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LEGALIZATION OF ARTISTS' RESALE RIGHT (*DROIT DE SUITE*) AS THE PROTECTION SYSTEM AND INCENTIVE INDONESIA PAINTING

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ABSTRACT

Artists' resale right (Droit de Suite) is the rights of visual artists to receive a percentage of the revenue from the resale of their works in the art market. It is basically very beneficial for painter's origin if it is applied to the painting. Indonesia does not have the legislation on artists resale right yet. Although Indonesia is considered as a country that has a very high potential in terms of painting. In addition, Indonesia is a country that has ratified the Berne Convention. From this point of view, it is an urgency to legalize artists' resale rights in Indonesia. The effort to design artists' resale right rules shall be done through in-depth studies and research on two things, namely formal and substance of the law that will govern the artists' resale right, hence its real advantages can be taken either by the painter or the people of Indonesia.

Keywords: Artists' Resale Right – Protection – Incentive – Painting.

INTRODUCTION:

A painting is a collectible object, and therefore, it is unique not only artistically but also economically. Generally, when an artist sells a painting to a collector at a high price, this does not directly result in any economic value to the artist. In fact, when a painting is sold in a gallery, the artist gives a royalty to the owner of the gallery. This royalty is between 50:50 and 40:60 of the price of the painting. With that percentage, the artist cannot profit highly from the sale of the painting. As time as goes by, the painting's value slowly increases, and it is even possible for a painting to sell for IDR. 100 billion. Sidoesoedarsono Sudjojono's *Pangeran Diponegoro* was sold in *Sotheby's* Hongkong auction hall in April 2014 for approximately IDR 100 billion, including a premium fee (Agresifitas Kolektor Mengejar Karya Seni, 2014). Retrieved from http://lifestyle.bisnis.com/read/20140615/230/236215/agresivitas-kolektor-mengejar-karya-seni/).

Looking into this reality, it is clear that the painting as an expression of the idea of the artist in this context apparently is not economically capable of contributing to the welfare of the painters' origin or their heirs. In some countries, this problem has been been solved through the establishment of legislation that allows the painters' origin or their heirs to benefit economically from the high prices of paintings by dividing the percentage of its value to the painters' origin or their heirs. This legislation effort is made in order to govern the concept artists' resale right to the provision of positive law.

Meanwhile, in Indonesia, when reviewing the provisions of the applicable legislation, which one of that is the Act No. 28 of 2014 on Copyright in Indonesia (hereinafter referred to as the Act No. 28 of 2014), it can be seen that the arrangement of the artists' resale right seems not been regulated yet. With the absence of this provision, accordingly it has become a challenge for Indonesian painters and the government to take steps in legalization of artists' resale right into Indonesian positive law. This effort is intended to build a system of protection and incentives for Indonesian painting.

LITERATUR REVIEW:

Indonesian Copyright as a Protection System for Painters:

In Indonesian Copyright Act, copyright according to Article 1 Number 1 Law Number 28 Year 2014, can be defined as the exclusive right of the creator that arises automatically, based on declarative principle, after the work is embodied in a tangible form and without decreasing the limitations according to the provisions.

From the definition above, we understand that copyright is an exclusive right, and it does not lend itself to the nature of monopoly. The nature of monopoly gives authority to the right holder to utilize a copyright, to permit other parties to use the right, and even to prohibit other parties from using the right.

Copyright as an exclusive right is divided into two parts, moral rights and economic rights. A moral right is a right that stays with the creator. According to Stewart, who is cited by Otto Hasibuan, there are three fundamental aspects of a moral right:

a. *Droit de divulgation (the right of publication), which is the right to decide whether the work is to be made public.*
b. *Droit de paternite (the right of paternity), which is the right to claim authorship of published works.*
c. *Droit de respect de J'oeuvre (the right of integrity), which is the right of an author to safeguard his reputation by preserving the integrity of the work* (Hasibuan, 2008), (Utomo, 2010).

Moral rights cannot be transferred to other parties. They are regulated in Articles 5, 6, and 7 Law Number 28 Year 2014. These regulations of moral rights allow the creator to do the following:

a. cite or not cite their name in the copy of work utilized in the public;
b. use a fictitious name or disguised name;
c. change the work based on public equity;
d. change the title and subtitle of the creation;
e. preserve their rights in the case that there is a distortion, mutilation, or modification of the creation or a similar event that damages its reputation.

An economic right is defined as a right to benefit or receive an advantage from the work that is protected by copyright. Economic rights consist of the following:

a. The reproduction right is a fundamental economic right, and it is recognized by the Berne Convention, Universal Copyright Convention and national copyright law in all countries. Literally, the right gives

permission for the creator to produce, copy, or duplicate the work both in print and by using mechanical methods. Therefore, the reproduction right is divided into the printing right and the mechanical right.

b. The adaptation right is the creator's right to give others permission to adapt, arrange, or change the form of a creation, such as by translating it from one language to another or creating an arrangement of music. It is clearly recognized by the Berne Convention and Universal Copyright Convention. It is also known as the alteration right.

c. The distribution right is the creator's right to give others permission to distribute duplications of the work to the public. Some examples include selling, renting, and other forms of transferring a duplication. However, these actions are excluded for cinematography works according to the Berne Convention, and the distribution right itself is not clearly recognized by the Berne Convention or Universal Copyright Convention.

d. The public performance right is the creator's right to give others permission to perform the work for the public. The right is recognized by the Berne Convention and Universal Copyright Convention. This right is referred to as the performance right among the author and other experts of Author Licensing and Collecting Society, such as *Yayasan Karya Cipta Indonesia (YKCI)* and the Indonesian Copyright Foundation, and it refers to the right to perform the work to the public directly (live) or by broadcasting.

e. The broadcasting right is creator's right to give others permission to broadcast the work by using wireless cable. There are two types of broadcasting involving wireless cable, cable transmission and cable origination. The first type involves broadcasting a pre-existing work by cable transmission. The second type involves broadcasting an original work by cable transmission. The Berne Convention includes the first type in the broadcasting right and the second type in the public performance right (Hasibuan, 2008).

In Article 9 Section 1 Law Number 28 Year 2014, several economic rights are recognized, including the following:

a. Publishing of a work;
b. Duplication of a work into many forms;
c. Translation of a work;
d. Adaptation, arrangement, and transformation of a work;
e. Distribution of a work or its copy;
f. Performance of a work;
g. Announcement of a work;
h. Communication of a work; and
i. Lending a work

In line with the description of the provisions in the Act No. 28 of 2014 in which includes moral rights and economic rights, then it is merely not enough to provide the moral rights law provisions and economic rights. However, the existence of moral rights and economy provisions in fact needs the support of other legal provisions that may lead to the enforcement of the protection of moral and economic rights. In this context, the provisions of the Act No. 28 In 2014, if it is seen as a whole from the perspective of copyright protection systems, has also contain a copyright protection system that covers either preventive approaches or repressive. The preventive approaches in this copyright protection system connotes that the provisions of the Act No. 28, 2014 can be used as a prevention system against all forms of copyright infringement. For instance, Article 64 and 79 of the Act No. 28 of 2014 regarding the recording of creation are a proof of the normative availability of copyright protection system as preventive approach. As for the relations between the creation of recording provision and the system of copyright protection, it is preventively relied on the understanding that if there is a record, then the copyright holder can perform anticipatory measures to prevent copyright infringement. By all means, copyright holders can also announce the creation of a record so that the other party cannot do copyright infringement on its creation.

The management of copyright information can be understood as a preventive instrument. The technology of copyright management can be used to identify the originality of the work substances as well as its creator (Article 7 Section 1). Electronic information can also be used to identify the name of the creator, the period, the conditions of utilization, and the number and information code related to the announcement of the work (Article 7 Section 2). In short, two forms of preventive protection can be used in the duplication and announcement of copyright information.

Furthermore, it is a repressive copyright protection system, which means that copyright provisions can be used

as a system of legal action when copyright infringement occur. Those provisions are associated with the settlement mechanism. There are two ways of settlement process, namely; copyright settlement through the settlement of civil code litigation; and the settlement via criminal code litigation. In the former, the creator or copyright holder who is unlawfully violated by another party, can file the lawsuit to an alternative dispute settlement or to the Commercial Court. Normally, the dispute settlement through civil code litigation is preceded by discussions between the creator or copyright holder and the infringer. (Articles 95 to 109 of the Act No. 28 of 2014)

However, if this does not succeed, then it can be reached through alternative dispute resolution such as mediation or arbitration or the Commercial Court. Specifically, in the case of alternative dispute resolution through mediation or arbitration, it has, nowadays, been established an organization known as the Board of Arbitration and Mediation of Intellectual Property Rights (BAM-HKI) which is located in Jakarta, the capital city of Indonesia. Moreover, if the track copyright settlement through civil cases with a claim to the Commercial Court, the lawsuit process refers to the provisions that is contained in the Act No. 28 of 2014 and the Civil Procedure Code. For copyright settlement through the criminal code litigation, the process can be done through an act of investigation, investigation, prosecution and inspection as it is set out in the Code of Indonesia Criminal Procedure. (KUHAP)

After seeing the description of the Act No. 28 of 2014 as the basis of copyright law in Indonesia that provides legal provision of moral rights and economic and supported by legal enforcement provisions of moral rights and economic rights, so those provisions shall be the system of protection for all types of creations and copyright.

Nevertheless, should further examine the issue of copyright in the painting in Indonesia, it becomes an interesting thing to be criticized. As for the Article 40 paragraph (1) of the Act No. 28 of 2014, it held that the protected creation includes work in the fields of science, art and literature, which consists of;

a. ...

f. Works of art in all forms such as paintings, drawings, engravings, kaligarafi, sculpture, sculpture or collage.

Creation of painting is a copyrighted object in Indonesia. Given this assertion, all copyright provisions stipulated in the Act No. 28 of 2014 mutatis mutandis apply also to painting. This, of course, includes the provision of moral and economic rights law over the paintings in the copyright protection system on painting both preventive and repressive.

However, the legal provisions of moral and economic rights on the art of painting seem not fully implemented yet at least in two things; first, the legal provisions of the moral rights of the painting, in particular the right of publication. In Indonesia, Articles 5, 6 and 7 of the Act No. 28 of 2014 which regulates the moral rights are merely a set of moral rights on the right of paternity and the right of integrity, where both kinds of moral rights are the emphasis only on the recognition of the existence of the creator and his creation, while acknowledging the will of the creator (painter) to decide whether the creation will be provided to the public or not at all has not been accommodated within its provisions; and second, the recognition of the economic rights of the painting in the form of artists' resale right. Artists' resale right itself implies the rights of visual artists to receive a percentage of the revenue from the resale of Reviews their works in the art market. From this sense recognition of the economic rights in the form of artists' resale rights on the art of painting as part of the visual work is very important and strategic. However, when looking at the provisions of Article 9 of the Act No. 28 of 20014 which regulates the economic rights of the copyright holder, it cannot be found the conditions governing these artists' resale right. Therefore, it can be concluded that the artists' resale rights that is determined as part of the economic rights in Indonesia has not been accommodated in the provision, including to copyright in the painting.

By understanding the above description, it can be argued that the Act No. 28 of 2014 does not recognize and regulate the moral rights, particularly in the right of publication; and economic rights of artists' resale right, so that the system of copyright protection does not reach both rights.

Indonesia Copyright as an Incentive System for Painters:

In Indonesia, copyright, aside from being a protection system, also functions as an incentive system. As an incentive system, copyright can be defined as a way to utilize the economic value of the property right that arises from the copyright itself. Property right can be defined as having an immaterial or intangible nature. It is regulated by Article 16 Section 1 Law Number 28 Year 2014, which states that a copyright is a movable thing but also an intangible asset

Normally, copyrights as an incentive system are divided into two mechanisms, licensing and assignment. A license is written permission that is given by the copyright holder or related right owner to another party to conduct a practice related to the economic rights of the work, or the product of a related right, with certain

requirements (Article 1 Number 20), whereas *Assignment* is the transfer of the economic rights in the form of inheritance, grants, endowments, wills, written agreement or any other reason justified in accordance with the provisions of the legislation that are made clearly and in writing either with or without notarial deed of the copyright holder or owner of the product related rights to the other party.

License is part of copyright as an incentive system which basically has several requirements. Generally, a license is made in writing with or without a notary deed that includes aspects of the scope of the licensed rights, license type, magnitude and distribution of royalties and procedures licensing period. It is usually very important in the license related to the scope of the licensed rights. As it is known, to determine the scope of the licensed rights, it is most closely related to the recognition of economic rights as stipulated in the Act No. 28 of 2014. As for the economic rights recognized and provided in Article 9 paragraph (1) of the Act No. 28 of 2014 which includes; the publication creation, duplication of creation in all its forms, creation of translation, adaptation, arrangement, transformation of creation, distribution of creation or copies, the show's creation, the announcement of the creation, communication of the creation ,; and leasing of the creation. These rights allow the license which is part of the copyright as an incentive system to be applied in Indonesia. Therefore, the copyright holder can not freely carry out the licensing of the rights that are not regulated in the Act No. 28 of 2014.

Furthermore, the license of another aspect should receive serious attention regarding the amount and procedures for sharing royalties. Reading to the provisions of Article 35 paragraph (4) of the Act No. 28 of 2014 that states: "the determination of the amount of royalties referred to in paragraph (3) and procedure of the royalty is based on a licensing agreement between the holders of Copyright or related rights owner and the licensee." Then, Article 35 paragraph (5) of the Act No. 28 of 2014 states: "royalty licensing agreements should be established under customary practices that apply and meet the elements of justice." From the provision of Article 35 paragraph (4) and (5) of the Act No. 28 In 2014, royalty and procedure of the royalties are based on an agreement between the copyright holder and the licensee, although both are also constrained by the prevailing of customary practices and meet the elements of justice. The existence of the license, in which set a royalty-sharing agreement, becomes logical if a license which is part of copyright, is determined as a system of incentives.

Another incentive system of Indonesia copyright is assigment. The provisions of the Act No. 28 of 2014 does not define what the assigment is. However, this term is used and ruled in the provision of the Act No. 28 of 2014, particularly in Article 16 (1) (2) and (3). This provision implies several things; First, copyright is determined as an intangible movable object; Secondly, the copyright may be transferred in whole or in part due to inheritance, grants, endowments, wills; written agreement; or any other reason justified in accordance with the provisions of the legislation. The process of transfer object is only allowed to the matter of economic rights, and Third, it can also be used as objects of fiduciary.

Understanding to the characteristics of copyright as an intangible movable object, does not only bring about legal consequences, in which the process is done on the basis of legislation in force and agreements, but also produces economic consequences in the form of reciprocal economies of the other party to the copyright holders. Economic Reciprocity can be realized in the form of money or its equivalent value. For instance, when the copyright in the painting is made as the object of sale and purchase agreements for its reproduction right, the copyright holder will get some value for money from the purchase agreement. This is where the relevance assingment which is part of the copyright as an incentive system occurs.

When discussing the relevance object of copyright protected in Indonesia particularly in painting, it shall also be subject to the provisions of copyright as an incentive system. Some provisions that have been stated above shall also be applied mutatis mutandis to the copyright in the painting. However, for painting copyright as an incentive system is basically still have serious problems. The issue with regard to the absence of legal provisions on the economic rights in the form of artists' resale right, does not only have implications on the protection system as described above, but also implies to the incentive system. The absence of the artists' resale right rules in the Act No. 28 of 2014 tends to produce automatically very significant impact on improving the incentives that should be obtained by painters from the perspective of the incentive system. In practice, the new painting usually attains the highest price when it has been in purchasing transaction for long time. Therefore, the lack of recognition and rules regarding artists' resale right in the Act 28 of 2014, will not protect the Indonesian painters from economic benefit from the rising price of the painting art in which the art of painting is no longer in its original painter.

METHODOLOGY:

The study was based on legal research, the legal research that is based on the rules of copyright law in Indonesia by using secondary data sources consisting of primary legal materials in the form; Berne Convention, Indonesian Contitution of 1945, Law No. 28 of 2014 concerning Copyrights, secondary law material in the form

of research, books and journals and tertier legal materials in the form of a dictionary. Data analysis using descriptive qualitative data analysis.

FINDINGS AND DISCUSSION:

Legalization of Artists' Resale Right (*Droit de Suite*) as the Protection System and Incentive Indonesia Painting:

Resale right or *Droit de Suite* is derived from the moral right, which guarantees the copyright holder attribution and protection from the mutilation of their work (United State Copyrights Office, 2013). David Vaver, who is cited by Henry Sulistyo, stated that because of the attribution guarantee, the identity of the creator shall be included in the creation or work, regardless of whether it is a real or fictitious name. The moral right can also take the form of an integrity right, wherein the work shall be representative of the image and dignity of the creator. In this situation, the creator can prohibit the alteration of their creation if it affects their honor and reputation (Soelistyo, 2011, p. 108-109). The *artists' resale right (Droit de Suite)* is *the right of visual artists to receive a percentage of the revenue from the resale of their works in the art market* (McAndrew & Dallas-Conte, 2015).

The concept of the *artists' resale right* will increase the value of owned art. There are two statements that are established from that matter. *First,* artists must attempt to continue to establish their reputation, and it must be done fairly, when they appreciate the work of art they have created. *Second,* the introduction of this right can eliminate unfairness between the creator and the composer in regards to the benefit of the increasing value of the art through sale or announcement (McAndrew & Dallas-Conte, 2015).

France was the first country to implement the concept of *Droit de Suite,* which they did in 1920, after Jean-Louis Forain published a work of art from metal (*lithograph)* with the title "Starving artists". Belgium followed by implementing the same *Droit de Suite* provision in 1921, as did Czechoslovakia in 1926. After the concept's implementation, the French government had an idea to add it to the Berne Convention for the Protection of Literary and Artistic Works during the 1928 meeting that was held in Rome. In 1948, the first revision was accepted, and the Berne Convention was formally amended to add the concept of *droit de suite* in Article 14bis. The Berne Convention was formally amended again in Brussels (United State Copyrights Office, 2013).

In 2001, the Intellectual Property Code and royalties collected through ADAGP (Association for the Defence of Graphic and Plastic Arts) in France were subject to some changes in order to conform to the uniformity requirements of the European Directive. The droit de suite applies to any sale of an artwork valued over €750. The administrative cost of the program was 20% of all fees collected. In 1998, France sold the most droit de suite-eligible items in the EU, with a total of approximately 9,000 items worth €76.2 million (CARFAC, 2010, p.12)

The United Kingdom developed provisions for the artists' resale right, which were implemented in 2006. Currently, the benefits of the artists'resale right are only enjoyed by living artists, but the ARR is expected to be extended to the estates of deceased artists by 2012. Applicable fees are paid to the artists according to a scale that ranges from 0.25% to 4% based on sales price. The maximum sale price is €12500, and the minimum threshold sale price is €1000. The distributions of the ARR to artists is administered primarily by the Design & Artists' Copyright Society (DACS). DACS charges a 15% administrative fee on all royalties collected. Research undertaken on behalf of DACS and by Imperial College has indicated that the implementation of the ARR has not had a negative impact on the art market, despite initial fears from the art trade (CARFAC, 2010)

Nowadays, *the artists' resale right* is recognized by 56 countries, including countries in the European Union. However, neither the United States of America nor Asian countries have regulations pertaining to the artists' resale right (Position of the Contemporary Art Galleries Association, 2011, p. 2). In the European Union, 11 countries have regulations about the *artists' resale rights,* but only eight countries effectively implement them. Meanwhile, there are four countries in the European Union that do not have any *artists' resale right* regulation: the United Kingdom, Ireland, the Netherlands, and Austria (McAndrew & Dallas-Conte, 2015).

In fact, the legalization of artists' resale right can provide advantages and disadvantages. They are four point that are considered as the advantages of the availability of the rules of artist resale rights. Firstly, the legalization of artists' resale rights can provide benefits to the recognition and guarantee of the protection of moral rights of the painter. However the rules are written in the provisions of the legislation would be enforced by the rule of law itself; Secondly, it could have an impact on the painter productivity improvements to produce a quality painting artworks. The third, it will be able to encourage the economic growth of a nation; and the fourth, it will be able to improve the welfare of the people of a nation through painting.

On the other hand, there are some disadvantages in terms of the opportunity arise. Firstly, the auction of paintings as affiliated parties in the application of artists' resale right tends to make transactions in countries that do not have legislation of artists' resale rights, where they can avoid the resale royalty, so it can be detrimental

to the painter; and Secondly, the availability of artists' resale right provisions will only lead to distortions and inefficiency of painting action in the transaction because the price of paintings has been engineered with the intent to meet the obligations of resale royalties.

Understanding on the opportunity to legalize the artists' resale right as well as the emergence aspects of the advantages and disadvantages in the legalization of artists' resale rights, it needs in advance to conduct an in-depth assessment. As it has been experienced by the UK and Canada.

In England, implemented the concept of the *artists' resale right,* it conducted discussions and research through the *Arts Council of England.* There are several items that were researched:

a. *An examination of models of best practice for collecting and distributing Droit de Suite in countries other than the UK ;*
b. *A review of existing models of the collection and distribution for other rights in England;*
c. *An assessment of the capacity and mechanisms needed for the successful implementation of Droit de Suite in the UK, and;*
d. *Exploration of possible models for the implementation of Droit de Suite.* (McAndrew & Dallas-Conte, 2015)

The same thing is also occurring in Canada. Canada has been striving to compile provisions for the *artists' resale right* in the Canadian Copyrights Act. Two institutions are creating a study to provide recommendations for this purpose. They are the (Artists' & Represantation, 2010)/*Le Front des artistes canadiens* (CARFAC), which is a federally incorporated association and national voice of Canada's professional visual artists, and the *Regroupment des Artistes en arts visuels du Québec* (RAAV), which is the professional association that represents and defends the interests of visual artists in *Québec*.

This study and its recommendations shall be taken into account based on two grounds. *First,* in some cases, artists do not receive any financial benefit from further sales of their work, even though the value has appreciated with the artist's experience and reputation. For example, acclaimed Canadian artist Tony Urquhart sold a painting, *The Earth Returns to Life*, in 1958 for $250. It was later resold by Heffel Fine Art auction house in 2009 for approximately $10,000. Similarly, his mixed media piece, *Instrument of Torture*, which originally sold in 1959 for $150, fetched $4500 in the same auction. Because there was no artists′ resale right, the artist did not benefit from the increased value of his work (CARFAC, 2010). *Second*, Article 14 of the Berne Convention, to which Canada is a signatory, recognizes that creators of works of art have the inalienable right to benefit from the resale of their works in countries that provide for this in their copyright legislation. CARFAC and RAAV recommended that the *Copyright Act* be amended to include the artists' resale right, which would be an inalienable and non-transferable right of the original artwork that gives the creator an economic interest in successive re-sales of the work. Based on these two reasons, than CARFAC and RAAV are concerned with improving the economic condition of visual artists and helping them achieve a living income (CARFAC, 2010)

In line with the foregoing, Indonesia has yet to have a rule regarding artists' resale rights neither in the Act No. 28 of 2014 as described previously nor in other special regulation (sui generis). The lack of these rules would be a serious problem considering that Indonesia currently has two strong reasons to legalize artists' resale right into positive law.

The first reason is that Indonesia apparently have had many painters to produce globalized art painting that has a very high price. In fact, there are Indonesian artists who have produced high-value paintings, including the well-known group *Grup Jendela.* This group consists of I Nyoman Masriadi, Yunisar, Alfie, and Agus Suwage. They are called *big boys with a lot of zero numbers*. This means that their works are valued up to one billion IDR. In addition, there are Rudi Manthovani, Handi Firman, Jumaldi Alfi, Rudi Kustarto, Heridono, Budi Kustarto, and Samsul Arifin (Bisnis Lukisan di Indonesia yang Kian menjanjikan bagi seniman kolektor maupun para penikmat seni lukis. (n.d.).) Painting is part of the visual works. The second reason is that Indonesia is an active member of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter called as the Berne Convention) through the Presidential Decree number 18 of 1997 on Ratification of the Berne Convention for the Protection of Literary and Artistic Works, which governs artists' resale rights norms. Therefore, it is reasonable if Indonesia apply the norms of artist's resale rights in its legal system. In addition, the Berne Convention becomes part of the minimum standards that are used in the TRIPs Agreement which has also been ratified by Indonesia through the Act No. 7 of 1994 on Ratification of the Agreement Establishing the World Trade Organization.

Moreover, the lack of artists' resale right rules in the Indonesia positive law has an impact on the protection and incentive for visual works produced by Indonesian Artists, including painters. When the painting is going to reach the significant increase of its price, in which it occurs when the painting has been transferred to another party within the next few years later, in fact Indonesian painters are not getting the protection and incentives from it.

Accordingly, the awareness of the impact of the unavailability of artists' resale rights provisions seems to be very logical, so that the Indonesian government and the Indonesian painter should already start to urge the need

to legalize the artists' resale rights. In order to do that, studies and research on this issue is very essential, including learning from the experience of other countries, such as Britain and Canada.

The studies or research that are needed to be conducted should be focused on two aspects, namely; the formal and the substance of the law. The former is aimed at the legal position and the strategic value of the legalization of artists' resale rights. In this context, the relevant research questions to address are: in what legal form shall the issue be formulated?, whether the issue of artists' resale rights is adequately governed in the provisions of copyright law, Or the legalization of artist's resale right shall be set forth in the other specific provisions of law (sui generis). If the legalization of artists' resale rights is considered only in the provisions of copyright law, it can be done in the form of amendment to the Act No. 28 of 2014 on Copyrights, while it is ruled in the provisions of a special law, it is necessary to select appropriately the legal products, which concerns whether the legislation should be made through the House of Representatives and the President or it could be with the government regulation that is only made by the President.

Furthermore, in terms of the substance of the law, the focus of the research will be directed to the study of philosophical, sociological and juridical of artists' resale right. The philosophical aspect that must be assessed concerns about whether the legalization of artists' resale rights can be consistent with the Indonesian nation ideology, it mainly deals with the principles of social justice, as set forth in the Pancasila. If it is not, how can it be in line with the philosophy of life of the Indonesian nation. Sociological study must be assessed with regard to the needs of the legal substance of what is it a necessary to legalize artists' resale right. In this study, some interesting things to be studied further are about the readiness of Indonesian painters and other stakeholders in supporting the effective implementation of artists' resale rights legalization. The other interesting thing is about the artists' resale rights management model, especially in terms of the availability of the model collection and distribution of the resale royalty. Regarding this issue, it is necessary to study a comparison with countries that have experience in doing this in order to obtain the model of implementation. At the end, the juridical study which is the last focus of study means to harmonize either vertically or horizontally the resale right norms in the Berne Convention and the Indonesian Constitution of 1945 as well as other law associated with it.

CONCLUSION:

The provisions of Indonesia copyright law are a system of protection and incentives for the creation within the fields of art, literature and science. Nevertheless, in terms of creation in the field of painting, it seems that the provisions does not fully provide arrangements for the system of protection and incentives. For instance, it can be seen in the rules of artists' resale right that does not exist in the Indonesia copyright legislation. From this condition, it is important to be pursued the legalization of artists' resale right in Indonesian positive law in order to create a system of protection and incentives particularly in Indonesia painting. As for such an effort, it shall be firstly to do a study and research which include the formal aspect and the substance of the law.

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