

Juridical Analysis of Portrait Publication Without the Permission of The Creator in View of Law Number 28 of 2014 Concerning Copyright

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Abstract

This research aimed to find out how I protect the law against the victim of I-portrait publication without the permission of the author I reviewed I of Law No. 28 of 2014 concerning Copyright. The research method used in this research is the type of normative juridical research. The results of this study showed that: There are two types of protection, namely preventive and repressive protection. Preventive protection is aimed at preventing copyright infringement on photography. Repressive protection is aimed at resolving copyright infringements on portraits. Meanwhile, attempts at settlement in the event of a dispute between the photographer and the person being photographed can be carried out in two ways, namely by filing a lawsuit against I-Commerce Court or through arbitration. Submission of a lawsuit in the Commercial Court is carried out if the Photographer does not ask for permission in advance to the person who becomes the object of the portrait. As for the suggestions that the author gives in this matter, they are: (1) the government must give strict sanctions to the copyright violators of the photographs of those who use the photographs of other persons for promotion, because of the preventive protection of copyrights for portraits, this is rarely done by photographers in publishing the results of their works. His portrait. (2) Photographers are advised not to use or publish the portraits of other people for promotion easily without getting the approval of them or their heirs. (3) The government should provide socialization to the public that their portraits or their portraits are used by photographers for commercial performances that have received the protection of those regulated by them in Law No. 28 of 2014 on copyright.

Keywords: Portrait, Normative Juridical, and Copyright .

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A. Introduction

Copyright is a right that is owned by the creator or recipient of the rights to a work or product that they make for publication with the aim of protecting the work or product from both an economic and moral perspective. Works that are protected by copyright are works of art, literature and science. The law provides the understanding that copyright is an exclusive right for creators or copyright holders to publish or reproduce their creations, which arise automatically after a work is created without reducing restrictions according to applicable laws and regulations.

Stated that this copyright arises automatically, which contains the meaning that simultaneously, when an invention is already in its real form, it automatically

attaches to the copyright without having to be registered first with the relevant agency, namely the Ministry of Law and Human Rights, where this is known as an ideological principle.¹

Copyright is a special right for the creator I or the owner of I to reproduce I or I to multiply the results of I's creation that grows simultaneously with the birth of I a work of creation. I. The creator has the right to the economic benefits he gave birth to from his creation, both in the fields of science, art, and literature.

Copyright infringement is punished according to what is stated in CHAPTER

¹ Firizky, R. (2010). *Analisis yuridis publikasi foto tanpa izin pencipta ditinjau dari undang-undang no. 19 tahun 2002 tentang hak cipta*. (Doctoral dissertation, University of Muhammadiyah Malang).

XVII regarding the criminal provisions in Law Number 28 of 2014 as follows:

Article 112 reads "Any person who unlawfully commits the act as referred to in Article 7 paragraph (3) and/or Article 52 for Commercial Use, shall be punished with imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp. 300 000,000.00 (three hundred million rupiah)".²

That way, according to the copyright law, namely law number 28 of 2014, copyright violators are punished with imprisonment or a fine. In fact, the status of ownership of a portrait has clear provisions, namely it is owned by the person who first created and published his creation, in this case the photographer. This is in accordance with the First to invent principle in Copyright.³

One of the problems that is often faced by a photographer is when he works as an employee and is under a power of attorney agreement, especially when one of the parties does not really understand what has been agreed beforehand regarding ownership rights to the portraits that have been created.

The main obstacle faced by the Indonesian nation in efforts to protect intellectual property rights is the problem of law enforcement, in addition to other problems such as public awareness of IPR itself and the nation's economic condition which indirectly contributes to the violation. As a result of the rampant piracy of copyright, Indonesia is faced with various

problems which are a possibility that the Indonesian nation will face.

As for the TRIPs agreement, it identifies the instruments of intellectual property rights (IPR) and tries to harmonize them at the global level with regard to components: namely agreements on intellectual property rights related to trade within the I Agency of International Trade.

TRIPs are the result of a WTO agreement in terms of protecting intellectual property rights (Agreement on trade related aspects of intellectual property rights) which are regulated in the minimum standard principle. However, the protection in this agreement is Patent, Copyright, TradeMarks, Industrial Design, Layout Design of Integrated Circuit, Undisclosed Information and Geographical Indication. The basic principles regulated in various National Conferences. The TRIPs agreement provides for a different minimum period of protection for each intellectual property right, for example broadcasting rights are given a period of 20 years calculated from the end of the calendar year of broadcasting and so on. IPR (Intellectual Property Rights) is a part of the law relating to the protection of creative businesses and economic investment in creative businesses.

The rise of publication of portraits without permission, be it the permission of the person taking the photo or the person being photographed, is one of the problems that are happening nowadays. Not many people feel aggrieved by the act of publishing a portrait on social media without the permission of the person who made it.

Therefore it is very necessary to get attention and protection for someone who created it in accordance with the applicable laws and regulations.

² *Vide* Pasal 112 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

³ Munggaran, R. (2012). *Pemanfaatan open source software pendidikan oleh mahasiswa dalam rangka implementasi undang-undang no. 19 tahun 2002 tentang hak cipta intellectual property rights*. (Doctoral dissertation, Universitas Pendidikan Indonesia).

B. Metode

In this research, the authors used the type of normative juridical research,⁴ which was carried out by studying and studying events related to laws and regulations which are contained in the library, both in the form of literature and documents which have something to do with laws regarding copyrights Created.⁵

C. The result of Research

Legal Protection against Victims of Publication of Portraits without Author's Permission In terms of Law Number 28 of 2014 concerning Copyright

The creator is a person or several people together who have created a work of creativity based on their ability, expertise or dexterity which is poured into a unique work form.⁶ Creation is a work of creativity that is created by the creator in accordance with his thoughts, imagination and knowledge. The resulting creations can be in the form of art, literature and science. The work of the creator that has been created is work that is personal and private, meaning that the creation that has been created by the creator can only be owned by the creator because it has personal properties and the creative work is unique because it has been made in accordance with the imagination of the creator. The result of the creator's work in the form of Iyang Ikhlas in the Art Field is a portrait. In copyright, a portrait is copyrighted work that has received legal protection. Photography is an invention that is protected and contained in Law Number 28 of 2014 concerning Copyright. Protection of Photography Has Been Declared in Article 12 paragraph (1) Law Number 28 of 2014 concerning

Copyright. Photographs are creations that are protected as meant by them in Article 12 paragraph (1). This protection is given to the creator, the copyright holder, and someone else who is the object of the photo shoot.

Legal protection to give understanding to the community that photography protected by law. So that an individual cannot reproduce the portrait of another person without his consent, because the portrait has been protected by Idi in Law Number 28 of 2014 concerning Copyright.

The portraitographer has 2 (two) roles, namely as the creator and copyright holder of the portrait. The portraitographer as the creator and holder of the portrait copyright that he produces can announce his portrait copyright in a show or exhibition, but the portraitographer still has to ask permission from someone who is the object of the portrait in accordance with Article 20 of Law Number 28 of 2014 about Copyright. A photographer cannot announce his portrait creations without obtaining approval from the person who is the object of the portrait.⁷ Photographers have the following rights and obligations:

The right to determine the price or value of the resulting portrait his works;

1. Save the film negatives and/or digital soft copies;
2. The photographer as the copyright owner has the right to display his creation in a public exhibition or to reproduce it in a catalog even though the portrait or photographs have been transferred to another party as the copyright holder (unless otherwise agreed);
3. Can sue someone who without permission reproduces and

⁴ Syahril, M. A. F. (2021). Privasi Yang Terpublikasi.

⁵ Qamar, N., Syarif, M., Busthami, D. S., Hidjaz, M. K., Aswari, A., Djanggih, H., & Rezah, F. S. (2017). Metode Penelitian Hukum (Legal Research Methods). CV. Social Politic Genius (SIGn).

⁶ Syahril, M. A. F. (2021). Published Privacy Rights via Short Messages. *Amsir Law Journal*, 3(1), 11-19.

⁷ *Vide* Pasal 20 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

- commercializes his work for personal gain or benefit;
4. To reproduce or publish his work, the photographer as the copyright holder must ask permission from the model or his heirs;
 5. Take responsibility for the correctness or authenticity of the portrait or portrait.

In Article 19 and Article 20 of Law Number 28 of 2014 concerning Copyright, it is stated that if a photographer wants to publish a portrait of someone who is the object of a photo shoot, he must obtain permission from the person concerned or his heirs.⁸ The portraitographer is also not allowed to publish the portrait copyrighted work if the person who is the object of the shoot does not approve of the portrait being published. With this, it has shown that there is protection for someone who is the object of shooting. Because the photographer must ask permission first, so that if someone who is the object of a photo shoot does not agree to have their portrait published, the photographer may not publish or announce it even though the copyright holder for the portrait is the photographer.

Legal protection of copyright on portraits is an effort made by the government by looking at the existence of statutory provisions so that there is no copyright infringement on portraits. There are 2 kinds of supervision/legal action on copyright on Ipotret, namely preventive supervision/legal action namely protection that aims to prevent copyright infringement on portraits. Supervision/repressive legal action is a protection to resolve disputes by filing a lawsuit in the Commercial Court. In publishing or announcing a portrait of a person intended for commercial use, there is

a period of 50 years after the announcement is made.

Before publishing or announcing the portrait copyrighted work, the photographer must first ask permission from someone who is the object of the photo shoot or heir. If someone who is the object of shooting gives permission for his portrait to be published or announced, the photographer can announce it. The 50 year period has expired, so the photographer must ask permission to return to other people who are the object of shooting. If another person who is the object of the photo shoot has died, the photographer must ask permission from his heirs within 10 years after the other person who is the object of the photo shoot dies.

Legal Settlement Efforts against Violations of Publication of Portraits without Author's Permission In terms of Law Number 28 of 2014 concerning Copyright.

In Article 2 paragraph (1) of Law Number 28 of 2014 concerning Copyright states "Copyright is an exclusive right for creators or copyright holders to announce and/or reproduce their creations, which arise automatically after a creation is born without reducing restrictions according to regulations current regulation." A creator will have exclusive rights if he has created a copyrighted work.⁹

The creator is a person or several people together who have created a work of creativity based on their ability, expertise or dexterity which is poured into a unique work form. Creation is a work of the Creator created by the Creator in accordance with his thoughts, imagination and knowledge. The resulting creations can

⁸ *Vide* Pasal 19 s.d 20 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

⁹ *Vide* Pasal 2 ayat 1 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

be in the form of art, literature and science. The work of the creator that has been created is work that is personal and private, meaning that the creation that has been created by the creator can only be owned by the creator because it has personal properties and the creative work is unique because it has been made in accordance with the imagination of the creator. The result of the creator's work in the form of willing in the Art Field is a portrait. In copyright, a portrait is copyrighted work that has received legal protection. Photography is an invention that is protected and contained in Law Number 28 2014 concerning Copyright. Protection of Photography Has Been Declared in Article 12 paragraph (1) Law Number 28 of 2014 concerning Copyright. Photographs are creations that are protected as meant by them in Article 12 paragraph (1).¹⁰ This protection is given to the creator, the copyright holder, and someone else who is the object of the photo shoot.

Legal protection to give understanding to the community that photography protected by law. So that an individual cannot reproduce the portrait of another person without his consent, because the portrait has been protected by Idi in Law Number 28 of 2014 concerning Copyright.

The portraitographer has 2 (two) roles, namely as the creator and hold the copyright for the portrait. The photographer as the creator and owner of the copyright-portrait that produces can publish copyrighted works in a performance or exhibition, however the photographer still have to ask permission for it first to someone who becomes the object of that portrait in accordance with Article I20 I of Law No.

about Copyright. A photographer cannot publish his photographic works without obtaining approval from the person who becomes the object of the portrait. The photographer has rights and obligations, namely as the following:

The right to determine the price or value of the resulting portrait his works;

1. Save the film negatives and/or digital soft copies;
2. The photographer as the copyright owner has the right to display his creation in a public exhibition or to reproduce it in a catalog even though the portrait or photographs have been transferred to another party as the copyright holder (unless otherwise agreed);
3. Can sue someone who without permission reproduces and commercializes his work for personal gain or benefit;
4. To reproduce or publish his work, the photographer as the copyright holder must ask permission from the model or his heirs;
5. Take responsibility for the correctness or authenticity of the portrait or portrait.

Article 19 and Article 20 of Law Number 28 of 2014 concerning Copyright states that if a photographer wants to publish a portrait of a person who is the object of a photo shoot, he must obtain permission from the person concerned or his heirs.¹¹ The portrait photographer is also not allowed to publish the work of the creator of the portrait if the person who is the object of the photo shoot does not agree with his portrait to be published.

The existence of this thing has shown that there is protection for someone who becomes the object of shooting. This is

¹⁰ *Vide* Pasal 12 ayat 1 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

¹¹ *Vide* Pasal 19 s.d 20 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

because the photographer must ask for permission first, so that if someone who becomes the object of a photo shoot does not approve of his photo being published, then the photographer may not publish it or publish it, even though the owner of the copyright for the photo is a photographer.

In Article number 2 of Law Number 28 of 2014 concerning Copyright, it states that the creator is a person or several people who together with inspiration produce a creation based on the ability of thought, imagination, dexterity, skill or expertise that is poured into in a unique and personal form. This means that "creator" is a person who has created or produced a work of creativity according to his own thoughts, imagination and expertise.

Holders of Copyright based on Article 1 number 14 of Law Number 28 of 2014 concerning Copyright Author as the Owner of Copyright, or the party received said right from the Author, other party who received more the rights who received the said rights.¹² This means that copyright rights can be transferred according to the agreement of the parties involved. In this case, the person is related to be the photo shoot, so that the holder of the photo I can be transferred according to the agreement of the parties concerned.

In the world of photography, the creator and the holder of the copyright for the portrait are photographers. The photographer has two roles, namely as the creator of the portrait has produced, and am also the holder of the copyright for the portrait have produced. Exhibitions or shows that are commercial in nature must ask for permission or prior approval from someone who is the object of shooting. If the object of the photograph is from natural

scenery, flora and fauna, then it is not necessary to ask for permission or prior approval. If the object of the photograph is a human being, then must ask for permission or approval from the person who becomes the object of shooting in accordance with Article 19 of Law Number 28 of 2014 concerning Copyright.

Portrait of photographer as the copyright holder portrait. The photographer has exclusive rights to the copyrighted works of the portraits he produces, but these rights are limited and he does not have full authority over his creations. This limited right is intended because if a photographer is going to announce his or her portraits for commercial use, then the photographer must ask for permission or prior approval from someone else who is the object of shooting. This agreement is intended to be in the future someone who becomes the object of a photo shoot does not feel objection to his portrait that will be published. If the person concerned does not agree because it is in conflict with natural interests of said person or can harm myself after the photograph is published, then the photographer may not publish it.

This dispute in the field of copyright was originally from a violation that was committed by someone by admitting that the creation was his creation. Acknowledgment by someone of another person's creation who previously did not get a license from the copyright holder or the creator is copyright infringement. Basically, created a work don't need to register it already have legal protection of Law No. 28 of 2014 regarding Copyright, but in order to prevent there is an PR infringement, the creator or the holder of such Copyright must register their creation to the Director General of HAKI (Intellectual Property Rights). So that, if a dispute occurs, the

¹² *Vide* Pasal 1 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

creator does not need to go through the trouble of proving that the creation in question is the result of his work.

An offense can also occur to a photographer and a person who becomes the object of a photo shoot. This violation occurred because the photographer published the portrait of another person for commercial use without first asking permission or permission. A person who becomes the object of a photo shoot does not agree that his portrait will be published, so that he can sue him his portrait will no longer be published. Copyright Disputes that Happened Require a Means to Resolve the Dispute.

In terms of copyright to resolve a dispute can go through 2 (two) Pathway, namely, Through Pathway to Court and ADR (Alternative Dispute Resolution). Channel of the Court is used for resolving intellectual property disputes that are open in nature and does not contain confidential elements, for example IPR, trademarks, IPR and others, while ADR pathways are used for resolving disputes over intellectual property aspects that have IPR secrets, for example Patents or Trading secrets.

If there is a copyright infringement, there is a mechanism to file a lawsuit with the Commercial Court. This mechanism is intended to find out the procedures for filing a lawsuit for copyright infringement. A person who feels aggrieved because his copyright has been used by another party without asking permission beforehand can file a lawsuit at the Commercial Court. Filing a lawsuit at the Commercial Court must be based on the provisions of Law Number 28 of 2014 concerning Copyright. The mechanism for filing a lawsuit at the Commercial Court is contained in Article 60 to Article 64 of Law Number 28 of 2014 concerning Copyright.

There are 2 types of cases that can be brought to court, namely claims for rights that contain disputes that are submitted to court by involving the Plaintiff and the Defendant to get a decision. The claim is called a "lawsuit", for example, a lawsuit regarding the cancellation of Intellectual Property Rights and so on. Other demands are submitted to the court by one or more "Applicant" in which there is no dispute, for example the request for a Provisional Court Order, and so on. The demand is called the "application".

C. Conclusion

The form of legal protection for copyrighted portrait works based on law number 28 of 2014 has 2 supervision/actions, namely preventive and repressive supervision/actions. Supervision or preventive action is aimed at preventing infringement of copyright on portraits. Meanwhile, surveillance or repressive measures are aimed at resolving copyright infringements on portraits. And tah settlement efforts in the event of a dispute between the photographer and the person being photographed can be carried out in two ways, namely by filing a lawsuit in the Commercial Court or by means of arbitration. A lawsuit in the Commercial Court is carried out if the photographer does not ask permission from the person who is the object of the portrait.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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