

# Juridical Analysis of Portrait Publication Without The Permission of The Creator because of Law Number 28 of 2014 Concerning Copyright

Muh. Al Habsy Ahmad<sup>1</sup>

<sup>1</sup> Fakultas Hukum Universitas Tomakaka

Corresponding Email: [habsyahmad30@gmail.com](mailto:habsyahmad30@gmail.com)<sup>1</sup>

## Abstract

This Research aimed to determine 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, 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: by filing a lawsuit against I-Commerce Court or arbitration. Submission of a case in the Commercial Court is carried out if the Photographer does not ask for permission in advance from 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 provide strict sanctions to the copyright violators of the photographs of those who use the pictures of other persons for promotion, because of the preventive protection of copyrights for portraits, photographers rarely do this in publishing the results of their works. His portrait. (2) Photographers are advised to only use or publish the portraits of other people for promotion easily after getting the approval of them or their heirs. (3) The government should provide socialization to the public that photographers use their portraits or their portraits 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 owned by the creator or recipient of the rights to a work or product they make for publication to protect the work or development from 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 natural 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.<sup>1</sup>

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 science, art, and literature.

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<sup>1</sup> 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).

Copyright infringement is punished according to what is stated in CHAPTER 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 Article 52 for Commercial Use, shall be punished with imprisonment for a maximum of 2 (two) years and a maximum fine of Rp. 300 000,000.00 (three hundred million rupiahs)".<sup>2</sup>

That way, according to copyright law, namely law number 28 of 2014, copyright violators are punished with imprisonment or a fine. The status of ownership of a portrait has explicit provisions; namely, it is owned by the person who first created and published his creation, in this case, the Photographer. This follows the First Invention principle in copyright.<sup>3</sup>

A photographer often faces problems when he works as an employee and is under a power of attorney agreement, especially when one of the parties needs help understanding what has been agreed beforehand regarding ownership rights to the portraits created.

The main obstacle the Indonesian nation faces in efforts to protect intellectual property rights is the problem of law enforcement, in addition to other issues 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.

The ITRIPs agreement identifies the instruments of intellectual property rights (IPR). It tries to harmonize them globally concerning components: 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, this agreement covers Patents, Copyright, Trademarks, Industrial Design, Layout Design of Integrated Circuits, Undisclosed Information and Geographical Indication. The basic principles are regulated in various National Conferences. The TRIPs agreement provides a different minimum period of protection for each intellectual property right; for example, broadcasting rights are given 20 years, calculated from the end of the calendar year of broadcasting. IPR (Intellectual Property Rights) is a part of the law protecting creative businesses and economic investment in innovative companies.

The rise of the 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 happening nowadays. Not many people feel aggrieved by publishing a portrait on social media without the permission of the person who made it.

Therefore, getting attention and protection for someone who created it following the applicable laws and regulations is essential.

## B. Metode

<sup>2</sup> *Vide* Pasal 112 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

<sup>3</sup> 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).

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

### C. The result of the Research

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

A creator is a person or several people who have created a work of creativity based on their ability, expertise or talent, which is poured into a unique work form.<sup>6</sup> Creation is a work of creativity created by the creator following his thoughts, imagination and knowledge. The resulting creations can be in the form of art, literature and science. The creator's work created is personal and private, meaning that the creator can only own the creation that the creator has developed because it has individual properties. The creative work is unique because it has been made following the creator's imagination. The result of the creator's work in the form of Iyang Ikhas in the Art Field is a portrait. In copyright, a picture is copyrighted work that has received legal protection. Photography is an invention 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 is protected by law. So that an individual cannot reproduce the portrait of another person without his consent because Idi has covered the picture in Law Number 28 of 2014 concerning copyright.

The portrait has 2 (two) roles, namely as the creator and copyright holder of the picture. The photograph, instead, as the creator and holder of the portrait copyright that he produces, can announce his portrait copyright in a show or exhibition, but the portrait instead still has to ask permission from someone who is the object of the picture following Article 20 of Law Number 28 of 2014 about copyright. A photographer can only announce his portrait creations without obtaining approval from the person who is the object of the portrait.<sup>7</sup> Photographers have the following rights and obligations:

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

1. Save the film negatives and 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 catalogue 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;

<sup>4</sup> Syahril, M. A. F. (2021). Privasi Yang Terpublikasi.

<sup>5</sup> 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).

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

<sup>7</sup> *Vide* Pasal 20 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

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.<sup>8</sup> The portrait is also not allowed to publish the copyrighted work if the person who is the object of the shoot disapproves of the printed picture. This has shown protection for someone who is the object of shooting. Because the Photographer must ask permission first, if someone who is the object of a photo shoot does not agree to have their portrait published, the Photographer may not post or announce it even though the copyright holder for the picture 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 photographs. There are two kinds of supervision/legal action on copyright on Ipotret: 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 are 50 years after the announcement is made.

Before publishing or announcing the portrait's copyrighted work, the Photographer must ask permission from someone who is the object of the photo shoot or heir. If someone who is the object of shooting permits his portrait to be published or announced, the Photographer can report 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 ten 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.**

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 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.<sup>9</sup>

A creator is a person or several people together who have created a work of creativity based on their ability, expertise or talent, which is poured into a unique work form. Creation is a work created by the creator following his thoughts, imagination and knowledge. The resulting creations can be in the form of art, literature and science. The result of the creator that has been

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

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

created is personal and private, meaning that the creator can only own the creation that the creator has developed because it has individual properties. 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 a will in the Art Field is a portrait. In copyright, a picture 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).<sup>10</sup> 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 is protected by law. So that an individual cannot reproduce the portrait of another person without his consent because *Idi* has covered the picture in Law Number 28 of 2014 concerning copyright.

The portrait has 2 (two) roles, namely as the creator and holding the copyright for the picture. The Photographer, the creator and owner of the copyrighted portrait, can publish copyrighted works in a performance or exhibition. However, the Photographer still has to ask permission first from someone who becomes the object of that portrait per Article I20 I of Law No. About copyright. A photographer can only publish his photographic works by obtaining approval from the person who becomes the

object of the portrait. The Photographer has rights and obligations, namely the following:

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

1. Save the film negatives and 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 catalogue 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 copy or publish his career, 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.<sup>11</sup> 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 disagrees with his picture to be published.

This has shown protection for someone who becomes the object of shooting. This is 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

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

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

being published, then the Photographer may not publish it or publish it, even though the owner of the copyright for the picture is a photographer.

In Article number 2 of Law Number 28 of 2014 concerning copyright, it states that a creator is a person or several people who, together with inspiration, produce a creation based on the ability of thought, imagination, talent, skill or expertise that is poured into in a unique and personal form. This means that a "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, another party who received more the rights who acquired the said rights.<sup>12</sup> This means that copyright rights can be transferred according to the parties' agreement. In this case, the person is related to the photo shoot so that the photo holder can be assigned according to the parties' agreement.

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 picture produced and the copyright holder for the photograph I have built. Exhibitions or shows that are commercial must ask for permission or prior approval from someone who is the object of shooting. If the thing of the photograph is from natural scenery, flora and fauna, then it is not necessary to ask for permission or prior approval. Suppose the object of the picture is a human being. In

that case, one must ask for permission or license from the person who becomes the object of shooting following 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 pictures 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 their 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 conflicts with the person's natural interests or can harm him after the photograph is published, then the Photographer may not post it.

This dispute in the field of copyright was originally from a violation that someone committed by admitting that the creation was his creation. Acknowledgement by someone of another person's invention who previously did not get a license from the copyright holder or the creator is copyright infringement. Created work doesn't need to register it already has legal protection of Law No. 28 of 2014 regarding copyright, but to prevent a 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 creator does not need to go through the trouble of proving that the creation in question is the result of his work.

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<sup>12</sup> *Vide* Pasal 1 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta

An offence 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 disagrees that his picture will be published, so he can sue that 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) Pathways, namely, Through Pathway to Court and ADR (Alternative Dispute Resolution). The Channel of the Court is used for resolving open intellectual property disputes that do not contain confidential elements, for example, IPR, trademarks, IPR and others. In contrast, ADR pathways are used for resolving disputes over intellectual property aspects with IPR secrets, for instance, 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 determine the procedures for filing a lawsuit for copyright infringement. A person who feels aggrieved because another party has used his copyright without asking permission beforehand can file a case 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 case at the Commercial Court is contained in Article 60 to Article 64 of Law Number 28 of 2014 regarding copyright.

Two types of cases can be brought to court: claims for rights that contain disputes submitted to the 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. Other demands are submitted to the court by one or more "Applicants" 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 two supervision/actions, namely preventive and repressive supervision/actions. Supervision or preventive action is aimed at preventing copyright infringement on portraits. Meanwhile, surveillance or repressive measures are aimed at resolving copyright infringements on pictures. And the settlement efforts in the event of a dispute between the Photographer and the person being photographed can be carried out in two ways: by filing a lawsuit in the Commercial Court or utilizing arbitration. A case 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 without any commercial or financial relationships that could be construed as a potential conflict of interest.

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