

## FROM PHILOSOPHY TO NORMATIVE CONFIGURATION: A SCOPING REVIEW OF INDONESIAN COPYRIGHT LAW

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### Abstract

The development of Intellectual Property Rights (IPR) is significantly shaped by John Locke's theory of property, along with subsequent philosophical discourse, which provides a foundation for granting exclusive rights to creators and inventors. IPR aims to balance the protection of individual interests with the greater public good, while fostering innovation. In the Indonesian context, a comprehensive legal framework and effective enforcement mechanisms are crucial to maintaining this equilibrium, particularly within the domain of copyright law. This research investigates whether Indonesia's copyright system reflects the philosophical foundations of intellectual property, examines the integration of these principles into legal norms, and evaluates their role in supporting the growth of the national creative economy. Using a scoping review methodology, the study reveals a strong alignment between philosophical principles of ownership and Indonesia's legal framework. This alignment highlights the dual role of copyright law: protecting individual creators' rights while stimulating a thriving creative economy. Furthermore, the research underscores the importance of balancing the interests of creators, industries, and the public. The study also explores how the Indonesian government has updated copyright legislation to better protect and promote creative industries, acknowledging the significant role of copyright in economic development. Recent policy reforms, such as the restructuring of the National Collective Management Institute (LMKN) and the digitalization of royalty databases, demonstrate a commitment to harmonizing legal practices with philosophical ideals. These reforms reflect an evolving copyright system that adapts to global dynamics, addressing technological challenges while ensuring effective protection of intellectual property rights.

**Keywords:** *Intellectual Property Rights (IPR); Copyright Law; Philosophical Foundations; Creative Economy; Legal Framework.*

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### 1. Introduction

The origin of Intellectual Property Rights ("IPR") is heavily influenced by John Locke's thoughts on property rights. In his writings, Locke states that a person's ownership of an object they have produced exists from the moment they are born.<sup>1</sup> Thus, in this context, "object" does not only refer to tangible things but also to abstract things, which are referred to as ownership of intangible objects that result from human intellectuality.<sup>2</sup>

In relation to the development of new doctrines and teachings on IPR, Immanuel Kant, in his book "*Von der Unrechtmäßigkeit des Büchernachdrucks*" (On the Wrongfulness of

<sup>1</sup> John Locke, *Two Treatises of Government*, Reprint ed (New Jersey: Lawbook Exchange, Ltd., 2010).

<sup>2</sup> David Armitage, "John Locke, Carolina, and the Two Treatises of Government," *Political Theory* 32, no. 5 (2004): 602–27, <https://armitage.scholars.harvard.edu/publications/john-locke-carolina-and-two-treatises-government>.

Reprinting Books) in 1785, emphasizes that the creator has an inalienable right to their work.<sup>3</sup> Kant refers to this right as a right that arises from within oneself (a personality right). Meanwhile, other philosophers, such as Fichte, argue that an author has a right to their intellectual work.<sup>4</sup> Fichte then distinguishes between a book as a printed work and the content of the book itself or its writing as the Author's work.

In the context of intellectual property, two core principles are involved: personality rights and economic rights. This dual perspective has given rise to two well-known theories in the development of intellectual property rights to this day. The first view proposes that intellectual property encompasses both principle, personality rights and economic rights, as a unified entity. However, among these two principles, the personality aspect is considered more dominant due to the close connection between the creator and their creation. This perspective is known as the Monist Theory, pioneered by Bluntschli and later developed by Gierke.<sup>5</sup>

According to Gierke, a work of authorship is an expression of human intellect, forging a deep connection between the work and its creator.<sup>6</sup> This theory places the creator's personal rights as "primary," while economic rights are viewed as "secondary".<sup>7</sup> In other words, the creator's personal interests take precedence over their economic interests. Consequently, even after the creator's death, their heirs retain the right to uphold and protect these personal rights. These personal rights are perpetual, whereas the creator's economic rights, such as copyright, are time-limited, typically lasting 50 years after their death.

The second perspective, known as the Dualist theory, asserts that the personal and economic aspects of intellectual property are entirely distinct and independent. According to this theory, copyright is regarded solely as an economic right. This approach was pioneered by the influential German legal scholar Josef Kohler, who introduced the concept of "*Immaterialgüterrecht*", which is a German legal term that refers to the legal framework governing intangible assets, including intellectual property rights such as patents, trademarks, and copyrights. Kohler argues that a unique relationship exists between the creator and their intangible property, but he emphasizes that the economic dimension of intellectual property outweighs its personal aspect.<sup>8</sup>

The third theory, utilitarian theory, as developed by philosophers like Jeremy Bentham and John Stuart Mill, argues that actions should be judged based on their consequences and ability to maximize overall happiness or well-being for the greatest number of people.<sup>9</sup> When applied to intellectual property rights, utilitarianism focuses on how IPR can benefit society rather than just individual creators.<sup>10</sup> The utilitarian justification for IPR is that granting limited monopoly rights to inventors and creators provides an incentive for innovation and public disclosure of new ideas. Without such protections, there would be less motivation to invest time and resources into developing new technologies or creative works, as others could simply copy them without compensation. By rewarding innovation through temporary exclusive rights, IPR

<sup>3</sup> Benjamin Goh, *The Literary Unconscious: Rereading Authorship and Copyright with Kant's "On the Wrongfulness of Reprinting" (1785)*. (London School of Economics and Political Science, 2022).

<sup>4</sup> Frederick Neuhauser, "Fichte and the Relationship Between Right and Morality," in *Fichte: Historical Contexts/Contemporary Controversies* (Humanities Press, 1994).

<sup>5</sup> Caterina Sganga, "The Theoretical Framework of Copyright Propertization: History, Challenges and Opportunities," in *Propertizing European Copyright: History, Challenges and Opportunities* (Cheltenham, UK: Edward Elgar Publishing, 2018), <https://doi.org/10.4337/9781786430410.00008>.

<sup>6</sup> Max A Shepard, "Otto von Gierke; His Political Teaching and Jurisprudence Sobei Mogi," ed. Sobei Mogi, *The American Political Science Review* 27, no. 3 (February 1, 2025): 493–95, <https://doi.org/10.2307/1947461>.

<sup>7</sup> Shepard.

<sup>8</sup> Niels van Dijk, "Legal Theory: From Intellectual Property to Informational Goods," in *Grounds of the Immaterial*, 2017, 5–32, <https://doi.org/10.4337/9781786432506.00007>.

<sup>9</sup> F. Mas Anienda Tien, Mohammad Jamin, and Yudho Taruno Murtanto, "Universal Principles of Foundations in Economic Analysis of Law Theory," *Proceedings of the International Conference on Law, Economic & Good Governance (IC-LAW 2023)*, February 22, 2024, 557–63, [https://doi.org/10.2991/978-2-38476-218-7\\_93](https://doi.org/10.2991/978-2-38476-218-7_93).

<sup>10</sup> Jonathan Riley, "Utilitarianism and Economic Theory," in *The New Palgrave Dictionary of Economics* (London: Palgrave Macmillan UK, 2018), 14205–18, [https://doi.org/10.1057/978-1-349-95189-5\\_2052](https://doi.org/10.1057/978-1-349-95189-5_2052).

aims to stimulate progress in science, technology, and the arts for the overall benefit of society.<sup>11</sup>

Another generally accepted theory in the context of IPR is personhood theory posits that creative works are inextricably linked to their creators' identities and personalities and should be protected as such. This theory, drawing from Hegelian insights and often attributed to the philosophical ideas of Kant and Hegel, promotes strong property rights for objects that individuals have interwoven with their identity, almost metaphysically imbuing them with a part of themselves.<sup>12</sup>

The personhood framework focuses on the relationship between objects and identity interests, starting with the premise that human individuality is inseparable from object relations. In the context of copyright, this theory suggests that creative works of artists are an indissoluble and inseparable part of their soul, spirit, and vision.<sup>13</sup> This perspective has found its greatest expression in the laws of several European countries, where "moral rights" protect, among other things, the rights of attribution and integrity. Under this theory, artists possess an inalienable right to be associated (or not associated) with their artwork and to preserve its integrity.<sup>14</sup>

Building on these theories, another perspective emerged, known as the Modern Monist theory, which refines the first viewpoint. This theory proposes that the personal and economic aspects of intellectual property constitute an inseparable whole, with both dimensions equally protected under positive law, whether through international statutes or domestic laws in various countries.<sup>15</sup> Indonesia's Copyright law similarly embraces this unified approach.

Intellectual property is generally categorized into two main areas: the first includes industrial property, which encompasses patents for inventions, industrial designs, trademarks, and geographical indications; the second comprises copyright and related rights, covering literary, artistic, and scientific works, as well as performances and broadcasts.<sup>16</sup> In essence, intellectual property rights—like copyrights, patents, and trademarks—function similarly to other types of property rights, enabling creators to profit from their work by granting them control over how their intellectual property is utilized. To protect these rights, intellectual property must be registered to be recognized by the state, to ensure awareness and acknowledgment of their existence.<sup>17</sup>

The concept of IPR is currently shaped by the teachings and theories of various philosophers, and it is generally understood as follows: intellectual property rights arise from human intellectual activities and provide economic benefits. This concept is founded on the premise that intellectual creations require significant investment in effort, time, and resources, which endows the resulting works with economic value due to the advantages they offer.<sup>18</sup> Consequently, legal protection is necessary to acknowledge and reward these contributions. According to the Indonesian Director General of Intellectual Property Rights, these rights are

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<sup>11</sup> Ritu Paul, "Intellectual Property Rights: A Utilitarian Perspective," *SSRN Electronic Journal*, no. 2011 (2021): 1–20, <https://doi.org/10.2139/ssrn.3842429>.

<sup>12</sup> Kanu Priya, "Intellectual Property and Hegelian Justification," *NUJS Law Review* 1 (2008): 359–66. <https://nujlawreview.org/2016/12/04/intellectual-property-and-hegelian-justification/>

<sup>13</sup> Khirod Chandra Maharana and Shyama Acharya, "International Journal of Research Publication and Reviews," *SSRN Electronic Journal* 4, no. 5 (2024): 6135–39, <https://doi.org/10.2139/ssrn.4909110>.

<sup>14</sup> Christopher S. Yoo, "Rethinking Copyright and Personhood," *University of Illinois Law Review* 2019, no. 3 (2019): 1039–78. [https://scholarship.law.upenn.edu/faculty\\_scholarship/423/](https://scholarship.law.upenn.edu/faculty_scholarship/423/)

<sup>15</sup> Brain Drain, "Committee on Development and Intellectual Property (CDIP)," 2010, 6–9.

<sup>16</sup> R. J. Lesperance, "What Is Intellectual Property?," *Canadian Veterinary Journal* 35, no. 3 (1994): 185–87, <https://doi.org/10.4324/9781315592343-9>.

<sup>17</sup> Bernard Nainggolan, "Enforcement of Intellectual Property Law in Indonesia," *International Journal of Law Reconstruction* 6, no. 2 (2022): 317–30, <https://dx.doi.org/10.26532/ijlr.v6i2.35991>.

<sup>18</sup> Loso Judijanto et al., "Challenges and Opportunities in Implementing Intellectual Property Rights Protection System for Creative Industry Development in Indonesia," *West Science Law and Human Rights* 2, no. 01 (2024): 28–35, <https://doi.org/10.58812/wslhr.v2i01.605>.

defined as those arising from an individual's intellectual efforts that result in forms others can utilize.<sup>19</sup>

Upon examination, the term intellectual property rights can be deconstructed into several components: "rights," signifying a form of authority; "property," understood as something owned by an individual; and "intellectual," referring to ideas generated from a person's knowledge. Intellectual property rights can also be described as individual rights possessed by a person, derived from their ability to create works. The rights held by the intellectual property owner entail both rights and obligations. Since these rights represent a form of intellectual wealth, they are inherently inseparable from the creator. Intellectual property rights have been crucial in protecting original ideas and technical creations from being illegally copied and altered, thereby promoting creativity and innovation. Despite their role as a philosophical base, Indonesia's application of IPR deals with new practical challenges and opportunities driven by technology, global commerce, and fast-paced growth in the creative sector.

Currently, strengthening IPR is now a key national priority in Indonesia, essential for boosting economic development and competitive advantage, specifically through intensified law enforcement, protection for creators, tackling digital piracy, and empowering the creative industries.<sup>20</sup>

For instance, the rapid expansion of digital content has turned copyright infringement, particularly in the fields of music, film, and software into a persistent and complex legal issues, sparking debates over the effectiveness of enforcement mechanisms and the need for more robust Digital Rights Management policies. At the same time, the strategic utilization of copyright and other forms of Intellectual Property Rights continues to be promoted to support Indonesia's vast creativity economy, including fashion, culinary, and gaming Industries.<sup>21</sup> The government and academic community are actively discussing policy reforms to simplify registration, speed up legal proceedings, and leverage IPR data to measure economic impact. This initiative reflects a transition toward more active, benefit driven intellectual property management. The goal is to develop a legal framework that meets international standards while delivering real economic and cultural value for both creators and the public. Consequently, reinforcing Digital Rights Management and digital enforcement has become a crucial move to suppress piracy.<sup>22</sup>

Despite the government's focus on enforcing laws to combat piracy and empower creative industries, a deficit in conceptual clarity often hampers progress. Law enforcement is more than a technical procedure, it is an expression of the philosophical principles behind the law. Incompatibility between normative rules and their philosophical foundations can lead to erratic legal enforcement. Thus, analysing the alignment of Indonesia copyright framework with Monistic, Dualistic, or Utilitarian perspectives is vital for understanding the success or failure of enforcement mechanisms in the digital age.

It is often argued that philosophical theory either has or lacks normativity, or vice versa, meanwhile many agree that philosophical accounts about science must arise from an "empirical

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<sup>19</sup> Nasywa Laffaiza and Christine S T Kansil, "Review of The Intellectual Property Directorate General's Responsibility Regarding The Cancellation of Well-Known Trademark Registration In The Same Class of Goods," *Delegalata Jurnal Ilmu Hukum* 10, no. 1 (2025): 1–10, <https://doi.org/10.30596/dll.v10i1.22274>.

<sup>20</sup> Fikri Zul Fahmi, Sierdjan Koster, and Jouke van Dijk, "The Location of Creative Industries in a Developing Country: The Case of Indonesia," *Cities* 59 (November 2016): 66–79, <https://doi.org/10.1016/j.cities.2016.06.005>.

<sup>21</sup> Loso Judijanto et al., "Challenges and Opportunities in Implementing Intellectual Property Rights Protection System for Creative Industry Development in Indonesia," *West Science Law and Human Rights* 2, no. 01 (January 2024): 28–35, <https://doi.org/10.58812/wslhr.v2i01.605>.

<sup>22</sup> Ni Putu Ayu Meylan Ardini, Ni Ketut Supasti Dharmawan, and Salwa Putri Hardiyani, "Comparative Analysis of Platform Liability for Illegal Premium Account Sales: A Study of Safe Harbor Principles in Indonesia and the United States," *Masalah-Masalah Hukum* 54, no. 3 (November 2025): 372–88, <https://doi.org/10.14710/mmh.54.3.2025.372-388>.

engagement” with science.<sup>23</sup> Normativity continues to play a role in the philosophy of science after the practice turn, paying extra attention to scientific practice particularly whether science inherently captures collective activity.<sup>24</sup> Research has an important role to play to this end and by building a robust theoretical framework, its result gives rise to a nuance and illuminating view that philosophical theories can be normative.

Consequently, this study addresses three critical questions: (1) The compatibility between the normative structure of Indonesian copyright law and its philosophical basis; (2) How effectively these theories are transformed into binding regulations; and (3) Whether this philosophical-normative consistency sufficiently supports the nations creative economy objectives. In answering these questions, the research examines copyright’s normative framework to evaluate the degree to which Indonesian law successfully convert abstract philosophical tenets into practical, enforceable rules.

Normative configuration refers to the structured framework comprising philosophical values, legal principles, and regulatory priorities that collectively shapes the direction and substance of the law. From this perspective, copyright provisions are not merely standalone statutory rules, rather; rather, they are the manifestation of a more fundamental value system, such as utilitarian motivations to incentivize creativity, personality based moral rights, Lockean Labor theory, and social welfare considerations. These philosophical foundations are subsequently translated into concrete legal doctrines, including economic rights, moral rights, limitations and exceptions, originality standards, and enforcement mechanism. This approach elucidates how abstract philosophical ideas are processed through normative reasoning and ultimately manifested within the legal structure of Indonesian copyright regime.

The scoping review method is highly appropriate for examining this normative configuration, as it facilitates a comprehensive mapping of philosophical influences, doctrinal elements, and regulatory choices reflected in legislation, judicial decisions, and academic studies. Rather than testing hypotheses or tracing causal relationships, a scoping review focuses on identifying patterns, thematic interconnections, and conceptual convergences that illustrate how Indonesian copyright law has evolved into a hybrid framework. This framework integrates robust moral rights protection, development-oriented economic incentives, limitations for the public interest, and distinct sanctioning elements. Through this approach, the normative configuration can be understood as a landscape of interconnected values, principles, and regulatory orientations that shape the formation, interpretation, and practical application of copyright law in Indonesia.

## 2. Method

This study employed a scoping review methodology to critically examine the literature on IPR and Indonesian copyright law. A scoping review was selected because it provides a systematic means of mapping the extent, range, and nature of research activity, without limiting the inclusion of studies based on research design, as is common in systematic literature reviews. Unlike systematic literature reviews, it does not exclude studies based on research design. For this review, the authors wanted to gain an overarching view of the evidence-based knowledge by showcasing influential philosophical theories on IPR and Indonesia Copyright Law as ideals in relation to the normativity construction of Indonesia Copyright Law rather than focusing on the findings of a specific dimension of the phenomenon.

Recent reports indicate a significant upward trend in the number of Intellectual Property (IP) filings and registration completions in Indonesia, reflecting growing public awareness and the digital service efficiency of the Directorate General of Intellectual Property (DGIP). This substantial surge, notably a 27% increase in copyright registration completions by early 2025—demonstrates that normative goals of incentivizing creativity (Utilitarian theory) and protecting

<sup>23</sup> Marcel Boumans and Sabina Leonelli, “Introduction: On the Philosophy of Science in Practice,” *Journal for General Philosophy of Science* 44, no. 2 (2013): 259–61, <https://doi.org/10.1007/s10838-013-9232-6>.

<sup>24</sup> Marie I Kaiser, “Normativity in the Philosophy of Science,” *Metaphilosophy* 50, no. 1–2 (January 1, 2019): 36–62, <https://doi.org/https://doi.org/10.1111/meta.12348>.

creators' rights (Personhood theory) are being realized through improved government services and public participation.<sup>25</sup> These data strengthen the argument that the normative framework of copyright is not merely conceptual but is actively implemented to support creativity. Nevertheless, data on violations and enforcement also highlight on going practical challenges, particularly the high rate of book piracy, where 75% of publishers report their works being pirated, despite books being the category with the highest registration rate.<sup>26</sup>

Moreover, the research specification focused on identifying the interconnection between philosophical theories of IPR and the normative configuration of copyright within the Indonesian legal framework. The data collection technique involved reviewing academic articles, legal documents, statutory provisions, and scholarly works relevant to philosophical foundations of property rights and their application to copyright law in Indonesia.

For the analysis method, this writing synthesized and compared philosophical teachings with normative legal structures to evaluate how abstract principles are reflected in concrete legal norms. Rather than concentrating on a single dimension of copyright, the review sought to provide an overarching perspective by showcasing influential philosophical theories as ideals in relation to the normative construction of Indonesian copyright law.

### 3. Results and Discussion

#### 3.1. International Regime for Intellectual Property Rights

The protection of intellectual property rights continues to evolve through international legal frameworks. Initially, these protection efforts were realized through the Paris Convention, which focused on the protection of industrial property. Subsequently, the Berne Convention expanded the scope of protection to include literary and artistic works. Prior to the implementation of these international conventions, national copyright provisions generally only provided protection for works produced within a country's own territory. As a result, for example, a work published in Indonesia by an Indonesian national would be protected by copyright under Indonesian legislation but could be copied and sold by others in Germany. Similarly, a work published in Germany by a German citizen falls under the protection of German copyright law, yet the work could still be reproduced and marketed by other parties in Indonesia.

Under the Berne Convention, copyright protection arises automatically from the moment a work is created, without the need for registration or formal approval. In countries that recognize the Berne Convention, creators are not required to "register" or "apply for" a copyright. As long as a work has been fixed in a tangible form, rather than being a mere idea or concept—the creator automatically acquires copyright protection for both the original work and any derivative works. This protection remains in effect until the creator explicitly waives it or the copyright term expires. Furthermore, foreign and domestic creators receive equal treatment in countries that are parties to the Berne Convention.

The Berne Convention also established an administrative office to oversee its operational matters. In 1983, two smaller offices operating under the Berne Convention merged to form the United International Bureaux for the Protection of Intellectual Property (hereinafter, BIRPI), headquartered in Berne, Switzerland. In the 1960s, BIRPI was relocated to Geneva to facilitate closer collaboration with the United Nations. By 1967, BIRPI evolved into the World Intellectual Property Organization (hereinafter, WIPO), and in 1974, it became an integral part of the United Nations system. The Berne Convention stipulates that member countries must afford the same level of national treatment to all other member states, thereby ensuring equitable protection of

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<sup>25</sup> Segudang Ilmu, "Lonjakan Karya Hak Cipta di 2024, KEMENKUMHAM Catat 177,889 Pendaftaran," SegudangIlmu.com, November 7, 2025, accessed November 18, 2025, <https://segudangilmu.com/karya-cipta/>

<sup>26</sup> Direktorat Jenderal Kekayaan Intelektual, *Tegas Berantas Pembajakan Buku, DJKI Jalin Kolaborasi Lintas Sektor*, DGIP, July 8, 2025, accessed November 18, 2025, <https://dgip.go.id/artikel/detail-artikel-berita/tegas-berantas-pembajakan-buku-djki-jalin-kolaborasi-lintas-sektor?kategori=Berita%20Resmi%20Desain%20Industri>

copyright across borders. This overview underscores the foundational role of the Berne Convention in establishing the framework for WIPO.

As of now, WIPO oversees more than 26 international treaties related to intellectual property. According to WIPO, intellectual property refers to “the creations of the human mind, including inventions, literary and artistic works, symbols, names, images, and designs used in commerce”.<sup>27</sup> A work produced through an individual's creativity and intellectual processing is considered intellectual property, as the resulting product holds economic value that can be utilized. The rights a person holds over their intellectual creations cannot be possessed by others without the owner's permission. Consequently, these rights constitute individual property and any work resulting from an individual's knowledge or intellect that provides economic benefit can be considered intellectual property.<sup>28</sup>

With the grow of international trade, most countries are now members of the World Trade Organization (“WTO”). Upon joining the WTO, a country agrees to adhere to all WTO agreements, including TRIPS, which came into effect on January 1, 1995, as part of its obligations. TRIPS is one of the key agreements within the WTO framework and establishes minimum standards for the protection of intellectual property rights among member countries. Consequently, all WTO members are required to comply with the standards outlined in the TRIPS, which encompasses provisions related to copyright, trademarks, patents, and other forms of intellectual property. Notably, Article 9 of the TRIPS explicitly mandates that member countries provide copyright protection that meets or exceeds the standards set forth in the Berne Convention.<sup>29</sup>

Until now, TRIPS remains the most comprehensive multilateral agreement on intellectual property to date. The TRIPS Agreement encompasses several domains of intellectual property, including: copyright and related rights (such as the rights of performers, producers of sound recordings, and broadcasting organizations); trademarks, including service marks; geographical indications, such as appellations of origin; industrial designs; patents, which also cover the protection of new plant varieties; layout designs of integrated circuits; and undisclosed information, including trade secrets and test data. This agreement has three main features. First, it establishes minimum standards of protection that must be met by each member. Second, it governs enforcement by outlining domestic procedures and legal remedies for upholding intellectual property rights. Furthermore, the agreement includes dispute settlement provisions, stating that disputes between WTO members regarding compliance with TRIPS obligations are subject to the WTO dispute settlement mechanism.<sup>30</sup>

### 3.2. Indonesian Copyright Law

The development of copyright protection in Indonesia is closely linked to its history under Dutch colonial rule. Dutch colonization of Indonesia began in the 1600s and reached its peak on January 1, 1800, when the Dutch East India Company was nationalized and its assets were officially transferred to the Dutch state, making Indonesia a Dutch colony. At that time, the territory known as the Dutch East Indies applied its own copyright law, which was essentially an extension of the Dutch *Auteurswet 1912*. The Netherlands later implemented this legislation in the Dutch East Indies after joining the Berne Convention in 1913. Furthermore, the Netherlands ratified the 1928 revision of the Berne Convention for the Dutch East Indies in 1931, thereby binding the colony to international copyright protection standards.<sup>31</sup>

Following independence, Indonesia initially adopted the Berne Convention as the legal successor to Dutch East Indies law. The *Auteurswet 1912* was also translated into Indonesian and adapted as a Copyright document. However, in 1958, Indonesia withdrew from the Berne

<sup>27</sup> Henry Olsson, “The TRIPS Agreement, WIPO/CR/KRT/05/1b,” no. January (2005): 1–21, [http://www.wipo.int/edocs/mdocs/arab/en/wipo\\_cr\\_krt\\_05/wipo\\_cr\\_krt\\_05\\_1b.pdf](http://www.wipo.int/edocs/mdocs/arab/en/wipo_cr_krt_05/wipo_cr_krt_05_1b.pdf).

<sup>28</sup> WIPO, *World Intellectual Property Indicators 2024, Ayan*, vol. 15, 2024.

<sup>29</sup> WIPO.

<sup>30</sup> WIPO.

<sup>31</sup> Ramdlon Naning, *Perihal Hak Cipta Indonesia: Tinjauan Terhadap Auteurswet 1912 Dan Undang-Undang Hak Cipta 1982* (Yogyakarta: Liberty, 1982).

Convention, citing the government's desire to facilitate access to education through free copying policies for books and other educational materials.

In 1982, Indonesia replaced the colonial copyright law with Law No. 6 of 1982 on Copyright. Although this law was seen as a step toward modernizing copyright regulation, it faced criticism both domestically and abroad. One of the primary criticisms was the shortening of the copyright protection period from 50 years (as under colonial law) to only 25 years. The Minister of Justice at the time, Ali Said, defended this decision by emphasizing the social function of copyright and the need to balance private rights with the public interest. This law also introduced controversial provisions, such as granting the government authority to take over copyrighted works for the "national interest" and asserting ownership over folkloric materials in cooperation with foreign parties. Despite this, the law offered limited protections for foreign rights holders.

Responding to pressure from developed nations to strengthen copyright protections, the Indonesian government amended the law in 1987. The revised Act expanded the scope of protection to include video tapes, sound recordings, computer programs, and traditional works like batik. It also extended the protection period to 50 years after the author's death for most works, although photographic works, compilations, and computer programs were protected for 25 years from their first publication. Foreign works, however, were only granted protection upon first publication in Indonesia, unless originating from countries with which Indonesia had bilateral copyright agreements or co-signatory agreements in international conventions. The amended law also introduced a mechanism for compulsory licensing for educational, scientific, and research purposes when copyright was not exercised for three years.<sup>32</sup>

In 1994, Indonesia ratified the Agreement on TRIPS, becoming a member of the WTO. Subsequently, Indonesia rejoined the Berne Convention in 1997 and became the first country to ratify the WIPO Copyright Treaty that same year. These milestones necessitated further amendments to the 1982 copyright law, which were enacted in 1997. These changes redefined key terms such as 'publication' and 'reproduction,' introduced rental rights for films, computer programs, and sound recordings, and expanded the definition of compilation to include derivative works.

In 2003, Law No. 19 of 2002 replaced the 1982 copyright law, consolidating various previous amendments and modernizing copyright protection to comply with international standards. The most recent overhaul occurred in 2014 with the enactment of the Copyright Act of 2014, which among others, extended the protection period for traditional works to the life of the author plus 70 years, reflecting global trends in copyright law.

Historically, the concept of copyright protection began to grow rapidly following the invention of the printing press by Johannes Gutenberg in the mid-fifteenth century in Europe. The need for copyright protection emerged because the printing press facilitated the mechanical reproduction of creative works, particularly written works, with ease. This development marked the initial establishment of copyright.<sup>33</sup>

According to the Black's Law Dictionary, copyright is defined as the right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the works.<sup>34</sup>

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<sup>32</sup> P. Bernt Hugenholtz, "A Century of Dutch Copyright Law," Kluwer Copyright Blog, July 30, 2012, <https://legalblogs.wolterskluwer.com/copyright-blog/a-century-of-dutch-copyright-law/>.

<sup>33</sup> Margaritha Rami Ndoen and Hesti Monika, "Principles of Fair Use Regarding Cover Versions of Song in a Copyright Protection Perspective (Comparison Between Indonesian and United States Copyright Laws)," *Paulus Law Journal* 1, no. 1 (September 2019): 1–8, <https://ojs.ukipaulus.ac.id/index.php/plj/article/view/464>.

<sup>34</sup> Henry Campbell. Black, Joseph R.. Nolan, and Michael J.. Connolly, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 1990.

In Indonesia, the term “copyright” was first proposed by St. Moh. Syah in 1951 during a cultural congress in Bandung, where it was adopted as a replacement for “author’s rights,” which was deemed too narrow in scope. The term “author’s rights” gave the impression that it only applied to authors. In contrast, copyright is broader, encompassing the act of creating literary or artistic works. The definition of copyright is further clarified in Article 1(1) of Indonesian Copyright Law, which states that copyright is the exclusive right granted to creators or copyright holder to publish or reproduce their work, arising automatically once a creation materialized, subject to statutory limitations. Pursuant to Article 1(3) of Indonesian Copyright Law, a creation includes any product of creativity within the realm of science, art, or literature, expressed tangibly. Such product can be derived from inspiration, skill, thought, imagination, proficiency, or expertise. Helvetica

Copyright possesses inherent characteristics that define its nature. These fundamental traits include copyright as a property right and its limited duration.<sup>35</sup> In regard to property right, copyright is essentially a form of ownership. The law guarantees the creator exclusive control over their work, allowing them to fully enjoy the benefits of their intellectual labor. This ownership stems from the recognition that individuals who invest intellectual effort in creating something new deserve to hold rights over their creation. No one else can claim ownership of a work unless they are its rightful creator. New creations, as well as adaptations of existing works, must be supported and protected by law. This protection is enshrined in legislation, with criminal sanctions imposed against copyright infringement. Secondly, legal protection for copyright ownership is limited in nature and does not apply permanently. Legal protection provides certainty regarding how long a creation or intellectual work will be safeguarded, while also providing legal remedies if an infringement occurs during that period. This time limit on protection aims to encourage creators by providing a guarantee for their work while simultaneously motivating them to produce new creations. Once the copyright term expires, the work enters the public domain, allowing it to be accessed by the public without restriction. This copyright time limit is not unique to Indonesia; rather, it is a common feature of copyright laws worldwide. The rules concerning the duration of copyright protection are regulated in Articles 57 to 63 of the Indonesian Copyright Act.

Every work, whether produced by an individual or a legal entity, is protected by copyright because the law recognizes and attaches rights to that creation. The creator or copyright holder has the freedom to exercise their rights over the work; however, this freedom is subject to certain legal limitations. The unrestricted exercise of copyright must not violate general boundaries established by law, thereby creating a balance between the creator’s rights and the public interest. Copyright law includes several limitations to ensure its responsible use. First, it must uphold morality and public order. The exercise of copyright should not promote immoral behavior or disturb public order. For example, distributing or reproducing VCDs that encourage immoral sexual conduct would be deemed a violation of morality, just as disseminating books that advocate for practices such as polyandry would be contrary to public order. Secondly, the social function of copyright is paramount. The right to exercise copyright should not hinder its social utility. Copyright should allow creative works to be used for societal benefits, including educational and scientific purposes, legal defense, or public lectures, as long as the source is properly acknowledged. Finally, compulsory licensing is another limitation. Copyright holders are required to grant licenses to others for translating or reproducing their works, ensuring fair compensation in return. This obligation arises when the state deems a work essential for the public interest, such as for purposes of education, research, or security, thereby ensuring that works critical to society are accessible while balancing the rights of the creator.

Article (1) of the Indonesian Copyright Act states that copyright is an exclusive authority granted to the creator or rights holder to publish, reproduce, or license their work, subject to applicable legal limitations. This exclusivity means that other parties may not exercise these rights without permission. Although a rights holder who is not the original creator

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<sup>35</sup> Jonathan Griffiths and Luke T. McDonagh, “Fundamental Rights and European Intellectual Property Law—the Case of Art 17 (2) of the EU Charter,” in *Constructing European Intellectual Property: Achievements and New Perspectives* (Edward Elgar, 2013).

only acquires economic rights, the overall scope of copyright encompasses both economic rights and moral rights. As further explained in Article 4, read in conjunction with Article 3(a) this law protects these exclusive rights by ensuring comprehensive control over the use and distribution of copyrighted works.

Copyright encompasses two primary types of rights: moral rights and economic rights. Moral rights, which are directly attached to the creator, are inalienable and non-transferable. According to Article 5(1) of the Indonesian Copyright Law, these include the perpetual rights to attribute the creator's name to their work, use a pseudonym, modify the work according to societal norms, change its title, and protect it from distortion or modifications that could harm the creator's honour or reputation.<sup>36</sup>

Economic rights, as detailed in Article 8 and Article 9(1) of the Indonesian Copyright Law, pertain to the financial benefits derived from the work. These rights include the exclusive authority to publish, reproduce, translate, adapt, distribute, perform, announce, communicate, and rent out the creation. Thus, while moral rights safeguard the creator's personal connection to their work, economic rights enable them to reap financial rewards from their intellectual property.<sup>37</sup>

Moreover, copyright holders are typically granted several exclusive rights, including the ability to reproduce and sell copies of the work, both physical and electronic; import and export the work; create derivative works, such as adaptations; publicly perform or display the work; and sell or transfer these rights to others.

According to Article 1(1) of Indonesian Copyright Law, there are three distinct types of exclusive rights protected by law: the right to publish, the right to reproduce, and the right to authorize others to publish and reproduce the work. Each of these rights is subject to the limitations established by copyright legislation.

The right to publish a work encompasses the ability to make it accessible to the public through various mediums, including reading, broadcasting, or disseminating the work. This right includes distribution rights, public performance rights, broadcasting rights, and cable rights, all of which enable the copyright holder to present their work publicly in both physical and digital formats. The right to reproduce a work allows for making copies, whether identical or altered, using the same or different materials. This includes rights to print, copy, and transform the work into other formats or media, ensuring that the copyright holder retains control over the duplication of their work. Additionally, the right to grant permission involves licensing third parties to publish or reproduce the work. This process is typically formalized through a written agreement that specifies the actions the licensee is permitted to take.

Regarding the scope of copyright protection, the Indonesian Copyright Act provides comprehensive protection for creations in the fields of science, literature, and art. According to Article 40, the Act regulates a broad array of works, including books, software programs, lectures, speeches, educational and scientific teaching aids, music, drama, visual arts, architecture, photography, batik art, cinematography, and more. The Act distinguishes between original works (such as books, songs, and paintings) and derivative works (such as translations, adaptations, and compilations), with both receiving distinct protection under copyright law. This ensures that even works that are based on existing creations, such as translations or modifications, are recognized as original and protected, while respecting the rights of the original creator.

Copyright protection under Article 40 of the Indonesian Copyright Act aims to balance the rights of the original creator and the party creating the derivative work. Creators of derivative works are required to obtain permission from the original copyright holder before proceeding. Similarly, translators must obtain authorization from the original rights holder. Furthermore,

<sup>36</sup> Ranti Fauza Mayana et al., "Legal Issues of Artificial Intelligence–Generated Works: Challenges on Indonesian Copyright Law," *Law Reform* 20, no. 1 (2024): 54–75, <https://doi.org/10.14710/Lr.V20i1.61262>.

<sup>37</sup> Edward J. Damich, "The Right of Personality: A Common-Law Basis for the Protection of the Moral Rights of Authors," *Georgia Law Review* 21, no. 1 (1987): 1–96. <https://heinonline.org/HOL/P?h=hein:journals/geolr23&i=16>

protection is extended to works that remain unpublished but are complete, fixed in a tangible form, and capable of being reproduced, as stipulated in Article 40, paragraph (3). For example, an author who has written a novel and possesses a physical copy or a digital file of the unpublished manuscript is eligible for protection because the work is tangible and reproducible.

Works not protected by copyright include creations that do not meet the legal requirements for protection under Articles 41 and 42 of the Indonesian Copyright Act. This includes ideas or concepts that have not yet been expressed in a tangible form. Additionally, copyright does not extend to procedures, systems, methods, concepts, principles, discoveries, or data, regardless of how they are expressed in a work. Functional objects, tools, or products designed solely to solve technical problems are also excluded. Certain works, such as the results of open meetings of state institutions, legislative texts, speeches by government officials, court rulings, and holy scriptures, are specifically excluded as they reside in the public domain for the collective interest.

A derivative work is a creation that results from an existing work. The creator of a derivative work takes an original piece—such as a photograph, painting, or literary work—and transforms it into something new. While the Indonesian Copyright Act does not provide an explicit definition of derivative works in a single section, several articles address them. Article 40, paragraph (1), letter (n) outlines that "protected works include creations in the fields of science, arts, and literature, such as translations, commentaries, adaptations, arrangements, modifications, and other works resulting from transformation." Paragraph (2) clarifies that these derivative works are protected as independent creations, without prejudice to the copyright of the original work.

Although the Act does not specify detailed criteria or examples for derivative works, Article 40, paragraph (2) provides independent protection for these creations, treating them as separate entities from the original. For instance, an adapted or appropriated painting can be categorized as a new form of transformation-based work.

The term "Copyright Holder" refers to the creator, as the owner of the copyright, or another person who has received those rights from the creator, as defined in Article 1, paragraph (4). These rights may be acquired through inheritance, grants, wills, transfers to the state, or agreements. Articles 31 to 37 further elaborate on the subjects of copyright ownership, specifying that a "creator" is the individual whose name is mentioned in the work, declared as the creator, recorded in the certificate of registration, or listed in the general register of works as the creator.

Additionally, the Act outlines six specific circumstances explaining the application of the terms "creator" and "copyright holder." First, the creator is person who delivers a lecture without using written materials and there is no declaration of who created the lecture. Second, the creator is the individual who leads the completion of an entire creation; if no one leads it, the creator is the person who compiles it, without diminishing the copyright of each individual part. This definition applies to creations consisting of several distinct parts created by two or more individuals.

Third, the term "creator" can also refer to the individual who designs a creation. Even if the person who designs the creation instructs someone else to execute the creation, the creator remains the person who conceived the design. Fourth, the copyright holder is defined as the party for whom the creation was made as part of their duties, or the person who commissioned the creation within an employment relationship, unless otherwise agreed. Thus, if someone creates a work as part of official duties or tasks associated with a company or other entities, the copyright holder is the person who commissioned or ordered the creation. Fifth, the creator or the party responsible for making a creation is identified as the one who produces it in the context of an employment relationship or based on a commission. Lastly, in cases where a legal entity announces, distributes, or disseminates a work originating from that entity without naming an individual as the creator, the legal entity is deemed to be the creator.

Furthermore, there are situations where the State may be considered the subject of copyright ownership, as regulated in Articles 38 and 39 of the Indonesian Copyright Act. Article 38 stipulates that the State holds the copyright for traditional cultural expressions, emphasizing its responsibility to protect the nation's cultural heritage. Meanwhile, Article 39 explains that if a

work has been published but does not include the creator's name or uses only a pseudonym, the copyright for such work is held by the State for the benefit of the creator.

In discussing plagiarism, it is important to note that it involves using another person's work, words, or ideas without proper acknowledgment. In other words, plagiarism is unacknowledged copying, which poses ethical issues because an individual claims credit for work that is not their own. There is no universal categorization of plagiarism; however, artists often face issues such as self-plagiarism, minor plagiarism, verbatim copying, plagiarism of ideas or images, citation plagiarism, and piracy.

Conversely, copyright infringement occurs when someone uses another person's work without permission. This legal issue depends on whether the work is protected by copyright, as well as factors such as the extent of use and the purpose of its use. Copyright infringement involves two stages: first, determining whether copying from the original work occurred; and second, assessing whether the copying was substantial. It is important to note that acknowledgment is generally irrelevant in cases of copyright infringement. Although acknowledgment can be used as a defense. For example, to show that the copying falls under exceptions for non-commercial research, criticism, or review, it does not grant the freedom to copy extensively. In the case of *University of London Press Ltd v University Tutorial Press Ltd (1916)*, the judge stated that "what is worth copying is prima facie worth protecting." Therefore, the primary question is whether a substantial part has been copied, not whether it has been acknowledged. This leads to situations where a person could commit plagiarism without committing copyright infringement, or conversely, could infringe on copyright despite providing proper acknowledgment.

The term 'artistic works' refers to a broad category of creative expressions protected by copyright law. Although the term 'artistic works' is not used universally across all legal frameworks, its definition is relatively consistent.<sup>38</sup> For instance, the Indonesian Copyright Act does not explicitly use this specific term, but instead defines fine arts, which encompasses forms such as paintings, drawings, engravings, calligraphy, sculptures, statues, or collages. This scope aligns with the protection of artistic works as long as they are original and fixed in a tangible medium. This protection covers a wide range of visual and creative expressions, including but not limited to pictorial, graphic, and sculptural works. Thus, an artistic work constitutes an original expression that potentially qualifies for protection under the Indonesian Copyright Act. The owner of an artistic work utilizes intellectual property rights to exclusively derive all economic benefits associated with the ownership of their work.

Artistic works refer to a broad category of creative expression protected by copyright law. Although the specific term 'artistic works' is not always used universally across various legal frameworks, its definition remains consistent. For instance, Indonesia Copyright Law does not explicitly use the term "artistic work," but it defines visual art to include forms such as paintings, drawings, carvings, calligraphy, sculptures, statues, or collages. This scope aligns with the protection to artistic works if they are original and fixed in a tangible medium of expression. This protection applies to a wide range of visual and creative expressions, including but not limited to pictorial, graphic, and sculptural works. Thus, Artistic works constitute original expressions that may qualify for protection under Indonesian Copyright Law. Owners of artistic works use intellectual property rights to exclusively secure all economic benefits associated with their ownership of the artwork.<sup>39</sup>

Artistic works strongly relates with appropriation in art. It refers to the practice of incorporating pre-existing objects or images into new artworks with minimal alteration of the originals. It has also been described as "borrowing images from popular culture, advertising, the mass media, other artists and elsewhere, and incorporating them into new works of art." Pre-

<sup>38</sup> John Henry Merryman, Stephen K. Urice, and Simon J. Frankel, eds., "Artists' Rights in the Works They Create," in *Law, Ethics, and the Visual Arts*, 6th ed. (Cambridge: Cambridge University Press, 2025), 96–323, Cambridge Core, <https://doi.org/10.1017/9781139811828.004>.

<sup>39</sup> Shelby Skumanich, "Art Is an Essential Part of the Human Experience," *Magazine* (College of Liberal Arts, Colorado State University), 2020, <https://magazine.libarts.colostate.edu/article/art-is-an-essential-part-of-the-human-experience/>.

existing objects often come with copyrights owned by others, and they may also include trademarks, which are considered personal property similar to copyrights. The term “appropriation art” arises because the artist “appropriates” these existing properties and incorporates them into their own artwork.<sup>40</sup> This is why many images associated with appropriation art feature highly recognizable elements. Artists known for working in this style often leverage the familiarity of their subjects to capture the viewer’s attention, creating a direct connection between the original work and their reinterpretation.

Appropriation art has long been a part of the creative world, with artists using existing works as a source of inspiration for centuries. In 1856, Ingres painted his famous portrait of *Madame Moitessier*, borrowing her hand pose from an ancient Roman fresco, *Heracles Finding His Son Telephus*, dating back to the early 2nd century BCE.<sup>41</sup> The practice of drawing references from significant works was quite common among artists. Delacroix and Millet, for example, were also known to create links—whether intentional or unintentional—with other art movements. In the modern era, artists such as Picasso and Braque began incorporating everyday objects, such as newspapers, into their works as a form of self-expression. Toward the late 1930s, Salvador Dalí produced the innovative work *Lobster Telephone*. By the 1950s, artists like Jasper Johns and Robert Rauschenberg further explored the use of images and objects taken from other works, a trend that later became the foundation for the emergence of the Pop Art movement.

With the development of early trends in appropriation art, the movement gradually evolved into Pop Art, which emerged from modern popular culture during the late 1950s and 1960s. The term ‘Pop Art’ was first introduced by British art critic Lawrence Alloway when referring to Richard Hamilton’s 1956 work, *Just What Is It That Makes Today’s Homes So Different, So Appealing?* This movement took familiar and easily recognizable images and integrated them into the realm of fine arts. Some defining characteristics of Pop Art include the use of images from mass media, most prominently seen in the works of Andy Warhol. He utilized iconic imagery from American popular culture, including advertisements, tabloid magazines, and celebrities such as Marilyn Monroe and Elizabeth Taylor. Another characteristic is the elevation of everyday objects into works of art; Warhol is famous for transforming the ordinary Campbell’s Soup can into an internationally recognized artwork, emphasizing simple, kitsch, and common objects when selecting items for appropriation.<sup>42</sup>

Additionally, repetition played a significant role in Pop Art. For instance, Warhol’s soup cans were frequently reproduced in patterns, a technique that celebrated and critiqued the modernisation of mass production and marketing in contemporary society. Following the Pop Art movement, the practice of appropriation in art became increasingly prevalent, particularly in the 1980s.<sup>43</sup> It is argued that this decade saw artists engaging in appropriation more than ever before. A notable shift occurred during this time; whereas earlier appropriation focused on repurposing everyday objects, the ’80s saw established artworks being incorporated into new pieces. Artists began reproducing existing works in their own distinctive styles. For example, Sherrie Levine recontextualized famous paintings by artists such as Edgar Degas and Gustave Courbet through photography. Much of Levine’s work involved direct appropriation from renowned artists, including those mentioned above, as well as Marcel Duchamp and Constantin Brâncuși.<sup>44</sup> Thus, the very concept of appropriation art challenges the copyright regime in at least two ways: the concept of authorship and the extent of fair use.

<sup>40</sup> Marina Markellou, “Appropriation Art and Cultural Institutions,” *Queen Mary Journal of Intellectual Property* 3 (April 1, 2013): 145–54, <https://doi.org/10.4337/qmjip.2013.02.03>.

<sup>41</sup> Sarah E. Betzer, *Ingres and the Studio: Women, Painting, History* (University of Pennsylvania Press, 2012).

<sup>42</sup> Décio Torres Cruz, “Pop Art and Puig’s Polyphonic Pop Narrative,” in *The Case of Manuel Puig* (John Benjamins Publishing Company, 2019), 79–114, <https://doi.org/doi:10.1075/illm.13.c2>.

<sup>43</sup> Laura Trafi-Prats, “Art Historical Appropriation in a Visual Culture-Based Art Education,” *Studies in Art Education* 50, no. 2 (January 2009): 152–66, <https://doi.org/10.1080/00393541.2009.11518763>.

<sup>44</sup> Hayley A Rowe, “Appropriation in Contemporary Art,” *Inquiries Journal/Student Pulse*, 2011, <http://www.inquiriesjournal.com/a?id=1661>.

The challenge in understanding fair use lies in determining the boundaries between the rights of one artist and another. The fair use doctrine assesses four main factors: the purpose and character of the use, the nature of the original work, the proportion of the work used, and the impact on the market. Courts in the US often favor fair use if elements of transformation are identified, measuring the extent to which the appropriated work carries elements of originality or new creativity.<sup>45</sup>

Eligibility for copyright protection under Indonesian law is broadly defined to ensure that both domestic and certain foreign works receive legal recognition. The Indonesian Copyright Law applies to all creations and related rights works created by Indonesian citizens, residents, and legal entities. It also extends to creations and related rights products created by foreigners, non-Indonesian residents, and foreign legal entities, provided these works are first publicly disclosed in Indonesia. Additionally, the law covers creations and/or related rights products, as well as users of such works from non-Indonesian citizens, non-Indonesian residents, and non-Indonesian legal entities, provided that their country has a bilateral agreement with the Republic of Indonesia regarding the protection of copyrights and related rights, or if both countries are parties to the same multilateral agreement on the protection of copyrights and related rights.

Furthermore, according to Article 31, there are 4 instances to attribute an individual as a “creator” of a work, unless proven otherwise. The individual considered the creator of a work is the person whose name appears in the creation, is declared as the creator of the creation, is listed in the creation’s registration certificate, or is included in the public register of creations as the creator.

Specifically, different requirements apply in certain cases, as regulated in Articles 33 and 34 of the Indonesian Copyright Act. Article 33 states that if a work consists of several parts created by two or more people, the persons deemed to be the creators are those who lead and supervise the completion of the entire work. However, if the person leading and supervising the work is absent, the individuals who compiled the work shall be deemed the creators, without prejudice to each person’s respective copyright over the parts they created. Article 34 affirms that when a work is designed by one person and realized or executed by another person under the direction and supervision of the designer, the designer shall still be deemed the creator of the work.

The Indonesian Copyright Act adheres to the declaratory principle, which means that official registration is not a requirement for legal protection, as copyright is automatically granted once a work is first published and fixed in a tangible form. Nevertheless, it is recommended to register the work with the Directorate General of Intellectual Property so that formal copyright protection is clearer and the commercial value of the work can be enhanced. In application, potential purchasers or licensees of copyrighted works typically request an official statement confirming ownership of the copyright from the seller or licensor, through a recordation certification. This certification serves as preliminary proof of ownership, subject to further verification.

Hence, since the declarative principle diminishes the importance of compulsory licensing, the wording of Indonesian Copyright Law refers to the term “recordation” rather than “registration”. Unlike trademarks, where the first-to-file principle applies, this principle does not extend to copyright. The protection of the creator’s moral rights is perpetual, while the protection of economic rights is dependent on the type of work and the number of creators or owners associated with it.

The Indonesia Copyright Law outlines that the duration of economic rights varies according to the type of work or creation. Generally, a work is protected by copyright for the lifetime of the author or creator, plus 70 years after their death. The 70-year period begins on January 1 of the year following the creator’s death. The duration of this copyright protection applies to various types of works, including written works and various forms of visual arts such as drawings, paintings, collages, calligraphy, carvings, sculptures, appropriation works,

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<sup>45</sup> Caitlynn Nadya Aurelia et al., “Enhancing Fair Use in Protecting Appropriated Artworks: A Comparative Analysis of Safeguarding Indonesian Copyright Law,” *Lex Scientia Law Review* 9, no. 1 (2025): 1181–1222, <https://doi.org/10.15294/lslr.v9i1.20570>.

architectural works, and other forms of decorative art. In addition to the 70-year protection period, there are exceptions for certain works; for instance, works owned by a legal entity carry a copyright term of 50 years from the time they are first announced to the public.

There are special cases and exceptions regarding the duration of copyright protection. For instance, for anonymous works or works made for hire (such as a painting commissioned for a museum exhibition), the copyright duration is 95 years from the first publication or 120 years from creation, whichever is shorter. Furthermore, for collective works—works created by multiple authors, such as a painting created by three artists—the protection period follows the 70-year rule, but the duration is calculated from the death of the last surviving creator. Once the copyright term expires, the work enters the public domain and is no longer protected by copyright law. Works may also become part of the public domain if the copyright holder voluntarily relinquishes their rights.

The right to reproduce and copyright exceptions operate within the framework of three major international treaties that govern global copyright protection: the Berne Convention, TRIPS, and the WIPO Copyright Treaty. Although each treaty has distinct provisions, they converge on regulating fundamental copyright issues and establishing general exceptions to copyright protection under specific circumstances.

Broadly, these treaties concur that copyright protection covers expressions, not ideas, procedures, methods of operation, or mathematical concepts. Under the Berne Convention, protected works include 'literary and artistic works,' which encompass a wide array of creative expressions, ranging from books, pamphlets, and other writings to lectures, dramatic works, choreography, cinematographic productions, and architectural designs. The Convention also extends protection to derivative works, official texts, collections, works of applied art and industrial design, as well as geographical, topographical, and scientific illustrations. This protection covers nearly every type of production in the fields of literature, science, and art, regardless of the medium or form.

The Berne Convention allows for certain limitations on the protection of specific types of works, permitting reproduction in specific scenarios. It stipulates that Member States may wholly or partially exclude from copyright protection political speeches and speeches delivered in legal proceedings. Additionally, Member States have the discretion to establish conditions under which lectures, addresses, and other similar works delivered publicly may be reproduced by the press, broadcast, communicated to the public by wire, or otherwise made publicly accessible, provided that such use is justified by an informational purpose. However, the author retains the exclusive right to compile these works into a collection.

Under the Berne Convention, authors of literary and artistic works enjoy the exclusive right to authorize the reproduction of their works in any form or manner. However, national legislation within Union countries may permit reproduction in specific cases, as long as such reproduction does not interfere with the normal exploitation of the work or unjustly harm the legitimate interests of the author.

Article 10 of the Berne Convention also outlines permissible uses of copyrighted works without authorization, including quotations, illustrations for teaching, certain articles, and works broadcasted or connected with current events. Quotations from a lawfully published work are allowed, provided that they adhere to fair practice and do not exceed what is justified by the purpose, such as press summaries from newspaper articles or periodicals. National legislation may also permit the use of literary or artistic works for illustration in publications, broadcasts, or audiovisual materials for teaching purposes, provided that such use complies with fair practice. Member States also have the authority to define the conditions under which literary or artistic works seen or heard during current events may be reproduced and made publicly available, either through photography or public communication, to the extent justified by an informational purpose.

However, the most prominent copyright exception is regulated in Article 9, paragraph (2) of the Berne Convention, which grants member states the freedom to limit exclusive copyright rights within their national legislation. These limitations apply to 'certain special cases' that do not conflict with a 'normal exploitation of the work' and do not 'unreasonably prejudice the

legitimate interests of the rights holder.' This provision, known as the three-step test, provides flexibility for member states in its application.<sup>46</sup>

Versions of this three-step test are also found in other international agreements that supplement the Berne Convention, including Article 13 of TRIPS and Article 10 of the WIPO Copyright Treaty. Additionally, this test appears in various regional agreements, such as the North American Free Trade Agreement (NAFTA), as well as in many bilateral free trade agreements.

Versions of this three-step test are also found in other international agreements that supplement the Berne Convention, including Article 13 of TRIPS and Article 10 of the WIPO Copyright Treaty. Additionally, this test appears in various regional agreements, such as the North American Free Trade Agreement (NAFTA), as well as in many bilateral free trade agreements.

The Indonesian Copyright Act does not explicitly define the term 'fair use,' but it outlines specific scenarios that are not considered copyright infringement. These exceptions are regulated in Chapter 5 of the Indonesian Copyright Act, which distinguishes between acts that are entirely excluded from copyright infringement and acts that are not considered infringing if they meet certain requirements or are used for specific purposes.

Referring to the former, Article 43 outlines actions that are not considered as copyright infringement, which includes the announcement, distribution, communication, and/or reproduction of state emblems and the national anthem in their original form as well as works carried out by or on behalf of the government, unless specified as protected by legislation, the use of current news from news agencies, broadcasting institutions, newspapers, or similar sources, provided that the source is clearly credited, the creation and dissemination of copyrighted content through information and communication technology for non-commercial purposes or in a way that does not benefit the creator or related parties, or when the creator has expressed no objection to such creation and dissemination, and the reproduction, announcement, and/or distribution of portraits of the President, Vice President, former Presidents, former Vice Presidents, National Heroes, or other leaders specified.

Article 44 of the Copyright Law provides certain exceptions to the exclusive rights of authors, allowing the use of copyrighted works without authorization under specific circumstances. These exceptions are carefully framed to ensure that the author's fair interests are not unduly harmed. One of the primary purposes for which this exception is allowed is for educational and research activities. This includes uses for writing scientific works, preparing reports, or offering critical analyses and case reviews. The requirement that the author's information must be disclosed ensures that proper attribution is maintained, thus respecting the moral rights of the author while allowing the public to benefit from knowledge dissemination. Additionally, the law permits the use of copyrighted works for state security, organizational needs, or legal proceedings, acknowledging the importance of such uses in maintaining the functioning of legal and governmental systems.

Another notable exception is for non-commercial performances or stagings, where copyrighted works can be used without the author's consent, as long as these uses do not infringe on the copyright holder's financial interests. This provision serves to encourage cultural and artistic expression without overburdening creators with commercial licensing demands, provided the performances are not intended for profit. Moreover, the law accommodates the needs of people with disabilities, allowing the adaptation of works into accessible formats such as braille or audio books, again under non-commercial conditions. This provision promotes inclusivity by ensuring that people with visual impairments or other disabilities can access and engage with creative works, which otherwise might be inaccessible to them.

Furthermore, the article allows for modifications to architectural works when necessary, considering technical requirements. This acknowledges the evolving nature of architecture and

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<sup>46</sup> Kenneth Bradley Sajogo, Fajar Sugianto, and Atsuko Yamamoto, "Comparative Analysis Regarding the Copyright Law on AI-Generated Art Between Indonesian and the United States: Unpacking Indonesian Legal Framework Conundrum," *Jurnal Hukum Bisnis Bonum Commune* 8, no. 2 (2025): 213–42, <https://doi.org/10.30996/jhbhc.v8i2.12883>.

construction, where designs may need to be altered for safety or functional purposes, while still considering the copyright interests of the original architect. The law, however, underscores the necessity of ensuring that these alterations do not undermine the original creator's rights and are conducted with respect to the integrity of the work.

In light of these exceptions, it is important to note that the implementation of the Berne Convention must remain flexible to accommodate the rapidly changing global digital environment. The Convention's principles provide the framework for international copyright law, but national legislations must adapt to the unique challenges posed by the digital age, including the vast and ever-expanding internet space. By utilizing the flexibilities provided by the Berne Convention, countries can ensure that their copyright laws are not only in line with international standards but also responsive to the needs of modern society. This balance between protecting the interests of authors and promoting broader public access to creative works is crucial in fostering a vibrant, inclusive, and innovative digital ecosystem that serves the greater good.

Although Indonesian law does not define "fair use," it refers to similar concepts through other provisions. Specifically, Article 43 states that the distribution and reproduction of state emblems and the national anthem in their original forms are not considered copyright infringement. Meanwhile, Article 44 provides exceptions for unauthorized use for purposes such as education, research, and criticism. However, the law does not provide clear boundaries regarding these exceptions, and the absence of specific guidelines potentially leads to the infringement of the creator's economic rights. To prevent the violation of the creator's economic rights, it is recommended that clear parameters be established, for example, through the drafting of specific guidelines regarding the application of these exceptions.

Furthermore, the reproduction of a work for personal use from a publicly disclosed work is limited to a single copy and may be carried out without the permission of the creator or copyright holder, as regulated in Article 50, subject to other additional provisions. The law also strictly prohibits any person from creating or disseminating works that conflict with moral values, religion, decency, public order, or national defense and security.

Parties who believe their copyright has been infringed may seek legal recourse, including filing police reports and resolving disputes through alternative dispute resolution (ADR), arbitration, or the Commercial Court. Criminal provisions and sanctions are regulated in Chapter 17, Articles 112–120 of the Copyright Act. Copyright Law. For copyright infringement, depending on the severity and context, the law provides for imprisonment ranging from one year to a maximum of 10 years and/or fines from IDR 100,000,000 (one hundred million rupiah) to a maximum of IDR 40,000,000,000 (forty billion rupiah). The criminal offenses specified in this law are classified as complaints-based offenses.

Although Indonesia has a national copyright law, copyright protection has long been a concern at the international level. Various international treaties have been established to ensure cross-border copyright protection. One of the early treaties affirming the global nature of copyright protection was the Buenos Aires Convention, while the Agreement on Trade-Related Aspects of Intellectual Property Rights is an international legal agreement between all member nations of the World Trade Organization (WTO).

The primary objective of the Buenos Aires Convention was to create a uniform system of copyright protection among member states, protecting literary and artistic works internationally. The convention provided broad protection for various creative works, including books, writings, musical compositions, visual arts, scientific materials, and architectural works. Copyright obtained in one member state is automatically recognized in others without additional formalities, provided the work includes a clear copyright notice (e.g., "All rights reserved"). The convention introduced the presumption of authorship, which assumes the person named or using a pseudonym is the creator unless proven otherwise, thereby facilitating legal action against infringement.

According to the Berne Convention for the Protection of Literary and Artistic Works, copyright is defined as the exclusive right of authors to control the use of their literary and artistic works. This includes the right to reproduce, distribute, and adapt their works, as well as the right to authorize translations. Convention emphasizes that copyright protection is automatic upon creation, requiring no formal registration, and applies to a wide range of

works such as books, music, films, and visual arts. The duration of protection generally covers the life of the creator plus a specific number of years, ensuring that creators and their heirs continue to derive economic benefits. Convention emphasizes that copyright protection is automatic upon creation, requiring no formal registration, and applies to a wide range of works such as books, music, films, and visual arts. The duration of protection generally covers the life of the creator plus a specific number of years, ensuring that creators and their heirs continue to derive economic benefits.

Evolving from these early efforts, the international community realized the need for a more comprehensive and globally applicable agreement on intellectual property rights. This led to the TRIPS Agreement, which came into effect in 1995 as part of the WTO agreements. The TRIPS Agreement represents a significant evolution in international copyright protection, expanding and modernizing the principles established in previous conventions.

Under TRIPS, copyright is a form of intellectual property protection for creators of original literary and artistic works. The agreement extends the provisions of the Berne Convention, requiring member states to comply with its substantive articles. Copyright protection under TRIPS covers the expression of a work, not ideas, procedures, operating methods, or mathematical concepts. This includes protection for computer programs as literary works and compilations of data. TRIPS stipulates that copyright protection must last for at least 50 years from the end of the year of authorized publication, or 50 years from the end of the year of creation for unpublished works. The agreement also covers related rights, such as the rights of performers, producers of sound recordings, and broadcasting organizations.

### 3.3. Intellectual Property Theories in Indonesia's Modern Royalty System

Recent developments in Indonesia's royalty system indicate a significant shift in how the law manifests the philosophical foundations of copyright, which are rooted in classical property theories, the moral significance of authorship, and social welfare objectives. The most prominent regulatory change occurred with the enactment of Ministry of Law and Human Rights Regulation Number 27 of 2025, which replaced the 2022 framework and strengthened the institutional authority of Lembaga Manajemen Kolektif Nasional (LMKN). By centralizing royalty management into a single LMKN account and mandating data integration and transparency through Pusat Data Lagu dan/atau Musik (PDLM), this reform reflects the logic of Lockean labor theory: that creators are entitled to enjoy the fruits of their intellectual labor and the legal system is obligated to ensure this right is tangibly realized. The requirement for all LMK's to integrate data and adhere to stricter reporting standards is not merely an administrative step, but a structural effort to respect the inherent connection between the creator and their work.

This regulatory reinforcement also aligns with personality or personhood theory, which views creative works as an extension of the creator's identity, values, and moral presence. By granting greater authority to LMKN and implementing stricter accountability mechanisms in royalty distribution, this legal framework indirectly protects the creator's right to control the use and recognition of their work. The updated music royalty system aims not only to achieve economic justice but also to preserve the moral dimensions of authorship as emphasized in Kant, Fichte, and Hegelian philosophy. Nevertheless, implementation challenges persist. In 2024, LMKN reported that over two thousand commercial event organizers failed to meet their royalty payment obligations, with arrears reaching approximately IDR 105 billion. This situation underscores an on-going tension between the normative ideals of philosophical protection which demand respect for the moral and economic rights of creators and the enforcement constraints that hinder the effective realization of such protection.<sup>47</sup>

Beyond the music sector, the government introduced MOLHR Regulation No. 15 of 2024 which regulates royalties for the secondary use of books, including digital reproduction and the utilization of copyrighted works as training data for Artificial Intelligence. This policy reflects a strong utilitarian approach, as by clarifying rights over new forms of

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<sup>47</sup> William M. Landes and Richard A. Posner, "An Economic Analysis of Copyright Law," *The Journal of Legal Studies* 18, no. 2 (June 1989): 325–63, <https://doi.org/10.1086/468150>.

digital utilization, the law provides incentives for authors to continue creating and sharing their works with the public. The temporary monopoly granted through copyright allows creators to obtain fair rewards, while society benefits from the increased production of literary works, knowledge, and cultural content. In this context, the regulation demonstrates a modern balancing effort between private interests and public benefits.

Indonesia's increasingly active role at the international level also demonstrates the influence of deeper theoretical traditions. The 2025 proposal for the establishment of a legally binding global royalty governance framework, informally known as the Jakarta Protocol shows Indonesia's ambition to harmonize collective management practices globally.<sup>48</sup> This initiative reflects elements of dualistic theory, which emphasizes the distinction between the economic and personal aspects of copyright, as well as modern monistic theory, which views both aspects as an inseparable unity. By pushing for a global user-based royalty payment system and coordinated institutional oversight, Indonesia asserts the view that copyright protection must encompass both economic and personality dimensions simultaneously and transcend territorial boundaries. Therefore, the continued implementation of the Jakarta Protocol is essential to realizing an integrated global royalty payment system.

In line with this, parliamentary discussions regarding the planned amendment to on amending Law No. 28 of 2014 on Copyright also reflect the convergence of these various theoretical approaches. The proposal to establish a true single gate royalty system and the enhancement of protection for journalistic works demonstrate the continuity of the monistic principle, which regards economic rights and personality rights as inseparable parts of a single copyright system. Parallel parliamentary discussions on amending Law No. 28 of 2014 on Copyright further reflect this multi-theoretical convergence. Proposals for a genuine "single gate" royalty system and greater protection for journalistic works illustrate the persistence of monist principles, which view economic and personality rights as inseparable components of a unified copyright system. The expansion of the royalty regime into new fields of creative expression reaffirms that both economic and moral interests require structural protection, even as the forms of economic rights continue to evolve alongside technological changes.

#### 4. Conclusion

Based on these influential IPR philosophical theories, philosophers discuss epistemic norms in science of IPR therefore they are aligned with normative configuration in Indonesia Copyright Law which construct ideals of how science should or ideally would work. First, IPR are exclusive rights granted by law to creators or inventors for their intellectual works and creativity that are unique and innovative. These works can cover various fields, including science, art, literature, and technological discoveries. IPR can be understood as rights arising from mental activities that produce products or processes that are useful to society. In addition, IPR also provides rights holders with the opportunity to gain economic benefits from the results of their intellectual creativity. It is originated from creative activities resulting from human intellectual abilities, expressed to the public in various forms that are beneficial and useful in supporting human life, while also having economic value. As a property right, IPR arises from human creations or works, which are the result of human intellect.

Second, copyright is a fundamental component of intellectual property law, encompassing a broad spectrum of protected works including science, art, literature, and computer programs. The Indonesian government, recognizing the critical role of copyright in fostering the national creative economy, has updated its copyright legislation to better protect and promote creative industries. This legal framework aims to optimize the contribution of copyright and related rights to the country's economic growth. In this context, copyright is defined as the exclusive right automatically granted to creators based on the declarative principle. This right comes into effect as soon as a work is manifested in tangible form, subject to limitations specified by law. It is

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<sup>48</sup> Kementerian Hukum Republik Indonesia, "Pemerintah Indonesia Usulkan Instrumen Hukum Internasional tentang Pengelolaan Royalti dan Publisher Right," *Kemenkum.go.id*, October 15, 2025, accessed November 18, 2025, <https://kemenkum.go.id/berita-utama/pemerintah-indonesia-usulkan-instrumen-hukum-internasional-tentang-pengelolaan-royalti-dan-publisher-right>

important to note that copyright extends beyond the creator's rights to include related rights, which are exclusive rights granted to performers, phonogram producers, and broadcasting organizations. This comprehensive approach to copyright protection reflects the complex nature of creative works in the modern era and underscores the importance of balancing the interests of creators, industries, and the public in fostering a thriving creative economy.

Recent policy reforms further solidify Indonesia's commitment to aligning philosophical ideals with legal regulatory practices. Measures such as the restructuring of LMKN, the digitalization of royalty databases, the strengthening of enforcement mechanisms, and global royalty governance initiatives through the Jakarta Protocol demonstrate an increasingly consistent normative direction. These developments reflect a maturing copyright system that balances the personal rights of creators, economic incentives, and the public interest, as formulated in both classical and contemporary theories of Intellectual Property.

Consequently, Indonesia's copyright legal framework does not merely reflect philosophical principles of labor, personality, economic efficiency, and distributive justice; it effectively translates them into an operational legal structure. This alignment between theory and practice marks the evolution toward a more coherent, transparent, and adaptive system capable of addressing technological challenges and global dynamics, while simultaneously realizing the primary normative goals of intellectual property protection.

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