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DROIT MORAL IN SELECTED LEGAL SYSTEMS OF ASIA, BY EXAMPLE OF THE RIGHT TO AUTHORSHIP OF A WORK – WHERE ARE WE COMING FROM, AND WHERE ARE WE GOING?

1. INTRODUCTION

The specification of *droit moral* in Asian countries cannot be encapsulated uniformly in a clear-cut way, as the individual countries present certain dissimilarities in this respect. It is, however, possible to attempt to establish groups showing the general mechanisms governing the development of moral rights in this part of the world. A presentation of the copyright regulations of Asia gains importance if we concentrate on the currently progressing globalisation of intellectual property rights (Jena, 2005: p. 7; Swadźba, 2006: p. 33–39) and the convergence of the Asian countries' economies (Freeman, 2003: p. 158–159). This analysis will be carried out based on the laws of countries such as: Thailand, Malaysia, Indonesia, Singapore, the Philippines, Vietnam, India, Taiwan, Hong Kong and Japan.

2. THE ECONOMIC CONTEXT

Economic factors have had an inherent influence on the development of moral rights in Asian legal systems, in common with the general development of all copyright laws in that part of the world. Many South-East Asian countries that have based their economies on new technologies and intellectual capital, among other things, have achieved economic success, becoming known as the "Tigers of the Far East". The countries that are currently treated as members of this group include: South Korea, Taiwan, Singapore, Hong Kong, Malaysia, Thailand, China, the Philippines, Vietnam and Indonesia. However, it should be borne in mind that the economic structure of this region is not uniform. While some economies are converging, many countries are facing the opposite phenomenon – divergence. This is apparent from the economic diversity that resulted from the sudden technological boost of the highly industrial countries.

The country that most revealed a particular interest in matters connected with copyright issues in Asian countries, back in the 1980s, was the USA, entering into intense trade exchange with South-East Asia. This interest resulted from the development of the illegal copies market in Asia, whereas the enforcement of copyright protection was seriously undermined due to a lack of national copyright regulations (Uphoff, 1991: p. 2).

The jurisprudence of the Supreme Court of Malaysia paints a picture of the situation during those times. The court would often issue contradictory judgements that effec-

tively kept the USA at bay in its attempts to seek or enforce copyright protection there (Azmi, 2008: p. 403). When a new copyright law was introduced in Malaysia in 1987, it was hoped that it would be one of the first steps towards strengthening the protection of artistic works. Also significant in that country is the strong competition with Singapore, which had been undergoing a second technological revolution since 1979. This fact fostered Malaysia into introducing a co-operation plan in the computer industry in 1981, and finally, in 1987, led to the enactment of the Copyright Act (Smith, 1999: p. 232).

3. NATIONAL CONTEXT VS IMPERIAL INFLUENCES

3.1. OVERVIEW

It should be noted that factors such as the origin culture of the nation, its religion, as well as the influence of the colonial empires were of great significance when shaping legal regulations in Asian countries (Heath, 1997: p. 303). It has been highlighted that emerging copyright cultures in Asia were highly correlated towards the concepts of Christianity, Scientism, Hinduism, Islam, and especially Confucianism (Azmi, 1996: p. 649, 671; Azmi: 1997: p. 686; Yoon, 1997: p. 162–164; Sidel, 1997: p. 357, 359). This thesis will be discussed using the examples of Malaysia, Indonesia, Vietnam, India and Thailand.

3.2. MALAYSIA

When it comes to Malaysia, the literature of this country reveals very little about the origins of copyright law before 1902. As A.S. Gutterman and B.J. Anderson put it, "The Malaysian legal system is based on English common law and includes an independent federal judiciary. In addition, Malaysia has two other parallel legal systems: the *sharia* courts, which are administrated by the state and which apply Islamic law; and an indigenous legal system applying customary laws, which exists in the Borneo island states of Sabah and Sarawak" (Gutterman, Anderson, 1997: p. 314). Malaysia is a country whose system is based on the customary law (which includes: the Malacca Digest, the Legal Digest of Pahang, the Ninety-nine Laws of Perak, the Maritime Rules of Malacca and the Digest of Kedah laws). These acts regulate many issues, but issues concerning copyright are not among them. On that basis, it is pointed out in the literature that it cannot be unequivocally denied that the origins of copyright law were present in this country, even if it seems that they might not have had much in common with the present doctrine of copyright law. This view is shared by Ida Medieha BT. Abdul Ghani Azmi, who claims that Islam – the religion of this country since the VII century – provides a logical and consistent explanation for the existence of copyright law both in the past and the present. However, the doctrine of law was not sufficiently developed to prove the case one way or the other. As Khaw Lake Tee claims, in separate states of Malaysia, such as Penang and Malacca, English regulations concerning copyright law were available, and were used. The introduction of the first Malaysian copyright act coincided with the introduction of English law in Penang in 1826 (Tee, 2008: p. 3; Kaib, 1988, p. 41). According to Azmi, the assumption of a "*wholesale import*" of

UK law into Malaysia is not right, as law should reflect the religious, cultural and social values present in a given country. At the same time, Azmi points out that "Islam has a very detailed moral code of ethics and laws that can apply to modern issues such as copyright" (Azmi, 1995). Indeed, in the law of Islam, there is no straightforward explanation of the intellectual property law, but Muslim scientists derive it from a broad understanding of "res" (the subject of law, known as "mal") (Al-Darini, Fathi, 1984; Azmi, 1995: p. 53).[1] In the Islamic law doctrine, "res" can be found in the form of: 1) "ayn" (material goods), 2) "dayn" (debt) and 3) "manfa'ah" (benefit, fruit). In order to talk about the subject of intellectual property, people use the term "ibtikar", which means invention or creation. Al-Darini recognises the intellectual property laws as a benefit ("manfa'ah") brought by material goods. Azmi notes that most scientists use this notion to describe rights in relation to objects that have a material form, similar to the law of "intifa" (rights of enjoyment) or the right to "irtifaq" (easement) (Mahmasanni: p. 20–25, after Azmi, 1995: p. 61). This theory seeks to find an explanation for intellectual property rights, and is a view also shared by Izzu ib. As Salam (Azmi: 1995, p. 61). Therefore, the "usufructuary rights of intellectual inventions differ from usufructuary rights of tangible property in two ways; source and origin. While the source and origin of usufructuary rights of tangible property are the physical property itself, the origin and source of intellectual inventions is human intellect, or effort that can only be understood notionally" (Azmi: 1995, p. 62).

The relationship between the author and the work is described as a "special relationship" ("alaqah ikhtisasiyah"), whereas Al-Darini claims, on the grounds of the doctrine of Islamic law similarly to the European doctrine, that an author leaves a part of his personality in the work ("shakhsiyah"). In the doctrine, this view also has its opponents, those who deny the existence of rights to immaterial goods. This group of authors includes Ibn Hazm and, to a certain extent, Iman Al.-Qarafi.[2] Azmi points out that the concept justifying the existence of the right to own immaterial goods has a strong connection with the right to own material goods. According to Azmi, when considering the right of authorship to a work, it seems that it has a strong justification also in "Surah an Nisa", verse 29 of which provides a justification for the recognition of authorship, as well as a ban on both complete and partial plagiarism. It is stated in verse 29 that, "O Ye who believe, eat not your property among yourself in vanities; but let there be amongst you traffic and trade by mutual goodwill." Islam long denied the omission of attribution, false attribution and especially plagiarism, valuing the creativity and innovativeness of an individual incredibly highly. Signing works was very common and concerned not only art and literature, but also handicrafts, textiles, pottery and bookbinding services.

One of the best known examples of very precisely attributing a produced book was the Manafi manuscript, dated back to circa the year 500 from the time of the Persian rule. The Malaysian court accepted this reasoning in the case *Longman Malaysia Sdn*

[1] The notion "mal" comes from the word "ma-wa-la", which means "enrich". We can assume after Azmi that it means "[a]ll that has commercial value" or "[t]hose corporeal, usufructuary and other rights of any kind customarily exchanged, are to be regarded as property (mal) of commercial use".

[2] According to this author, "even if the author can claim a right over his intellectual products, it is a personal right and not proprietary and cannot be alienated."

Bhd. vs *Pustaka delta Sdn. Bhd.*[3] As Azmi claims, despite the fact that Islamic law developed its own concepts of how artistic work should be respected, the perception of authorship was far from the romantic concept that would depict the European view of XIX century. Authorship was not understood in such an individualised way. It had far more to do with the responsibility of authors "to guide others", as well as the need to protect the work, rather than protecting the author himself (Azmi, 1995: p. 137). It cannot be forgotten that, in Islam, a person is not only obliged to acquire knowledge, but also to pass it on to others (Azmi, 1995: p. 138).

Harir ibn. Salman ibn. Samir is believed to have said, "Do not narrate falsehood to al-hukama' (those possessed with wisdom), do not narrate wisdom to al-sufaha' (those who are ignorant) for they will be angry against you; do not conceal knowledge from those who deserve it, for you will be committing a sin; do not narrate to those who do not deserve it, for you will become ignorant. Indeed, you are obliged to observe the right in your knowledge as you are obliged to observe the right in your property." On the basis of this view, Azmi finds a strong justification for protecting the personal rights of an author (Azmi, 1995: p. 139).

3.3. INDONESIA

The Indonesian legal system was initially based on customary law, passed down orally and called "Hukum Adat" ("the law of Adat"). These "unwritten rules of law" did not constitute one system, but rather consisted of several groups of norms (Ali, 2001: p. 8). Written laws were more of an exception, and included the laws of the Hindu kingdom of the ancient kingdom of Java. These laws were based mainly on religious and ethical rules (Antons, 2000: p. 9). In most cases they referred to local legislation and did not have the status of an exclusive source of law (Maine, 1963). The Indonesian legal system was also heavily influenced by Islam, which easily settled in this country due to the local customs and value system (Antons, 1995: p. 9).

It can be noticed universally in the doctrine of this country that the present Indonesian legal culture derives to a large extent from its own tradition, religion and culture, not to mention the strong Dutch influences. According to Achmad Ali, "people commonly believe that history and tradition are very strong in the Indonesian legal system" (Ali, 2001: p. 1). However, the copyright law was developed especially under the influence of Dutch law. The change in the outlook on life was summarised by Sunaryati Hartono in these words, "while among the Balinese it is a source of pride that one's discovery or design is imitated by others, with the advance of the Copyrights and Patent Right Acts, one actually prevents one's work from being imitated by others. The changing values and awareness, as a result of globalised information and technology, both directly and indirectly affect the content and the pattern of our legal system. As a result, it is impossible for us to maintain our ambition to continually defend the purity of the application of the rules of our "adat law" to become national law" (Hartono, 1992: p. 3).

[3] *Longman Malaysia Sdn Bhd. vs Pustaka delta Sdn. Bhd. case* (1987) 2 MLJ 359.

3.4. VIETNAM

Whereas in Vietnam the legal culture was developing under the influence of Buddhism, Confucianism and Taoism, the combination of both Chinese and French influences can be noticed there. The first copyright law was issued there only in 1970. As L. Net and H.A. Morris point out "the tradition of codification in Vietnamese law is inherited from the French culture, but the reluctance to bring a dispute to court is most derived from Taoism, a philosophy from China" (Net, Morris: 2012, p. 17–18).

3.5. INDIA

The legal system of India has been built on a variety of sources of law, especially on English common law. Not much has been written about the religious background serving as an accelerator on the way to implementing moral rights in this country. However, the common law that is governing there is "supplemented by the Constitution, statutes passed by the legislature, and customary laws. Indeed it is not uncommon in India for a judge in a local matter to take into account local customs and conventions in interpreting and applying the law" (Gutterman, Anderson, 1997: p. 378).

3.6. THAILAND

Due to its successful foreign policy and diplomacy, Thailand was never given the status of a colony.[4] However, readers may be astonished to know that Thailand passed its Copyright Law in 1901, following along the lines of English copyright regulations, including the Statute of Queen Anne of 1709, as well as the Literacy Copyright Act of 1842. According to D. Subhapholsiri, the idea of developing IP national protection was raised at a national level, just as the act of drafting it was patterned on the English act (Subhapholsiri, 1993: p. 67; Sukonthapan, 2005: p. 102; Sumawong, 1999, p. 30).

3.7. DISCUSSION

When analysing the development of moral rights in this chosen part of the Asian continent, we cannot forget that its legislation and jurisprudence was developed not only under the maelstrom of influences from the continental legal systems (due to French or Dutch rule) and the common law systems (from British and American influences). It appears, nevertheless, that the development of copyright and its mechanisms in Asian countries had to be dependent on many more factors. Apart from the impact of colonial empires, more attention should be paid to the domestic background of introducing copyright and to the local striving to understand the gist of copyright. In many countries, namely in Malaysia and Indonesia, this effort found its form by referring to the local beliefs and religions that were helping people to understand why authors should receive credit and respect. As this concept became better understood, copyright laws were implemented into the Asian systems, but their shape has been strongly influenced

[4] When it comes to Thailand, it should be noted that the first copyright act in this country was issued in 1892, though it referred mostly to printing books. The next one, extending the range of regulation, comes from 1901.

by domestic comprehension. This has been subject to discussion from a philosophical point of view in many Asian countries as depicted above. Some of them have relied on foreign legislation, hardy amending any word of detailed regulations (e.g. Hong Kong), whereas others wanted to meet international standards while still formulating their copyright laws individually (e.g. Malaysia, Indonesia, Thailand, India). Only when we gain a deeper comprehension of this idea of encouraging Asian nations to implement copyright law into their national law systems – though in their own way and with their own wording – can we then go on with our analysis on moral rights in Asia (Heath, 2003: p. 5; Antons, 2004: p. 35).

4. TRIPS AGREEMENT – THE POLITICAL AND LEGAL CONTEXT

Pride of place in solving the problem of not obeying the copyright law can be assigned to the *Trade and Tariff Act* of 1984, in which it was stated that the inapplicability of the protection of intellectual property laws should be treated as a dishonest trade practice (Correa, 2000: p. 1).[5]

TRIPs, which was based to a certain extent on the achievements of the Berne Convention, established a rule setting out a minimum level of copyright protection. According to the above, in Article 9 section 1 TRIPs, it is stated that the member states will not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of the Berne Convention. By admitting that the character of moral rights was not directly connected with the trade aspect, the proposal of those countries following the common law system was accepted in order to provide the TRIPs signatory states with more flexibility in regulating droit moral in their national regimes (Rajan, 2001a: p. 5). However, it has been noted that such a general regulation of moral rights carries a risk of recoding these rights into the background in relation to pecuniary rights. These anxieties were plain to see in the example of J. Adams, who wrote in 2008 that, despite differing views in other legal systems, priority should be given to pecuniary laws. He was saying that recognising those rights as bearing priority in relation to moral rights is inevitable if we want to guarantee authors their economic interests, and this is why these rights aspire to be perceived as fundamental rights. According to his view, personal rights would be perceived as assuring "additional goods" (Adams, 2008: p. 26).

However, according to David Vaver, moral rights are actually connected with the international trade aspect in many ways. Respecting the right of authorship of a work – manifested by placing the mark of the author on the work – can be one guarantee about the authenticity of the work of authorship as a product. What is more, granting the author moral rights places him in a stronger negotiation position toward the holder of his pecuniary rights. The author may also gain some revenue by undertaking not

[5] Since 1988, USTR has published annual reports (known as the "Special 301 Report") on compliance with intellectual property laws in the world, in which it incorporates a list of countries that are on a special watch list ("Priority Watch List") as well as observed countries ("Watch List"). Between 1989 and 1993, countries such as China, India, Thailand and Taiwan appeared on the priority watch list, out of which only Taiwan has moved to the less priority list of observed countries – in 2008.

to bring a claim into court, e.g. on the grounds of his attribution being omitted (Vaver, 2006, p. 278).

As discussed above, the globalisation of copyright law spreading through the Asian countries cannot be treated only in a strictly economic sense. In addition to that, various Asian countries are obliged to provide authors with strong protection of their droit moral because of the accepted obligations resulting from the Berne Convention. It should be noted that Indonesia, Singapore, Hong Kong and Vietnam entered the Berne Convention only after signing the TRIPs Agreement. Some other countries accepted the Berne Convention a little earlier: Malaysia in 1990, whereas Cambodia and Taiwan have not yet accepted either of these legal acts. Only India, Thailand, the Philippines and Japan have been bound by the Berne Convention for much longer.[6]

5. MORAL RIGHTS IN ASIA

5.1. OVERVIEW

The *droit moral* doctrine was introduced in the legal systems of individual Asian countries without much resistance, which could be noted in the attitude of Great Britain or the United States towards introducing this institution in their copyright systems. What may raise more doubt is the method whereby moral rights were introduced. Although the institution of moral rights can be found without difficulty in all Asian countries' systems, it is often more difficult to interpret the provisions correctly. It is noticeable that the commentators themselves (and there are not many of them) seem to rely more on the copyright doctrine of the system functioning as the prototype of the national regulations, rather than creating a national copyright doctrine individually (Tee, 1994: p. V). However, it does not seem that a more detailed description of each country's regulations would be justified. At this point, I would like to draw attention to certain fundamental issues of special meaning.

5.2. HONG KONG

When it comes to the regulation of moral rights, an exact copy of the English legislation can be found in Article 89 of the Hong Kong Copyright Act. It can be noticed in an almost casuistic way of regulating the author's situation, in which the author is given the right to sign the work with his name according to the category of the work. As in the English legal system, claiming the right of authorship is possible only after performing an '*assertion*', which means handing in a statement of intent concerning the intention to execute moral rights, which should be issued before an act of infringement (Wong, Lee, 2002: p. 127).[7] There is no general right of authorship, but there are many subjec-

[6] India has belonged to the Berne Association since 1928, Thailand since 1931, and the Philippines since 1957.

[7] Such a declaration can be general or concern a specific situation. It should be accomplished when passing a copyright law or at any other moment. In the second case, it is carried out in a normal, written way (art. 90 sec. 2 Hong Kong Copyright Act).

tive exceptions due to the category of the work following the English act.[8] Although these exceptions were broadly discussed when voting on the act in England, both by the supporters of the doctrine and lobbyists, it appears that there were no such discussions and analysis accompanying the introduction of these legal rules in Hong Kong.

5.3. INDIA

Another country that was always heavily influenced by the British legislature was India. It is significant that the first copyright act in India, in 1914, was an exact copy of the English act issued in 1911 (Gupta, 2011: p. 17). Only the current legal act, issued in 1957, is a result of relatively independent work by the Indian legislator, although in some aspects (even by reaching for the English notion "author") it clearly borrows from English law (Doshi, 2003: p. 301–302; Narayanan 2007: 278; Vashishth, 2002: p. 992). However, India went much further than Great Britain in the search for droit moral. By issuing its own legal regulations, it turned away from the casuistic formulated categories of situations subject to the obligation of attribution, the catalogue of exceptions in the use of the law, as well as the circumstance of an *assertion* being the basis for executing the laws (Adeney, 2006: p. 32).[9] Different legal solutions should not come as any surprise if we realise that the institution of droit moral was introduced into the Indian legal system already in 1957, much earlier than in the English legal system. Therefore, at that time the Indian legislator took a step ahead of the English model. Moral rights have a special status in the Indian legal system, which is clear also from the statutory terminology. They are jointly called "special copyright laws" and they are treated that way, both in the doctrine and the judicature of Indian law.[10] Despite this, it can be noted that the droit moral regulation is not free from small inconsistencies, for example the duration of copyright protection, which is not defined (Rajan, 2001b: p. 175). Another matter forming an interesting point of reference concerns the existence of legal awareness and real compliance with these laws. It is perhaps puzzling that the first case dealing with moral rights went to court 40 years after the introduction of droit moral (Bansal, 2000: p. 16; Kumari, 2004: p. 109).[11]A statement can be found in literature that this case was a historically remarkable event as, despite the existence of Article 57 of the Indian Copyright Act, its contents remained unfamiliar to most Indian authors (Thairani, 1996: p. 98). The courts have tried to deal with certain theoretical inconsistencies and practical difficulties, which can be admitted as having an active role in developing the legal awareness, by providing a possibly complex interpretation of moral rights. However, this does not change the fact that a need to change this legal regulation has been highlighted in literature on the subject (Rajan, 2001b: p. 180).

[8] It does not have a sample use in relation to such works as: computer programs, writing style designs, computer generated works (art. 91 sec. 2 Hong Kong Copyright Act), press news, newspaper/magazine or periodical articles, as well as encyclopaedias, dictionaries or co-operative works (art. 91 sec. 5 and 6 Hong. copyright law).

[9] Art. 57 (1) of the Indian copyright act: "Independently of the author's copyright, and even after the full or partial assignment of the copyright, the author of a work has the right (a) to claim authorship of the work; […]".

[10] The terminology "of special moral rights" found its place not only in India, but also in Lebanon and Syria.

[11] It was the case *Manu Bhandari vs Kala Vikas Pictures*, (P) Ltd., A.L.R. 1987 Delhi 13.

Legal regulations concerning copyright can also be found, for example, in Malaysia (Article 25 (2a) of the Malaysian Copyright Act), Indonesia (Article 24 (1) of the Indonesian Copyright Act),[12]Thailand (Article 18 of the Thai Copyright Act)[13] and Vietnam (Article 19, point 2 of the Vietnamese Copyright Act).[14]

5.4. MALAYSIA

Droit moral in Malaysia was introduced as late as in the Copyright Act of 1969, though it seems that the explanation for respecting the attribution of an author in Malaysia is rather strong. It results not only from the legal regulations, but also finds some support in the doctrine of Islam. As Khaw Lake Tee claims, the first version of the Copyright Act of 1987 contained a very general regulation of the right of authorship that protects the author's right to sign his work with his own name, but only since the amended version issued in 1997 (Tee, 2008; Kandan, 1993: p. 86). Article 25 (2a) of the Malaysian Copyright Act only gives the author the legal right to enjoin any person from claiming authorship of his work or from attributing the authorship of a work to another.[15] So, until 1997, the Malaysian regulation in this respect was at variance with Article 6bis of the Berne Convention. The Malaysian judicature has also issued several rulings concerning the right of authorship. However, it seems interesting that these rulings are not new. It leads to the conclusion that, despite that the Malaysian regulations concerning authorship being introduced under the influence of Great Britain, the respect for authorship seems to be rather natural. In this respect, a rather old case can be mentioned, that of *Mokhtar Hj Jamaludin vs Pustaka Sistem Pelajaran* from 1986, in which the court accepted the claim of the author on providing a different name of the author. In this case, the editor acted against what had been arranged in an oral agreement and on the cover of the book, by providing the surname of the author 'Mokhtar AK', and the nickname on the first page of the book. However, it is not certain what the legal basis for the court's decision was. It seems that, instead of basing the verdict on the droit moral regulation of 1969, the court acknowledged the violation of the agreement.

[12] Art. 24 (1) Indonesian Copyright Act: "An author or his heirs will be entitled to require that the copyright holder place the name of the author on his work"; The act of 1982, source:http://www.geocities.com/Athens/Ithaca/1955/copyact.html, as for 03.06.2013).

[13] Art. 18 Thai Copyright Act: "The author of the copyright work under this Act will be entitled to identify himself as the author and to prohibit the assignee or any person from distorting, shortening, adapting or doing anything detrimental to the work to the extent that such act would cause damage to the reputation or dignity of the author". Cf. http://www.wipo.int/wipolex/en/text.jsp?file_id=129763, as of 03.06.2013

[14] Art. 19 of the Vietnamese Copyright Act: "The moral rights of authors include the following rights: […] 2. To attach their real names or pseudonyms to their works, to have their real names or pseudonyms acknowledged when their works are published or used."

[15] Art. 25(2) Subject to this section, where copyright subsists in a work, no person may, without the consent of the author, or, after the author's death, of his personal representative, do or authorise the doing of any of the following acts: (a) the presentation of the work, by any means *whatsoever, without identifying the author or* under a name other than that of the author (the amendment of 1997 has been provided in italics), cf. http://www.wipo.int/wipolex/en/text.jsp?file_id=128853, as of 3.06.2013

5.5. INDONESIA

In relation to Indonesian law, S. H. Simorangkir writes that "the relation between a creator and his creation is so real and so close that any transfer of all or part of the creation to another party will not deprive the creator or the heirs of the right to file a claim against any person who, without consent:
a. omits the creator's name from the creation,
b. inserts another creator's name on the creation" (Simorangkir, 1985: p. 12).

This position, defined on the grounds of the former Copyright Act dating back to 1982, seems to lead to the conclusion that the regulation of droit moral was introduced in an almost natural way. Indeed, the editing of the act of 1982 shows that the Indonesian legislator introduced this regulation to the system in a more mechanical than instinctive way. It should be pointed out that, while taking into consideration the right of the authorship of a work, this regulation of law in the act of 1982 can be found in two places, in Articles 24 and 41 of the former Copyright Act. According to Article 24 (1) of the previous Indonesian act, "an author or his heir will be entitled to require that the copyright holder place the name of the author on his work." This law was introduced in the chapter dedicated to the limitations of copyright law. It is only mentioned in Chapter V (Rights and Authority to Bring Lawsuit) in Article 41 that "The transfer of copyright on all works to another person or entity will not prejudice the right of the author or his beneficiaries to bring a lawsuit against any person who, without his consent:
a. deletes the name of the author on the work;
b. gives another name as an author of the work."

This regulation lacked something that was typical for civil law regulations – a typical incorporation of the droit moral. It seems that the negligence of the legislator in this respect reveals a lack of understanding of this institution. What is more, an opinion concerning the erroneous formulation of Article 41 b) can be found in the doctrine of Indonesian law. According to Rosidi, Simorangki and Panggabean, in the content of the regulation, there was an omission of the term "*other person's* name" as constituting a moral right infringement in a situation of placing somebody else's name as the author on the work of authorship. Antons claims that the version mentioned above has a lot in common with the Dutch act, which also regulated the rights of an author by giving him specific claims in case of an infringement in law in the version before 1989, but did not give him a positive right (Antons, 2000: p. 95). At present, in the Indonesian Copyright Act of 2002, the notion of droit moral (Indonesian "hak moril") appears before Article 24, but the formulation is still general enough to raise the concerns stated above.

5.6. SINGAPORE

Wee Loon Ng-Loy claims, on the grounds of Singaporean law, that the attitude towards moral rights in those countries with a civil law tradition, as well as in India, which she names the "'soulful' approach", is not visible in Singapore. As she writes "even though Singapore is a member of the Berne Convention, there is no protection for the right of paternity and the right of integrity as such in our copyright system." Through a British colony since XIX century, Singapore imported the entire body of English common law, equity and statute law as it stood in England at that time. The Second Charter of Justice took effect from 27 December 1826, whereas the copyright of 1814 came into force

also in Singapore on the grounds of the charter mentioned above. The English Act on Copyright Law of 1911 functioned in Singapore until 1987, when a new act was introduced (largely based on the Australian Copyright Act of 1968). The reference to Australian law was on one hand a result of the desire to amend a rather outdated act, but it also reflected the intention to be freed from the influences of Great Britain and to perform an individual legislative initiative (Ng, Lim, Loke, 2001; Ng-Loy, 2007: p. 61). However, when it comes to droit moral, the tradition of common law adopted from Great Britain remained unchanged, which leads in a way to the lack of copyright law in the copyright act of Singapore. A hot topic for discussion when it comes to Singapore is whether it should amend the act to adapt it to Article 6bis of the Berne Convention, which was ratified by this country. The claims to stop violating the proper usage of a work can be carried out using one of the common law institutions, namely *passing off* (Ng, Lim, Loke, 2010). In addition, the regulation forming part of Article 188 of the Singaporean Copyright Act should be mentioned, as it is a substitute for the right of authorship.[16] According to Ng-Loy, "the absence of moral rights protection in Singapore per se does not mean that morality-based justifications are entirely irrelevant in the Singapore copyright scene. Within the morality-based justifications is the […] 'reap not where thou hath not sown' principle" (Ng-Loy, 2007: p. 59–60).

5.7. THAILAND

A good example of a rather chaotic introduction of the droit moral institution into the legal system can be found in Thai law. In its present form, Article 18 of the Thai Copyright Act of 1994 gives the author the right to identify himself as the author, and to prohibit the assignee, or any other person, from distorting, shortening, adapting or doing anything detrimental to the work to the extent that the act would cause damage to the reputation or dignity of the author. In the 1978 act, the provision granting the right of authorship was formulated as "in the case where the copyright has been assigned under a second paragraph, the author still has a personal right to prohibit the assignee from distorting, abridging, adapting or doing any act in relation to the work to such an extent as to cause injury to the reputation or goodwill of the author." This wording was criticised on the grounds that it does not say whether the author was given a positive right to claim the attribution, or he was only entitled to object any action concerning injury to his reputation caused by signing the work with his name. Under the regime of the 1978 act, many issues concerning moral rights were left undecided, including the time of application and the expiry of the moral rights, as well as the possibility of transferring them along with the pecuniary rights. The act of 1994 did not settle these doubts, and the judicature in this respect is also not very rich (Subhapholsiri, 1993: p. 73). As is pointed out by the literature, the moral rights last as long as the property rights, 50 years from the moment of death (Weerawowarit, 1998: p. 53).

[16] The duty not to falsely attribute authorship of the work or the identity of the performer of a performance 188.–(1) A person (referred to in this subsection as the offender) will, by virtue of this section, be under a duty to the author of a work or a performer of a performance not to – (a) insert or affix another person's name in or on the work, or recording of the performance, or reproduction of the work or recording, in such a way as to imply that the other person is the author of the work or the performer of the performance.

5.8. THE PHILIPPINES

E.B. Bautista writes about the relatively strong protection of an author's moral rights under Philippine law (Amador, 1998: p. 14),[17] noting that it is inevitable not only when it comes to protecting the interests of the author in relation to the work, but also in relation to protecting the interests of society, as well as protecting the integrity of the national cultural heritage (Bautista, 1985: p. 25; Rodriguez, 2002: p. 124).[18]

5.9. JAPAN

The only country that resisted the West for a long time when it comes to legislature and judicature was Japan (Parker: 1989: p. 181).[19] Nevertheless Japanese copyright law was introduced under pressure from the USA and Europe. The first Japanese Act on Copyright Law of 1899 already covered the droit moral regulation and secured the right of authorship.[20] At that time, Renato Mizuno having done his research on some of national copyright law regulations wrote that the doctrine of the French distinguishes droit pecuniare (*kinsenjo no kenri*) and droit moral (*mukeiji no kenri*). He fully supported this view and proposed introducing moral rights in Japanese system naming them as *mukeiteki kenri* (Doi, 2001). An indicator of a relatively well-developed legal culture of copyright law in Japan can be seen in the debate that took place in the 1970s concerning the provenance of droit moral. It was considered whether this right constituted a subcategory of the general personality right, or a separate legal category (Ueno, 2005: p. 42). This means that Japan became highly developed in the droit moral doctrine long ago.

5.10. DISCUSSION

If these regulations were interpreted in comparison with regulations concerning the authorship of a work under the French, German or Polish legal systems, for example, it could be noted that in some Asian regulations the author seems not to be granted the right of authorship in the strict sense, but is instead given the right to sign the work with his name, which in a civil law approach is just one aspect of the broadly understood right of authorship. Therefore, it is justified to ask the question whether, by providing the author with "the right to sign the work with his name," the codifications really incorporated the "right to the authorship of the work" to these legal systems. A negative answer to this point would reveal a certain non-compliance between the national regulations and the Berne Convention. On the other hand, a positive answer to this question would lead to the conclusion that the introduction of the *droit moral* institution,

[17] The act of 1998, (later referred to as: the Philippine Copyright Act), source: http://www.chanrobles.com/legal7copyright.htm, as for 03.06.2013).

[18] "Society itself has a direct interest in the protection of the creator in this respect, since such protection is closely linked with the preservation and integrity of the nation's cultural heritage."

[19] R.B. Parker claims "the Japanese are […] comfortable with the belief that they are an absolutely unique people who cannot be understood by the rest of the world. […] Japan is, in fundamental ways, different from the rest of the world, and radically different from the United States. Japan is an isolated homogeneous island society. […] From the early 1600s until the middle of the nineteenth century, Japan cut itself off from the rest of the world."

[20] Cf. Art. 18 of this act.

despite the widespread use of this notion (Simorangkir, 1985: p. 12; Bautista, 1985: p. 8) in these legal systems, migh have not been preceded by a detailed analysis of the copyright law theory, but rather was focused on its practical application. The correctness of formulating the right of authorship is one thing, while the proper understanding of the *droit moral* doctrine in Asia is the other. In any case, it is plain to see that pragmatism and a practical approach were at the basis of introducing moral rights in Asian countries since the very beginning.

6. CONCLUSIONS

To sum up, we cannot underestimate the influence of the colonial empires' governments on the shape of copyright regulations in Asian countries. On the one hand, colonialism imposed upon the colonies legal regulations reflecting the legal culture of the colonising countries, but on the other hand it resulted in a kind of withdrawal from the inner ways of law development, and into a specific "patchwork" of legal cultures, stitched together not according to cultural affiliation, but to membership in a given empire. At the same time, it should be noted that the legal regulations were not always introduced without changes, but they sometimes included national concepts or indigenous customary mechanisms (Simorangkir 1985: p. 7).[21]

It seems clear then that colonial influences are very strong not only in the legal regulations, but also in the national doctrine, in which the analysis of a given institution is very rarely carried out on the grounds of an independent theoretical approach and practical experience, but more often by a wide reference to the literature and national judicature of the colonising country, which had a significant influence on the introduction of law in its former colony.

However, there is no doubt that the main attention in the field of executing copyright law in Asian countries was focussed on abiding by the pecuniary rights, and above all eliminating major piracy. The theory of copyright itself, and consequently the notion of an "author", as well as a consideration of the institution of *droit moral,* was somehow neglected. The fact of simply adopting copyright institutions from former colonial countries has also contributed to giving less significance to these concepts. The institutions and terms were often only adopted for pragmatic reasons, meaning that they were intended to be used mostly in practice. It seems that it is precisely these factors that have contributed to the appearance of many difficulties in interpretation.

An analysis of the selected legal systems enables certain conclusions to be drawn on the manner of implementing the right of authorship into Asian systems. Undoubtedly, the main focus in the field of enforcing copyright law in Asia was to provide authors with pecuniary rights and to eliminate piracy. Nevertheless, it is plain to see that insti-

[21] According S.H. Simorangkir, "The 1982 Copyright Law, which repeals the colonial Copyright Law, the 1912 Auteurswet, besides accommodating new elements to keep up with the technological advancements, also introduces an element of Indonesian character, which nurtures both individual and social interests, so that there is a harmonious balance between the two interests. […] This social function can be seen, among other things, from: a. the possibility to limit a copyright for public interest, for which the creator is entitled to compensation; b. the shortening of the period of validity of a copyright from 50 (fifty) years, according to the former law, to 25 years; c. the appropriation by the State of copyright on National Cultural Objects".

tutions and terms were often adopted for purely pragmatic reasons, which means that it was intended for copyright to be easily used in practice. In the case of moral rights, as far as the rights of authorship are concerned, the Asian legislators went in one of the following directions:

- simply transferred the legal solutions from the foreign countries to the Asian ground, without taking into account their evolution or paying attention to the need to place them in specific functional groups together with other elements of a foreign system,
- formulated possibly independently legal constructions dealing with the institutions of the right of authorship to a work. Though inspired by western institutions, these are often not without flaws, largely due to the fact that such factors as the aim and origin of the *droit moral* institution, and maybe even its very essence, were not taken into much consideration.

It appears that modelling Asian regulations on moral rights after European copyright acts seemed to be the best idea in order to implement copyright proficiently, while remaining coherent with the Berne Convention. As a matter of fact, a strict transferal of the ideas and mechanisms into Asian systems is inadequate, as we bear in mind that each implementation should be preceded by a precise analysis of the institutions involved. Given that ideas on creativity in Asia do not mirror European ideas, a strict transfer would not be effective enough. In addition, if the implementation bears only a small resemblance to the precursor models (European and US), then domestic changes to the standard wording of the precursoring copyright laws sometimes make it difficult to understand the essence of the chosen regulations. In this situation, from a European point of view, we must wait and look for new case law and references to copyright law in the national doctrine in order to be able to say more about the direction that Asian regulations on moral rights are taking. A good example of this kind of situation will be observed soon in China, as on 31 March 2012 the National Copyright Administration published a preliminary draft amendment to revise China's copyright laws. The proposed draft very quickly became the subject of many opinions and public discussions, revealing the consciousness of the Chinese on many copyright issues, including moral rights.

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