

The Indigenous People's Innovation Copyright and Legal Consequences: A Case Study of the Plant Chopper Machine in Mulia Asih Farmer Group, Central Kalimantan, Indonesia



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ABSTRACT: Agrotourism is a tourism activity that combines plantation or agricultural activities by offering unique experiences to visitors. Indonesia, which has natural resources in the plantation and agricultural sectors, provides great opportunities for the community, one of which is implemented by the Mulia Asih Farmer Group in Humbang Raya Village, Central Kalimantan. Agricultural and plantation activities require fertilizer as an important component in increasing crop production, and there are even demands for environmentally friendly use of organic fertilizer or compost as an advantage so that people innovate to create organic fertilizer processing machines from the surrounding environment. This article uses a qualitative approach to discuss the findings of local communities and analyze them with the copyright law which regulates the copyright of photographic works and portraits taken without permission. Article 12 paragraph (1) of the Copyright Law regulates economic rights to portraits, there must be written consent from the person being photographed or their heirs for reproduction, distribution, announcements, commercial use, and/or communications used for billboards, advertisements, banners, pamphlets and more. The results of this study show that the public has not realized unintentional errors due to limited information so that the innovations made are claimed to be their own work even though they have previously been discovered by other communities.

KEYWORDS: Enumeration Machine, Legal Consequences

BACKGROUND

Opportunities for the tourism sector are quite prospective, because apart from being one of the producers of tourism economic growth, the tourism sector is expected to have the opportunity to be a growth driver for other development sectors, such as the plantation sector, agriculture, trade, industry and others. One element of the agricultural sector that is currently not being exploited optimally is agrotourism. The potential for agrotourism is aimed at the natural beauty of agriculture and production in the agricultural sector which is quite developed (Bhayu, 2020).

Agrotourism is a series of tourism activities that utilize the potential of agriculture as a tourism object, both in the form of natural scenery of the agricultural area as well as the uniqueness and diversity of production activities and agricultural technology as well as the culture of the farming community. Agrotourism activities aim to broaden knowledge horizons, recreational experiences and business relations in agriculture which includes food crops, horticulture, plantations, fisheries and animal husbandry (Uğur & Akbıyık, 2020).

One of the agrotourism in Central Kalimantan is carried out by the Mulia Asih Farmers Group in Humbang Raya Village. The need for a supply of fertilizer as an important component in increasing crop production. Currently, the use of fertilizers has begun to shift from chemical fertilizers to organic fertilizers or compost, the large amount of waste or organic waste produced by agrotourism forces the people of the Mulia Asih Farmer Group to innovate to solve the problem of fertilizers and organic waste. One of the innovations from the local community, especially in the Mulia Asih Farmers Group, is the organic waste chopper machine, which is part of the organic waste processing machine that is often used to chop various wastes or organic waste into useful products such as compost. This composting machine is also called a compost chopper because it can chop various raw materials for composting.

As time goes by and the demands of the development of this new paradigm on the protection of Intellectual Property Rights (Di Valentino, 2016), it is necessary to register a patent which if not registered, it is feared that it will lead to acts such as plagiarism, piracy, imitation, falsifying, mutilating a work or admitting it as a result. own creation of another person's creation

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(plagiarism) or the holder of a permit from the creation is an act that is prohibited and can be threatened with legal sanctions. This development causes all sectors of life such as economy, law and culture to also race against time to catch up in the era of global competition which is now increasingly discriminatory, comparative and competitive.

Copyright law has regulated the copyright of photographic works and portraits taken without permission. Article 12 paragraph (1) of the Copyright Law regulates economic rights to portraits, there must be written consent from the person being photographed or their heirs for reproduction, distribution, announcement, commercial use, funds or communications used for billboards, advertisements, banners, pamphlets, and so on.

METHOD

The research was carried out in 2021 using a qualitative approach and the data collected included aspects of ecotourism, copyright and a counting machine that was used by the community, especially in the Mulia Asih Farmer Group, Humbang Raya Village, Kapuas Regency, Central Kalimantan, Indonesia

DISCUSSION

The term Copyright was first put forward in the Berne Convention held in 1886. In the Berne Convention, the definition of Copyright is not formulated in a separate article but is implied in Article 2, Article 3, Article 11 and Article 13 whose contents are absorbed in Article 2 jo Article 10 Auteurswet 1912 (Saidin, 2015). In Auteurswet 1912 Article 1 stipulates that: "Copyright is the sole right of the Creator or the right of the person who has the right, on the results of his Creation in the fields of literature, knowledge and art, to publish and reproduce it keeping in mind the restrictions determined by law". Article 1 point 1 of Law Number 19 of 2002 concerning Copyright, stipulates: "Copyright is an exclusive right for the Creator or recipient of the right to announce or reproduce his work or to give permission for it without reducing the restrictions according to the laws and regulations that applies". Based on the definition of Copyright according to Article 1 point 1 of Law Number 28 of 2014 concerning Copyright, the meaning of exclusive right is a right that is solely intended for the holder, so that no other party may use the right without the holder's permission.

In relation to the provisions of Article 1 point 1 of Law Number 28 of 2014 concerning Copyright, further review and elaboration of the meaning and nature of Copyright are:

1. Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.
2. The creator is one or several people who individually or together produce a creation that is unique and personal.
3. Creation is any copyrighted work in the fields of science, art, and literature that is produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form.
4. Copyright holder is the Creator as the owner of the Copyright, the party who receives the right legally from the Author, or another party who further receives the right from the party who receives the right legally.
5. Related Rights are rights related to Copyright which are exclusive rights for performers, phonogram producers, or Broadcasting institutions.
6. Performer is a person or persons who individually or collectively display and demonstrate a Work.
7. A phonogram producer is a person or legal entity that first records and has the responsibility to carry out sound recording or sound recording, both recording performances and recording other sounds or sounds.
8. Broadcasting Institutions are broadcasting providers, both public broadcasting institutions, private broadcasting institutions, community broadcasting institutions and subscription broadcasting institutions which carry out their duties, functions and responsibilities in accordance with the provisions of the laws and regulations.
9. A computer program is a set of instructions expressed in the form of language, code, schema, or in any form intended to make the computer work to perform certain functions or to achieve certain results.
10. Portraits are photographic works with human objects.
11. Announcement is the reading, broadcasting, exhibition, of a work by using any means, whether electronic or non-electronic, or doing so in any way so that a work can be read, heard, or seen by others.
12. Reproduction is the process, act, or method of duplicating one copy of a Work and/or phonogram or more in any way and in any form, permanently or temporarily.
13. Fixation is the recording of audible sound, recording of images or both, which can be seen, heard, reproduced, or communicated through any device.

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14. Phonogram is a fixation of the sound of a performance or other sound, or representation of sound, which does not include a form of fixation incorporated in cinematography or other audiovisual Works.
15. Broadcasting is the transmission of a Work or Related Rights product wirelessly so that it can be received by everyone in a location far from where the transmission originates.
16. Communication to the public, hereinafter referred to as Communication, is the transmission of a Work, performance, or Phonogram via cable or other media other than Broadcasting so that it can be accepted by the public, including the provision of a Work, performance, or Phonogram so that it can be accessed by the public from the place and time it chooses.
17. Distribution is the sale, distribution, and/or dissemination of Works and/or Related Rights products.
18. Proxy is an intellectual property consultant, or a person who is authorized by the Author, Copyright Holder, or Related Rights owner.
19. Application is an application for registration of Works by the applicant to the Minister.
20. A license is a written permission granted by a Copyright Holder or Related Rights Owner to another party to exercise economic rights over his work or related rights products under certain conditions.
21. Royalty is a reward for the use of Economic Rights of a Work or Related Rights Product received by the creator or owner of the related rights.
22. Collective Management Institution is an institution in the form of a non-profit legal entity that is authorized by the Author, Copyright Holder, and/or Related Rights owner to manage their economic rights in the form of collecting and distributing royalties.
23. Piracy is the illegal reproduction of Works and/or Related Rights products and the wide distribution of the goods resulting from the reproduction in order to obtain economic benefits.
24. Commercial Use is the use of Works and/or Related Rights products with the aim of obtaining economic benefits from various sources or for a fee.
25. Compensation is the payment of a sum of money charged to the perpetrators of the infringement of the economic rights of the Creator, Copyright Holder and/or Related Rights owner based on a court decision in a civil or criminal case which has permanent legal force for the losses suffered by the Author, Copyright Holder and/or Related Rights owner. .
26. Minister is a minister who carries out government affairs in the field of law.
27. Person is an individual or legal entity.
28. Day is a working day.

Indonesia has ratified a number of conventions or international agreements on intellectual property rights, these conventions are binding on Indonesia. This means that Indonesia must make or enforce Indonesian law, especially Intellectual Property Rights in accordance with the conventions it has ratified (Riswadi, 2017).

Article 1 point 3 of Law Number 28 of 2014 concerning Copyright, it is determined that: A work is the work of an Author that shows its authenticity in the field of science, art or literature. In order to find out what works in the field of science, art or literature are protected by Copyright, Article 1 point 3 needs to be linked to the provisions of Article 40 paragraph (1) of Law Number 28 of 2014 concerning Copyright which stipulates Works. protected are works in the field of science, art or literature which include:

- a. books, pamphlets, presentations of published works, and all other written works;
- b. lectures, lectures, speeches, and other similar creations;
- c. teaching aids made for the benefit of education and science;
- d. songs and/or music with or without subtitles;
- e. drama, musical drama, dance, choreography, wayang, and mime;
- f. works of art in all forms such as paintings, drawings, carvings, calligraphy, sculptures, sculptures, or collages;
- g. applied art;
- h. architectural works;
- i. map;
- j. batik art or another motif art;
- k. photographic works;
- l. Portrait;
- m. cinematographic works;

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- n. translation, interpretation, adaptation, anthology, database, adaptation, arrangement, modification and other works resulting from the transformation;
- o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. compilation of Works or data, either in a format that can be read with a Computer Program or other media;
- q. a compilation of traditional cultural expressions as long as the compilation is an original work;
- r. video games; and
- s. Computer program.

Article 40 paragraph (2) explains that the Works as referred to in paragraph (1) letter n are protected as separate Works without prejudice to the Copyright of the original Works. As well as in paragraph (3) explains that the Protection as referred to in paragraph (1) and paragraph (2), includes the protection of Works that have not been or have not been Announced but have been realized in a tangible form that allows the Reproduction of the Works.

When compared with the law in America such as the opinion of Lior (2006), DMCA Chapter 1204 provides provisions for those who destroy security technology, which are included in criminal offenses (Zemer, 2017). Those who destroy security technology intentionally and with commercial purposes for personal financial gain are subject to a fine of US\$ 5000.00 or imprisonment for 5 (five) years for the first violation, and a fine of US\$ 1,000,000 or criminal imprisonment for 10 years for further offences. Exceptions apply if for the purpose of not-for-profit libraries, archives, and educational institutions, they are freed from all criminal and civil charges.

Meanwhile, in Japan, according to Burk (2007), under Japanese law, the destruction of access control is not considered a violation of copyright, the prohibition against tampering with security technology in Japan only applies if the copyrighted work that has been tampered with the security technology has been used or reproduced without permission. from the owner of the work. The destruction carried out for personal reproduction will not be subject to sanctions, but if the reproduction is piracy carried out for the purpose of seeking profit, then the act of destruction is categorized as illegal and will be subject to sanctions (Burk, 2007).

Likewise in Brazil. According to Batista (2021), in Brazilian law, copyright infringement is clearly regulated in the rules related to copyright related to works in Law no. 9.610/96 (Copyright Law), Through this provision, Brazilian legislators are more concerned with protecting the wider public interest (Batista, 2021). Therefore, it can be concluded that each country has clear and firm rules in the implementation of copyright infringement in their respective countries.

Judging from the core of the enumerator, this exclusive right is a right that is solely intended for the Copyright Holder to utilize and enjoy the Copyright. An act can be said to be a copyright infringement if the act violates the exclusive rights of the Creator or Copyright Holder (Margono, 2002).

The plants chopper machine aims to facilitate the process of destroying organic waste, animal feed to help increase production capacity in the manufacture of organic fertilizer and then be able to overcome waste problems that exist in each area by recycling organic waste into organic fertilizer (Eewag, 2017). In addition, this use is to increase livestock production, namely to chop animal feed so that the results obtained are more effective and efficient which are increasingly popular, and the practice is beneficial for millions of farmers and ranchers every year (Ariana Lukito, 2013). At present the plants chopper machine has become a vital tool, which is often used to reach underserved farmers and ranchers in rural areas who do not receive government assistance for the use of fertilizers (Arafah, 2003).

Therefore, this case is includes in the exclusive right of the enumeration machine in terms of announcing and reproducing, including translating, adapting, selling, arranging, transforming, renting, importing, exhibiting, or showing it to the public through any means (Explanation of Article 2 of Law Number 28 2014 concerning Copyright). Matters included in the definition of reproduction are the addition of a number of works either in whole or in very substantial parts by using the same or not the same materials, including converting them permanently or temporarily (Article 1 point [4], [12], [17], and [23] Law Number 19 of 2002 concerning Copyright). It will be a challenge for farmers and ranchers in Indonesia instead of having a cropping machine this will help the economy of farmers and ranchers instead it will be the other way around because of this Copyright.

Economic rights are the rights to obtain economic benefits from Works and Related Rights products (General explanation of Law Number 19 of 2002 concerning Copyrights). Economic rights are rights to exploit, namely the right to announce and reproduce a work, while moral rights are rights that contain prohibitions on making changes to the content of the work, the title of the work, the name of the creator, and the work itself (Supramono, 2020).

Meanwhile, the impact of copyrights that are violated on this plant chopper will result in legal consequences, namely consequences arising from a legal event. In the Big Indonesian Dictionary, an event is defined as an event, so in the language of a

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legal event, it can be interpreted as an event that gives rise to a law that can apply or an event related to law. The rule of law consists of the events and consequences to which the rule of law is linked. Such events are referred to as legal events and the consequences arising from these events are legal consequences.

According to Van Apeldoorn, a legal event is an event based on law that creates or nullifies rights. With a more easily understood understanding, legal events or legal events or *rechtsfeit* are social events whose consequences are regulated by law. This legal event is an event in society that moves a certain legal regulation so that the provisions contained therein are then realized. In more detail we can say the following: if an event occurs in society, while the event is in accordance with what is described in the legal regulations, then that regulation is then imposed on the event (Soeroso, 2011).

According to Soeroso (2011), legal events can be classified or divided into two types (Soeroso, 2011), namely: Menurut Soeroso (2011), Peristiwa hukum dapat digolongkan atau dibagi dalam dua jenis (Soeroso, 2011), yaitu:

1. Legal events due to the actions of legal subjects (human actions). Is an act committed by a human or a legal entity that can lead to legal consequences, for example: buying and selling and others.
2. Legal events that are not acts of legal subjects (events that are not human actions). An example of natural death.

Therefore, the result of copyright infringement on the enumerator is Article 112 which explains that any person who unlawfully commits an act as referred to in Article 7 paragraph (3) and/or Article 52 for Commercial Use, shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp.300,000,000.00 (three hundred million rupiah).

Whereas Article 113 explains that (1) Anyone who unlawfully violates economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine a maximum of Rp. 100,000,000 (one hundred million rupiah). And paragraph (2) explains that any Person who without rights and/or without permission of the Author or Copyright holder commits a violation of the economic rights of the Author as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be sentenced to a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). Whereas paragraph (3) explains that any Person who without rights and/or without permission of the Author or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). (4) Any person who fulfills the elements as referred to in paragraph (3) which is committed in the form of piracy, shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiahs).

Whereas Article 114 explains that any person who manages a trading place in all its forms who knowingly and knowingly allows the sale and/or reproduction of goods resulting from infringement of Copyright and/or Related Rights in the trading place he manages as referred to in Article 10, shall be punished with a fine. 100,000,000.00 (one hundred million rupiah). Meanwhile, in Article 119, any Collective Management Institution that does not have an operational permit from the Minister as referred to in Article 88 paragraph (3) and conducts Royalty withdrawal activities is subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000. .000,00 (one billion rupiah). Article 120 explains that the crime as referred to in this Law is a complaint offense.

Therefore, it can be concluded that the existence of this copyright has an impact on the progress of farmers and breeders if they create this plant chopping machine without registering it first because it is very likely that the chopping machine they made is thick with copyright infringement where in the current era of progress many have register copyright on a plant chopper machine.

CONCLUSION

The use of a plant chopping machine in the Mulia Asih farmer group can be said to violate copyright and can result in legal events in Articles 112, 113 and 114 on the condition that the violation is subject to a complaint offense in accordance with Article 120 of Law No. 28 of 2014 concerning Copyright if any. who complained about the violation. This sector has not realized the full error caused by the ignorance of the Mulia Asih farmer groups. This study also found that the copyright regulatory framework has an impact on community innovation, especially farmers and ranchers who will innovate in making crop chopping machines that aim to facilitate the process of destroying organic waste, animal feed to help increase production capacity in making organic fertilizers and then be able to overcome problems. waste in each area with the process of recycling organic waste into organic fertilizer.

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