

⁸ Ali, Zainuddin. *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2009, p.14

⁹ Marzuki, Peter Mahmud. *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2017, p.34

nature of the research is descriptive analytical, which is research that explains and describes the protection of Ramayana Ballet as part of copyrighted works in terms of Law Number 28 of 2014.

3. DISCUSSION

A. Embodiment of Ramayana Story Expression into a Ballet Performance

According to Timbul Haryono, the history of the Ramayana Ballet in 1960 was because Djatikusumo wanted to create a monumental work as a tribute to the people of Prambanan and its surroundings who had helped in the Independence War. To realize the project, Djatikusumo conducted a comparative study to Cambodia to see the Ballet Royal du Cambodia performed in front of the Angkor Watt Temple as a royal dance performed to welcome guests of honor and nobility. Djatikusumo continued his comparative study to Egypt to see a show called Son et Lumiere or sound and light show located in the ruins of the Giza Pyramids.¹⁰

Based on these two performances, an idea arose from Djatikusmo to create a performance that had never existed before both in terms of form and structure in the form of a ballet in front of the relics of Prambanan Temple by taking the Ramayana story as the background of the performance. Idea is the most important thing in the creation of a copyrighted work, but when speaking in the context of Intellectual Property, especially copyright, the idea cannot be protected in a copyrighted work. This is related to the basic doctrine of Copyright law which says that Copyright only protects *"expression" and does not protect an "idea"*. This basic doctrine is often referred to as the **"idea and expression dichotomy"**.¹¹

The basic doctrine of copyright law is also followed by some experts in the field of copyright. According to L.J. Taylor in his book Copyrights for Librarians states that copyrighted is the expression or embodiment of an idea, and not protect the idea itself. Based on this statement, it can be interpreted that the protected in copyright is something that is already in real form as a creation and not an idea.¹² Oliver Wendell Holmes also stated that indeed the literary world is full of such coincidences (similar ideas) that some people

¹⁰ Moehkardi, *Op.Cit*, p.50

¹¹ Samuels, Edward. The Idea – Expression Dichotomy in Copyright Law dalam Tennessee Law Review Law Review Associations, Inc. Nomor 321, University of Tennessee

¹² Usman, Rahmadi. Hukum Atas HKI: Perlindungan dan Dimensi Hukumnya Di Indonesia, Bandung: Alumni, 2003, p.121

call plagiarism. Ideas fly through the air, and it requires greater skill to avoid them than to find them.¹³

Another opinion is also expressed by William M Landes and Richards A Posner who try to describe the difference between "idea" and "expression", which is :¹⁴

- 1) If a writer of an espionage novel imitates a part of a James Bond novel, it can be said that there has been imitation. But if the author is inspired by James Bond and then also writes about a British secret agent, the author cannot be said to be an imitator.
- 2) If an economist plagiarizes Ronald Coase's article without his permission then the economist is an imitator, but if the economist elaborates Ronald Coase's theory in his own language then he cannot be said to be an imitator.

Tim Lindsay also stated his opinion on the dichotomy of ideas and expression, including :¹⁵

- 1) Information contained in university textbooks about the scientific process does not receive copyright protection. However, the words used by the author, including pictures and other illustrations, are protected by copyright.
- 2) The "idea" to write a biography of a famous person does not receive copyright protection. But the words in the sentences used by the author in the biography get copyright protection.

Article 1 paragraph 3 of Law No. 28 of 2014 states that creation is any result of any copyrighted work in the field of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in real form. Based on this definition, it can be concluded that a copyrighted work gets copyright protection is :¹⁶

- 1) Creation that is the result of the process of creation based on inspiration, or ideas based on the ability and creativity of the mind, imagination, dexterity, skill, or expertise of the creator.

¹³ Goldstein, Paul. *Hak Cipta : Dahuku, Kini Dan Esok*, Jakarta : Yayasan Obor Indonesia, 1997. p.5-8

¹⁴ Kusumaatmadja, Mochtar, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*, Lembaga Penelitian Hukum dan Kriminologi, Fakultas Hukum Universitas Padjajaran, tanpa tahun terbitan Landes, William M and Richards A Posner, *The Economic Structure of Intellectual Property Law*, Cambridge: The Belknap Press of Harvard University Press, 2003, p.91

¹⁵ Lindsay, Tim. *Hak Kekayaan Intelektual Suatu Pengantar*, Bandung: Alumni, 2002, p.105

¹⁶ Usman, Rahmadi. *Op.Cit*, p.121

- 2) The work must have a distinctive form and show its originality as a personal creation in a distinctive form. The work must be realized so that it can be seen, heard, and read, including braille reading. The creation must show its originality in other words it does not imitate or plagiarize the inspiration, ideas, or ideas of others and in addition the creation in question is also the result of personal reflection of the creator.

Protection of the expression of an idea in a work that is real or tangible can be found in Article 2 of the Berne Convention for the Protection of Literary and Artistic Works 1886 (hereinafter Berne Convention) which states that: *The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.*

According to Budi Santoso, the word expression is usually associated with ideas, concepts, ideas, and methods. This is used to build an understanding that the world of ideas, concepts, ideas, and methods are terms that are not physical or are in the human mind (intangible) while the expression or embodiment of ideas, concepts, and methods are physical things (tangible).¹⁷

Article 2 paragraph (2) of the Berne Convention also states that the state parties to the convention shall establish an explicit rule in their legislation, that a copyrighted work that is general in nature or in a particular category is not protected unless it has a real or tangible form (*Possible Requirements of Fixation*). The doctrine of protection of expressions or embodiments of copyrighted works is also recognized in Trade Related Aspects of Intellectual Property Rights (TRIP's) mentioned in Article 9 paragraph (2) which reads "Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such."

¹⁷ Santoso, Budi. *Dekonstruksi Hak Cipta*, Semarang: Badan Penerbit Universitas Diponegoro, 2008, p.91-91

The United States also regulates these regulations in the Copyright Act of 1976 Chapter 1 regarding the subject and scope of copyright. Section 101 states that "*A work is fixed in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.*"

In section 102 (a) Copyright Act of 1976 states also that "Copyright protection subsists, in accordance with this title, in original works of authorship *fixed in any tangible medium of expression*, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. *Works of authorship include the following categories : Literary works; Musical works, including any accompanying words; Dramatic works, including any accompanying music; Pantomimes and choreographic works; Pictorial, graphic, and sculptural works; Motion pictures and other audiovisual works; Sound recordings; and Architectural works.*

Deborah also added that some things that cannot be protected by copyright include laws, results of state reports, white papers, facts, and works that have become public property or creations that have expired (public domain).¹⁸ These provisions are also applied in the Indonesian Copyright Law as contained in Article 41 section b of Law No. 28 of 2014 which states that: "Works that are not protected by copyright include any ideas, procedures, systems, methods, concepts, principles, findings or data even though they have been disclosed, stated, described, explained, or combined in a work."

In Article 2 Japan Copyright Law No. 48, of May 6, 1970 also states that a copyrighted work is a production resulting from the mind or feelings of the creator expressed in a creative way in the fields of science, literature, art, and music. From all the definitions of copyrighted works that have been described above, it can be concluded that an important element in a creation is not only an idea that is *expressed or realized* in a copyrighted work but there is also an *element of creativity* in the creation of a copyrighted work that makes it different from other copyrighted works.

If the dichotomy doctrine of copyright is associated with the idea of Djatikusumo in the creation of copyrighted works Ramayana Ballet then if it is only limited to ideas cannot be protected by the Copyright Act. To get copyright protection, ideas inspired by the performance of the Ballet Royal du Cambodia and also Son et Lumiere at the Pyramids of Giza is realized or expressed in the form of a copyrighted work that has never existed before in

¹⁸ Bouchoux, Deborah E, Protecting Your Company Intellectual Property, Amacom, 2001, p.91

Indonesia even in the world in the form of Ballet (art, drama and dance) that combines Indonesian art and culture.

The Ramayana Ballet performed at Prambanan Temple is not only inspired by performances in Cambodia and Egypt. According to Timbul Haryono, the Ramayana Ballet was also inspired by a literary work from India written by Walmiki named Ramayana. The story of Ramayana itself has been widely known by the ancestors of the Indonesian people since the 9th century. The Ramayana story in India is not only seen as a literary work but also a religious book because of its moral teachings. The creation of the Ramayana Ballet storyline is inseparable from the Ramayana literary work which was originally a literary work and then turned into a performance called Ramayana Ballet. In the context of copyright, it can be seen that there has been a **"change of expression"** of Literary Works into a new form in the form of Ballet (art, drama and dance). Changes in an expression in Copyright is also known as *derivative works*.

Protection of derivative works exists in the 1886 Berne Convention. Article 2 includes Protected Works: *Literary and artistic works; Possible requirement of fixation; Derivative works; Official texts; Collections; Obligation to protect; beneficiaries of protection; Works of applied art and industrial designs; News*. In Section 101 of the United States Copyright Act of 1976 a derivative work is a copyrighted work created based on one or more pre-existing copyrighted works which include translations, musical arrangements, plays, works of fiction, films, sound recordings, reproductions of art, summaries, condensations, or any other form in which a work is recreated, transformed, or adapted. A work that consists of editorial revisions, explanations, elaborations, or other modifications in its entirety and is the original work of the creator is also called a *derivative work*.

Further provisions in Section 103 (b) Copyright Act of 1976 states that : *"The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material"*.

The United States Copyright Act also provides for the exclusive right for creators to create derivative copyrighted works. It is stated in section 106 of the Copyright Act of 1976 that the creator has the exclusive right to do the following:

- 1) To reproduce a copyrighted work in copies or sound recordings;
- 2) To make derivative works based on a copyrighted work;

- 3) To distribute copies or sound recordings of a copyright-protected work to the public through sale or transfer of ownership, as well as rental and lending;
- 4) To display copyrighted works. Such creations are literary works, music, drama, choreography, pantomime, movies and other audio-visual works;
- 5) To exhibit or show a work protected by copyright. Such works are literary works, music, drama, choreography, pantomime, films, graphics, sculptures, including images from a film and other audiovisual works;
- 6) To perform sound recordings by means of digital audio transmission.

In Article 2 of Japan Copyright Law No. 48, of May 6, 1970, the definition of derivative work is *“A work created by translating, arranging musically, transforming, or dramatizing, cinematizing or otherwise adapting a pre-existing work”*. Article 28 of Japan Copyright Law No. 48, of May 6, 1970 states that *“In the exploitation of a derivative work, the author of the pre-existing work shall have the same rights as those the author of the derivative work has under the provisions of this Subsection”*. According to Hisayoshi Yokoyama of Gakushuin University in Japan, the meaning of Article 28 is that when a derivative work is utilized or published (for example in the publication of a translation of a novel), it must be approved by both the original creator (the novel that has not been translated) and the creator of the derivative work (the novel that has been translated).

In Indonesia, the definition of derivative work is not specifically mentioned in the Copyright Law, but that does not mean that derivative work is not regulated in that Law. Article 12 paragraph (1) section l of Law No. 19 of 2002 states that protected works in the fields of science, art, and literature include translations, interpretations, *“adaptations,”* anthologies, databases, and *“other works of embodiment.”* The definition of the work of embodiment contained in the explanation of Article 12 paragraph (1) section l of Law No. 19 of 2002 is *“the copyrighted work of change of form.”* After Law No. 19 of 2002 was amended into Law No. 28 of 2014, the derivative work is regulated in Article 40 paragraph (1) section n which refers to the copyrighted work of "adaptation" which in the explanation of the Act is *“to convert a work into another form.”*

Based on the explanation of the Copyright Act, it can be concluded that the work of embodiment is a derivative work. This means that the Indonesian Copyright Act also provides legal protection to derivative work. In the opinion of the author for the formulation of the next Copyright Law, the regulation of derivative work must be further clarified both the definition,

types of derivative work both in general provisions and the scope of protection in the articles of the Copyright Law.

When associated with Law No. 28 of 2014, the Ramayana Ballet is protected in the Copyright Act, namely in Article 40 paragraph (1) letter n because it is included in the copyrighted work of embodiment (derivative works). Ramayana which was originally a literary work from India has changed its expression into a new form of Ballet (art, drama, and dance) that combines Indonesian culture and art. In addition, the Ramayana Ballet is also protected in Article 40 paragraph (1) section e which states that the creations protected in this Law are creations in the fields of science, art and literature which include drama, musical drama, *dance, choreography*, puppetry and pantomime. Based on this article, Ramayana Ballet is included as a copyrighted work in the field of art in which there are Indonesian arts in the form of dance and choreography combined with Javanese gamelan musical instruments which are characteristic of Indonesian art.

B. The Originality of Ramayana Ballet

Speaking of the originality of a copyrighted work, it will not be separated by the principle of originality. This principle is the main principle in copyrighted works in addition to the principle of expression of ideas and the principle of creativity. Originality shows the aspect of the copyrighted work that shows novelty and distinguishes the work of reproduction, cloning, imitation, and derivative works. In other words, the original copyrighted work is protected by the Act not due to copying (plagiarizing) the work of others but the creation is really pure from the creator's idea that is poured into a real form and has never existed before.

Ramayana Ballet is a new creative work in the field of arts and culture in Indonesia. It is said to be a new art because in 1960 there was no performance in Indonesia or even the world that combined many elements of art, drama and dance. These elements consist of the Ramayana literary work (the basis for making the storyline), traditional Indonesian dance, Javanese gamelan, lighting, stage, and Prambanan Temple and Mount Merapi as the background of the performance. With these various elements, to determine whether Ramayana Ballet is an original work of authorship or not, *the principle of originality can be used as an analytical method*.

Referring to Law No. 28 of 2014, it can be seen that in order to obtain copyright protection, a work must show the originality of the creator, but the definition of originality is not explained in the articles or in the explanation of Law No. 28 of 2014. This is one of the weaknesses of Act No. 28 Year 2014 because in practice there are many cases that occur due to a copyrighted

work that is similar to a pre-existing work of creation. There are no absolute criteria regarding the definition of the originality of a work. The originality of a work is studied through various cases (based on cases) and the opinions of copyright law experts who try to provide definitions and limitations on the originality of a work.

To determine whether a copyrighted work is original or not, in practice there is a doctrine that can test the authenticity of a creation called "*sweat of the brow doctrine*".¹⁹ According to this doctrine the originality of a copyrighted work is determined by "*sufficient effort*" in the creation of copyrighted works. Sufficient effort is enough to be given copyright protection if the copyrighted work is produced by the creator by using his skills, energy, or experience and does not copy the work of others.

Marina Hasyim argues that the amount of skill and effort required to determine whether a copyrighted work is original or not depends on the facts of the case.²⁰ The logical reason is that if the creator makes a new copyrighted work (never existed before), automatically the effort required will be greater (Trial and Error and Research and Development costs). In contrast, if the collection of facts from a copyright case is generated from a pre-existing work then determining whether there is sufficient skill and effort becomes more difficult.

The United States Copyright Act of 1976 mentions the words "an original work of authorship". The meaning of the word is "any type of expression independently conceived of by its creator". Attorney Stephen Elias explains that to be original, a copyrighted work does not have to be new. Thus the originality of a copyrighted work is defined as an expression of ideas independently made by the creator and the meaning of originality does not mean that the copyrighted work must be new. Further explained by Attorney Stephen Elias regarding exceptions to the principle of originality of a copyrighted work : "*A few categories of expression do not qualify as original works of authorship. Either because they are too short to deserve copyright protection or they involve little or no creativity or originality. Among these are title of books, movies and song, short phrases and slogans, printed forms, compilation of facts, and works consisting entirely of information that is public domain property for instance, list and tables taken from public documents or other common sources*".

¹⁹ Hasyim, Marina, Mohamed, Mazita, Artikel: Konsep Keaslian Dalam Undang-Undang Hak Cipta, 2003, p.103

²⁰ *Ibid*, p.104

From the opinion of Attorney Stephen Elias, it can be concluded that if the greater the effort (skill, judgment, knowledge, taste and labor) in creating a copyrighted work, it will show a high level of creativity in a copyrighted work created by the creator. The higher the creativity of a creation, the more it shows the level of originality of a copyrighted work. Thus the originality of a creation is not only determined by sufficient effort (skill, judgment, knowledge, taste and labor) but also creativity. Deborah defines originality as "it must arise from its author's creative intellectual effort, as distinguished from the copying of an existing work." She explained that although a copyrighted work must be original, it does not mean that it is the only one of its kind. Thus, if there are two songwriters who independently create a song, then both creations are original and get copyright protection as long as the creation does not duplicate the creation of others.²¹

Friedrich Nietzsche in his article entitled "Concept of Originality" explains that a copyrighted work must be the embodiment of the creative expression of thought of the creator. The Copyright Act is not concerned with the originality of the idea but with the originality of the expression of thought.²² Paul Goldstein provides a more detailed explanation of the principle of originality of a copyrighted work. According to Goldstein, the test for originality of a copyrighted work is in some ways similar to the test for determining copyright infringement. Proving of the originality of a copyrighted work is based on the fact that the plaintiff did not duplicate the earlier work. Conversely, the determination of copyright infringement is based on the fact that the defendant has copied the copyrighted work. Previous creations that fulfill the element of originality sometimes will not avoid copyright infringement. The addition of new elements to a pre-existing work is a support for the originality of a work.²³

Budi Santoso provides indicators of the originality of a copyrighted work in relation to copyright protection:²⁴

- 1) For a copyrighted work to be considered original, it is not required that the work be new, like in the patent system;
- 2) There is no need for a significant difference between the new copyrighted work and the previous one, as is the case in the patent system, to determine novelty;
- 3) The originality referred to in the copyright system is original in the expression of the idea not original in the idea;
- 4) It is said to be original if the copyrighted work is purely derived

²¹ Bouchoux, Deborah E, *Op.Cit.* p.87

²² Nietzsche, Friedrich, *Artikel: Concept of originality*, 2013, p.1

²³ Goldstein, Paul, *Op.Cit.* p.63-67

²⁴ Santoso, Budi. *Op.Cit.* p.103-104

- from the creator himself and not just do a duplicate of previous creations;
- 5) It is not original if the work contains a lot of information that is already public;
 - 6) Originality arises from the creativity and intellectual efforts of the creator, not just plagiarism;
 - 7) There is a correlation between the concept in the creator's mind and the creation produced through the creator's hands;
 - 8) In quantity, the contributions made by the creator are as follows:
 - a) Not just an additional variation that seems trivial;
 - b) Not a perfunctory work of authorship;
 - c) Lack of creativity;
 - d) Must be a distinctive variation;
 - e) Must be a serious touch from the creator.
 - 9) Originality relates to the manner in which the creation was made;
 - 10) There must be skill, judgment, and labor put into the work.

From the explanation of the doctrine of the originality of a work and the opinion of copyright law experts, the author uses indicators of originality to determine and analyze whether the Ramayana Ballet is an original copyrighted work or not. To clarify the analysis then can be made analysis table as follows:

Originality of Copyrighted Work Indicator	Ramayana Ballet Inspiration (Idea)	Result of Idea Embodiment (Expression of Copyright Work)
Copyrighted works are said to be original if they fulfill : <ol style="list-style-type: none"> 1. <i>Skill</i>; 2. <i>Judgement</i>; 3. <i>Knowledge</i>; 4. <i>Taste</i>; 5. <i>Labor</i>; 6. <i>Creativity</i> 	The inspiration for creating the Ramayana Ballet: <ol style="list-style-type: none"> 1. Ballet Royal du Cambodia; 2. Son et Lumiere; 3. Ramayana Epic Literary Works 	Changes in expression of ideas : <p style="text-align: center;">Literary Works</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Ramayana Ballet (Derivative Work)</p>

Based on the table above, a copyrighted work is said to be an original work that must be different from the creations that have existed before. To

know the originality of Ramayana Ballet, it can be known based on its form and function which is different from Ramayana as a literary work. According to its form, the Ramayana is a literary work written by Walmiki that tells the story of Rama's struggle to save Sita who was kidnapped by Rahwana. While the function of Ramayana literature is as a religious book and moral teachings that can guide humans to become wiser in living life in the world.

Ramayana Ballet combines the forms of art and culture that exist in Indonesia, especially dance. The Ramayana Ballet has a function to increase the country's foreign exchange in the field of tourism and as a tribute to the people of Prambanan for helping Djatikusmo in the independence war. According to the results of the author's research, Ramayana Ballet not only has differences in terms of form and function with the Ramayana as a literary work but as a derivative work also has many additional elements that are not owned by the Ramayana as a literary work such as :

- 1) Made in the theater;
- 2) There are elements of art, drama, and dance;
- 3) There are characters performed in the ballet;
- 4) There is no dialog;
- 5) There is a narrative director of the Ramayana Ballet story; and
- 6) Javanese gamelan as the accompaniment of the performance

C. The Creator and Copyright Holder of Ramayana Ballet

According to the dichotomy doctrine of ideas and expressions, copyright protects the expression or embodiment of ideas, not giving protection to ideas, because copyrighted works must have a distinctive form, is personal and shows the originality as a creation born based on the ability, creativity, or expertise so that the creation can be seen, read, or heard.²⁵ The concept of Intellectual Property is based on the idea that intellectual works that have been produced by humans require sacrifice of labor, time, and money. The existence of these sacrifices makes the work that has been produced have economic value because of the benefits that can be enjoyed. Based on this concept, it encourages the need for appreciation of the work that has been produced in the form of legal protection for Intellectual Property. The purpose of providing this legal protection is to encourage and develop the spirit of work and creation.

The basic framework is given legal protection to a person against his creation is from the **“Doctrine of Natural Law”** which emphasizes the human factor and the use of reason as known in the Civil Law System which

²⁵ Prapantja, Cita Citrawinda, *Hak Kekayaan Intelektual Tantangan Masa Depan*, Jakarta: Badan Penerbit Universitas Indonesia, 2003, p.73

is the legal system used in Indonesia. The philosophy of the importance of legal protection of copyright is based on the theory of natural law, and also justified by utilitarian adherents who emphasize that the intelligence of economic principles, whereas copyright protection is needed in order to provide incentives for creators to produce their works. The spirit to create from the creator can make the welfare of society increased.

Historically, the idea to create the Ramayana Ballet was based on the provisions of MPRS No. II of 1960. The content of the MPRS provision is a tourism project planned by the Government to increase foreign exchange. According to Timbul Haryono, the executor of the tourism project was the Department of Land Transportation, Post, Telecommunications and Tourism led by Major General GPH Djatikusumo. To realize the tourism project, in 1960 Minister Djatikusumo reviewed various tourism projects in various countries as comparative study material. In April 1961, Djatikusumo formed a project team with a fund of Rp 20,000,000 taken from the country's tourism development fund.

Based on this explanation, it can be recognized that the one who initiated to make the Ramayana Ballet performance was Djatikusumo, but it does not mean that the copyright of the Ramayana Ballet is automatically owned by Djatikusumo personally. The tourism project undertaken by Djatikusumo is a state project based on the provisions of MPRS No. II of 1960 concerning the First Phase of Universal National Development. The project was also financed by the state using a tourism development fund of Rp. 20,000,000. In the provisions of Article 35 paragraph (1) of Law No. 28 of 2014 states that unless otherwise agreed, the Copyright Holder of the Creation made by the Creator in official relations, which is considered as the Creator, is a government. Furthermore, in Article 35 paragraph (2) of Law No. 28 of 2014 in the event that the Creation as referred to in paragraph (1) is commercially used, the Creator and / or Neighbouring Rights Holder receives compensation in the form of royalties.

From the explanation of Article 35 of Law No. 28 of 2014, it can be concluded that the copyright of Ramayana Ballet is in the government. Thus, the creator and copyright holder of Ballet Ramayana is the government. This is because based on its position and function, Djatikusumo performs state duties as Minister and the project is financed by the state. Another case if Djatikusumo is not a Minister and use their own funds in making the Ramayana Ballet then the copyright of the Ramayana Ballet is on Djatikusumo as the creator.

Although the Copyright of Ramayana Ballet is owned by the government, it would be better if the state gives awards to the creators of dance, choreography, gamelan music, lighting and stage design who have

contributed to the Ramayana Ballet project. The reason is because in creating dance, choreography, gamelan music, in the Ramayana Ballet project the creators have devoted time, thought and energy so that the creators of art need to be rewarded.

D. Protection Period of Ramayana Ballet

Exclusive utilization of a copyrighted work also has a period of time. Copyrighted works known to the creator under the provisions of Article 57 of Law No. 28 of 2014 the validity period of moral rights is indefinitely. While the validity period of Economic Rights in accordance with the provisions of Article 58 applies during the life of the creator and continues for 70 years after the creator dies starting on January 1 of the following year.

If the state as the holder of the Ramayana Ballet Copyright in this case has the status of a Legal Entity, based on Article 58 paragraph (3) of Law No. 28 of 2014, its legal protection is only valid for 50 years since it was first announced. When the Ramayana Ballet has expired, the copyrighted work becomes public domain and the information can be accessed by the general public. After the copyrighted work becomes public domain, anyone can utilize the Ramayana Ballet either non-commercially or commercially without requiring permission from the creator.

If this is 2024, then since it was first performed or published in 1961, the age of the Ramayana Ballet has been 63 years. This means that the copyright protection of the Ramayana Ballet has expired since 2011. Against this fact, the author gives his opinion that if the Ramayana Ballet Copyright protection has expired, it does not mean that it is no longer protected by Law No. 28 of 2014. Based on the nature of protection in the field of Intellectual Property is divided into two, namely:

- 1) Intellectual Property that is communal in nature;
 - a) Biological resources;
In the form of plants that do live in a community of people and certain areas.
 - b) Traditional Knowledge;
Traditional knowledge is generally a form of innovation, creation and cultural expression produced and maintained for generations by indigenous people or a local community or individuals in a local community of a country.
 - c) Traditional Expressions (Folklore)
Intellectual works in the arts, including literature that contain elements of traditional heritage characteristics produced, developed, and maintained by certain communities.

- 2) Personal Intellectual Property, including Copyright, Patents, Trademarks, Industrial Designs, Integrated Circuit Layout Designs, Trade Secrets, Plant Variety Protection.

If the validity period of Ramayana Ballet has ended, it can be classified as Traditional Expression (folklore). This is because in the Ramayana Ballet there are elements of Indonesian art and culture developed and maintained by the Javanese community, generally the people of Yogyakarta and Solo and especially the people of Prambanan. Therefore, in accordance with the provisions of Article 60 of Law No. 28 of 2014, traditional cultural expressions held by the state are protected indefinitely.

4. CONCLUSION

From the research, it can be concluded that Law No. 28 of 2014 concerning Copyright can accommodate the protection of Ramayana Ballet as part of copyrighted works. The basic idea in the staging of Ramayana Ballet is based on the performances of Ballet Royal du Cambodia, and *Son et Lumiere* in Egypt. The creation of the Ramayana Ballet storyline uses the Ramayana Literature from India. In this case, there has been a change of expression from literary works to ballet combining Javanese art and culture. Changes in the form of expression in copyrighted works are referred to as derivative works. In Article 12 paragraph (1) section l of Copyright Law No. 19 of 2002 uses the term copyrighted work of the result of embodiment. After Law No. 19 of 2002 was amended into Law No. 28 of 2014, the derivative work is regulated in Article 40 paragraph (1) section n which refers to the copyrighted work of "adaptation" which in the explanation of the Act is "to convert a work into another form." Ramayana Ballet gets legal protection in Copyright Law No. 28 of 2014. In this case, Ramayana Ballet is protected in Article 40 paragraph (1) because there are dances, choreography, and Javanese gamelan music. The copyright of Ramayana Ballet is owned by the state represented by PT Taman Wisata. Therefore, the economic and moral rights of Sendratari Ramayana are held by the state and the term of protection of its Copyright becomes unlimited.

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 legal protection of Ramayana ballet as part of Indonesian copyright as regulated in Law Number 28 of 2014. This research can be used as expected to provide insight, especially in understanding intellectual property law relating to the copyright of traditional expressions (*folklore*) of

the original work of the ramayana derived from literary works into derivative works or adaptations in the form of a ballet and its legal protection period.

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