

LEGAL RECONSTRUCTION OF COPYRIGHT AS MARITAL PROPERTY IN INDONESIAN LAW

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Abstract

This study examines the reconstruction of copyright law as marital property within the Indonesian legal framework, focusing on the economic rights of works created during marriage. The research background stems from the complexity of the relationship between intellectual property rights and family law, where copyright often becomes a source of conflict in asset division during divorce. Employing a normative method with legislative, comparative, and conceptual approaches, this study compares regulations in Indonesia and the People's Republic of China. The findings indicate that Indonesia lacks specific rules on the division of economic copyright rights as marital property, whereas China has explicitly integrated them into the Civil Code. Reconstruction is proposed through harmonization of the Copyright Law and Marriage Law, differentiation between moral and economic rights, and the establishment of technical regulations to ensure legal certainty, justice, and protection of creators' rights. These findings contribute to the development of a more responsive national law towards intangible assets in family contexts.

Keywords: *copyright, legal reconstruction, marital property.*

INTRODUCTION

In the era of industrialization and technological advancement, economic value has shifted from tangible assets to intangible ones, with intellectual property, particularly copyright, playing a pivotal role. Copyright, as an intangible asset, holds significant economic value and is a cornerstone of Indonesia's creative economy, contributing substantially to national economic growth and social change. According to the *World Intellectual Property Report*, intangible assets like copyright have transformed global markets, reflecting a fundamental economic shift. In Indonesia, copyright underpins the creative sector, generating income through rights to use, produce, distribute, and license creations, as protected by the state. Copyright grants creators exclusive rights, encompassing moral rights (inalienable, covering attribution and integrity) and economic rights (transferable, including publication and royalties), as outlined in Articles 4 and 5 of Law No. 28/2014 on Copyright. Indonesia's adherence to international agreements like the Berne Convention and TRIPS reinforces these protections. However, within marriage, the classification of copyright as marital property (*harta bersama*) under Article 35 of Law No. 1/1974 on Marriage remains ambiguous, as it lacks explicit provisions for economic rights acquired during marriage. Judicial interpretations, such as in Case No. 1622/Pdt.G/2023/PA.JB, have recognized royalties as marital property, but the absence of clear regulations creates legal uncertainty, especially for couples without prenuptial agreements. This issue is compounded by the labor theory of property (John Locke), which attributes ownership to the creator's effort but must consider spousal contributions (material or immaterial) in marriage, and Robert Nozick's entitlement theory, which supports equitable distribution through just acquisition and transfer. Comparatively, China's Civil Code (Article 1062) explicitly classifies intellectual property proceeds as marital property, ensuring clarity and fairness. Indonesia's regulatory gaps necessitate legal reconstruction to harmonize Copyright and Marriage Laws, ensuring legal certainty and justice.

LITERATURE REVIEW

The literature on copyright as marital property integrates intellectual property and family law theories. Copyright is defined as exclusive rights over creative works in art, literature, and science (Sudjana, 2019), governed by principles like automatic protection and limited duration (UU Hak Cipta, Articles 4-5). Moral rights are

inalienable, while economic rights are transferable (Damian, 2022). Marital property, per UU Perkawinan Article 35, includes assets acquired during marriage, based on equality and joint ownership (Hadikusuma, 2022). Theories include property rights (Locke, emphasizing labor-derived ownership) and incentive theory (encouraging creativity via economic rewards) (Jamadi, 2022). Distributive justice theory supports fair asset division in marriage (Nozick's entitlement theory ensures just acquisition and transfer). Comparative studies show gaps: Indonesia lacks specifics, leading to analogies from religious law (Shidarta, 2018), while China explicitly regulates IP proceeds as communal (Civil Code, 2021). Literature highlights needs for harmonization to balance individual creator rights with family equity (Sun, 2019; Erwina, 2021), addressing uncertainties in divorce and inheritance. Collectively, this literature delineates a critical need for reconstruction: integrating copyright protections into family law to bridge the chasm between extant regulations and courtroom practices. Such reforms could harmonize individual creator incentives with marital equity, mitigating conflicts and enhancing doctrinal coherence in Indonesia's evolving legal landscape.

METHOD

This study employs a normative legal research design, utilizing statutory, conceptual, and comparative approaches to analyze the legal framework governing copyright as marital property in Indonesia. The statutory approach examines primary legal materials, including Law No. 28/2014 on Copyright, Law No. 1/1974 on Marriage (as amended by Law No. 16/2019), and Article 1062 of the Civil Code of the People's Republic of China. The conceptual approach explores legal theories, such as John Locke's *labor theory of property* and Robert Nozick's *entitlement theory*, to provide a philosophical foundation for the analysis. The comparative approach contrasts Indonesia's regulatory framework with China's to identify best practices and gaps in legal clarity. Primary legal materials include the aforementioned statutes and relevant court decisions, such as Case No. 1622/Pdt.G/2023/PA.JB and Case No. 16/Pdt.G/2024/PTA.JK. Secondary materials comprise scholarly books, journal articles, and legal doctrines, including works by Sudjana (2019), Jamadi (2022), and Hadikusuma (2022). Data collection involves a systematic literature review to inventory and identify relevant legal provisions, cases, and academic sources. Data analysis employs qualitative normative methods, using grammatical, systematic, and teleological interpretations to assess legal texts and propose a reconstructive framework. Deductive logic is applied to formulate recommendations for harmonizing copyright and marriage laws, ensuring legal certainty and justice in the division of economic rights as marital property.

RESULTS AND DISCUSSION

The research findings reveal significant regulatory incompleteness in Indonesia concerning the integration of copyright into marital property regimes. In Indonesia, economic rights arising from creations produced during marriage are acknowledged as community property through judicial interpretations, yet the absence of detailed mechanisms leads to inconsistencies and uncertainties in application. This contrasts sharply with China, where Article 1062 of the Civil Code explicitly designates economic benefits from intellectual property as joint marital assets, while incorporating flexibility via prenuptial agreements to allow for customized allocations.

Copyright Ownership as Marital Property in Indonesia for Legal Certainty

Legal certainty is a cornerstone of a rule-of-law state, ensuring predictable, consistent, and fair application of laws, as emphasized by Gustav Radbruch's triad of legal values: certainty, justice, and utility. In the context of intellectual property, particularly copyright, legal certainty protects creators' rights while fostering creativity. Sudikno Mertokusumo underscores that legal certainty provides societal security and clear behavioral guidelines. Copyright law, under Indonesia's Law No. 28/2014, automatically grants protection upon a work's tangible creation, ensuring creators' exclusive rights without formal registration. However, challenges arise when copyright intersects with marital property under Law No. 1/1974, particularly regarding economic rights as *harta bersama* (marital property), necessitating clear legal frameworks to balance individual and communal interests.

Roscoe Pound's theory of law as a balancing mechanism highlights the need to protect creators' exclusive rights while ensuring public access to creative works, as reflected in fair use provisions. In Indonesia, the creative economy's significant contribution (7.44% of GDP in 2019, per Bkraf) underscores the growing relevance of copyright as marital property, especially in sectors like film, music, and literature. However, the absence of explicit provisions in copyright and marriage laws creates a legal gap, leading to judicial inconsistencies in dividing economic rights (e.g., royalties) during divorce. Case No. 1622/Pdt.G/2023/PA.JB demonstrates progressive judicial recognition of royalties as marital property, but disparities persist due to the lack of specific regulations. John Locke's *labor theory of property* supports classifying economic rights as marital property, as spousal contributions (material or emotional) during marriage justify shared ownership. Shidarta's principle of balance in marriage law, combined with John Rawls' distributive justice, the contributive substance theory, and Islamic *syirkah* principles, reinforces

that economic benefits from copyright should be equitably shared. However, conflicts arise as Article 16(2) of the Copyright Law allows unilateral transfer of economic rights, while Article 36(1) of the Marriage Law requires mutual consent for marital property transactions, highlighting a normative tension. Practical challenges include determining future royalties post-divorce and proving contributions to creative works. Courts often limit marital property to royalties received during marriage, but debates persist over future earnings from works created during marriage. Prenuptial agreements, enabled by Constitutional Court Decision No. 69/PUU-XIII/2015, could resolve disputes by designating copyright as personal property, but public awareness remains low. Judicial evidence, such as copyright registration or royalty contracts, is crucial but challenging for unregistered works. The analysis reveals a conceptual tension between copyright's personal nature and marriage's communal principles. While moral rights remain inalienable (Article 5(1), Copyright Law), economic rights align with marital property under Article 35(1), Marriage Law. The lack of explicit regulations necessitates judicial discretion, risking inconsistent rulings. Legislative reform is needed to integrate copyright and family law, ensuring legal certainty and fairness, particularly for creative professionals in Indonesia's growing digital economy.

China's legal framework, notably the Civil Code (2021), integrating the Copyright Law (1990, revised 2020) and Marriage Law (1980, revised 2001), explicitly recognizes intellectual property proceeds, including copyright royalties, as marital property under Article 1062. This clear codification distinguishes moral rights (inalienable, personal to the creator) from economic rights (transferable, part of marital property), ensuring legal certainty. Courts, as in Beijing Higher People's Court (2018) and Shanghai Intermediate People's Court (2015), consistently treat royalties earned during marriage as marital property, dividing them equitably while preserving creators' moral rights. Haochen Sun notes that China balances individual creator rights with family economic harmony, reflecting collectivist values. However, Jianfu Chen critiques the automatic inclusion of royalties as potentially unfair to creators if spousal contributions are minimal, rooted in China's collectivist ideology. Donald Clarke highlights that this approach strengthens family units as economic entities, aligning with national economic goals. Challenges arise with fluctuating royalty incomes and future earnings post-divorce, with courts typically limiting marital property to actual earnings during marriage to avoid speculative valuations. China's system allows prenuptial agreements to override default marital property rules, as seen in a 2018 Guangzhou case, offering flexibility. Academic debates, per Gao Feng and Zhang Yue, focus on future royalties, with some courts compensating non-creators for contributions during marriage, while others restrict claims to pre-divorce earnings. This inconsistency underscores the need for clearer judicial guidelines from China's Supreme People's Court.

Reconstruction of Copyright as Joint Property in Indonesia

In Indonesia, copyright and joint property are governed by distinct legal regimes: Law No. 28/2014 on Copyright, which protects intellectual creations in science, art, and literature, and Law No. 1/1974 on Marriage (amended by Law No. 16/2019), which regulates assets acquired during marriage. However, neither law explicitly addresses the status of copyright as joint property, creating legal uncertainty, especially in disputes over economic benefits from works created during marriage. This ambiguity complicates determining whether such benefits are personal to the creator or part of joint property, particularly when non-material contributions (e.g., moral or financial support) from the non-creator spouse are involved.

1. Differentiation Between Moral and Economic Rights in Marriage Law

To address this, a reconstruction is proposed to clearly distinguish between moral rights (personal, inalienable rights tied to the creator) and economic rights (transferable, commercial benefits like royalties). Moral rights, as per the Berne Convention, remain exclusively with the creator, respecting their intellectual integrity. Economic rights, however, should be classified as joint property if generated during marriage, acknowledging the spouse's contributions to the creative process. This distinction ensures legal clarity in divorce or inheritance disputes, aligns with Indonesia's constitutional principle of justice (Article 28D(1) of the 1945 Constitution), and mirrors practices in countries like Germany and France. Philosophically, Robert Nozick's theory of justice supports this by emphasizing legitimate acquisition and transfer of rights. Moral rights are acquired through the creator's intellectual effort and remain inalienable, while economic rights, resulting from collective familial support, can be justly shared. Similarly, John Locke's labor theory justifies moral rights as the creator's personal property but recognizes economic rights as joint property due to the spouse's role in the creative environment. This approach balances individual and familial interests, fostering distributive justice.

2. Legal Reconstruction Through Amendments

To resolve the legal gap, amendments are proposed to both laws:

Article 16 of the Copyright Law: Add a new clause (5) stating: *"The transfer of economic rights under paragraph (2) requires the consent of both spouses if the work is created and generates economic benefits during marriage, unless otherwise stipulated in a prenuptial agreement."* This ensures economic rights are treated as joint

property, aligning with marriage law principles and Nozick's and Locke's theories, while protecting the creator's moral rights.

Article 35 of the Marriage Law: Revise to include: "*Assets acquired during marriage, whether tangible or intangible, constitute joint property.*" This explicitly includes intangible assets like copyright, recognizing their economic value. It ensures fair distribution of economic benefits, especially royalties, even post-divorce or in inheritance, and aligns with global practices (e.g., France's marital property regime). Reconstructing copyright as joint property through these amendments integrates intellectual property and marriage laws, addressing modern economic realities. Grounded in Nozick's and Locke's theories, this approach ensures justice in acquisition and transfer, balances individual and collective rights, and aligns with Indonesia's constitutional mandate for equitable legal protection. It also positions Indonesia's legal framework to support the growing creative economy while maintaining fairness in family law.

CONCLUSION

This research concludes that the reconstruction of copyright law as marital property (*harta bersama*) in Indonesia is urgently required to address significant regulatory gaps and ensure legal certainty and substantive justice. Current Indonesian regulations lack explicit, comprehensive provisions governing the status and division of intellectual property, specifically copyrights, within marital assets upon divorce, leading to discrepancies and ambiguity in judicial decisions. To address this *vacuum of norm*, the study advocates for a comparative legal approach, specifically drawing lessons from the regulatory framework of the People's Republic of China. China provides clear models for harmonizing intellectual property rights with family law, particularly regarding the categorization and valuation of intangible assets in divorce proceedings. The necessary legal reconstruction involves three key pillars: regulatory harmonization, clear differentiation of rights, and the establishment of robust mediation mechanisms. Harmonization requires explicitly integrating the principles of Copyright Law into the framework of Marriage Law and Islamic Law Compilation (KHI) concerning *harta bersama*. Differentiation is essential to distinguish between the economic rights (which should be recognized as marital property subject to division) and the moral rights (which must remain inalienably with the original creator). Finally, developing specialized mediation and appraisal mechanisms will facilitate fairer, more efficient, and amicable settlements outside of litigation.

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