

# The Existence of a Portrait of Nudism in the Perspective of Copyright Law

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## ABSTRACT

The art of nudism photography is an art of photography that invites much debate, especially assumptions that contradict the decency and tendency of pornography. There are also other parties in the portrait work, namely as the party that uses the portrait work for certain purposes. In this case, intended as a company for the purposes of advertising the products, it produces it requires a model as well as those who are able to take pictures, then the company can be said to be the party that uses the portrait work for commercial purposes or for company profit. Companies that use a photographic work for a particular purpose without asking permission in advance will violate the Copyright Act, as stated in Article 4 of the Copyright Act which explains that copyright is an exclusive right consisting of moral rights and economic rights.

**Keywords:** *Corporate Accountability, Nudism, Considered in Violation of Asusila*

## 1. INTRODUCTION

There are several genres of art in photography. One of them is the art of photography with the genre of nudism that uses humans, both men and women as objects that show their entire body without a single thread [1]. Nudism photography is an art of photography that invites a lot of debate, especially assumptions that are contrary to the decency and tendency of pornography. The nudism genre is included in the category of realist art, which depicts the figure of the human body as it is because the human body is the most beautiful and most perfect creation of God among all His creatures. Nevertheless, amid the polemic of decency and pornography, artists still have the belief that their creations are protected by law [2].

Observing the provisions in the laws and regulations concerning Copyright which was originally Law Number 6 of 1982 and was replaced by Law Number 12 of 1997 which was later replaced by Law Number 28 of 2014. In principle, all kinds of creations get legal protection, with general limits: excluding creation that is contrary to the discretion of the government in the fields of religion, defence and security of the state, decency, and public order after obtaining the consideration of the copyright board. Copyright boards should be more instrumental in being able to make considerations and/or opinions about the art of photography with the nudism genre or other nudism creations.

One of the famous cases is Madame D Syuga which is some of the nudism photographs of the former wife of the first President of Indonesia, Ratna Sari Dewi Soekarno. Despite to prohibition of distribution by the General Attorney in Indonesia, the copyright of these photographs remains protected by the State of Indonesia. This is indicated by the decision of the Central Jakarta Magistrates Court on copyright violation cases committed by The Indonesian magazine What's On, issue 138 of 1998 [4].

This paper questioning the company's liability to works with nudism genre or considered to be immorality violation.

## 2. RESEARCH METHODS

This research uses the approach of normative research methods through a statutory approach. The approach of legislation is to review all laws and regulations concerned with legal issues that are being handled using primary legal materials and secondary legal materials [5]. Collection of legal materials through a study of literature begins with reading systematically to classify available legal materials and then used as a guide to answer and analyze existing problem formulations. The author using interpretation methods, which is research departs from the opinions that exist in these problems by interpreting through the interpretation of language, laws and regulations or systematically

about the problems to be discussed by looking at legal concepts from a normative point of view.

### **3. CORPORATE LIABILITY FOR NUDISM-BASED WORK**

Photography is the art of shooting that produces beautiful photos, has high artistic value and can be enjoyed by the wider community which makes the audience captivated by the beauty, admiration, and inner experience due to the impression caused by the photo. In addition, the beauty of a photograph is sometimes associated with the figure of women. There is an assumption that an attractive photo shows the beauty of a woman [6]. Nowadays, many cover pages in printed mass media that are circulating are dominated by female figures which are specifically intended for the majority of male readers. Moreover, the female figure featured in the new tabloids circulating in the community clearly shows the beauty of a woman's body with her curves and beauty (showing off her *aurat*). Recently, several weekly magazines got into trouble because their cover page featured a photo of a model deemed pornographic by the authorities. The editor-in-chief, photographer and model were summoned to provide further information by the police. The photographer and the model were confused because they thought they had done nothing wrong and there was no clear legal solution. Photographers feel that they were not creating pornographic photos but works of art that show the beauty of women, such as the cases of Sophia Latjuba and Inneke Koesherawati. Another very horrendous case is Dewi Syuga. Ironically, tabloids that clearly prioritize eroticism (pornography), from the cover to the content, have never been sued. Even now, it still flutters freely [7].

The United States press, which is freer than other countries, still finds pros and cons to the problem of pornography [8]. Those who are on the pro side think that pornographic materials are part of freedom of the press [9]. This freedom stems from a constitutional provision included in a series of amendments to the United States Constitution which reads, "Congress shall make no law... abridging the freedom of speech or of the press". A commission in the United States called the Commission on Obscenity and Pornography once made a conclusion which reads "Public opinion in America does not support the imposition of legal prohibition upon the rights of adults to read or see explicit sexual materials" [10].

On the other hand, on the contrary, they think that the presentation of pornographic materials is considered an invasion of one's privacy. In fact, one of the members of the commission were against the pros and it was recorded that he had appealed to the public as follows, "Credit the American public with enough common sense to know that one who wallows in filth is going to get dirty" [11].

In general, differences of opinion in America are no longer concerned with whether the material is pornographic or not, but whether the pornographic material is appropriate for public consumption. Generally, they think that the problem of pornography is just a matter of taste and has absolutely nothing to do with morality. The commission added that the lust associated with sex needs to be channelled to achieve satisfaction and not to be suppressed, while obscenity is equated with beauty both of which depend on the viewer and judge. From here people began to legalize the practice of free sex [12]. On the other hand, pornography is also considered to have an educational value which can provide information about sex and encourage people to be more open-minded about sex. But it is also acknowledged that not everyone has the same opinion. Although many people think that the increase in pornography in publishing is a sign of change and progress, there are still those who consider it a mirror of moral decline [13].

In the world of art and literature, erotic realism is known. Publishers in America also consider that they also have the right to present materials that are erotic realism. They started struggling to convince the audience about the importance of erotic elements in human life. Equating sex problems with other problems of a non-sexual nature. Establish that people are free to create and broadcast descriptions of realistic and lively aspects. Likewise, with the description of all parts of the body, without exception; Hair is hair, wherever it grows. Lips are lips, wherever they are. This is the flow of erotic realism, looking at life as it is. They set their own limits, namely that all realistic aspects are not intentionally presented to arouse lust, it is considered not to be included in the category of pornography [14].

Body nudity has long been an object for the development of art, even since the origin of man. Many of the reliefs listed on the temples display nude images. Paintings of women were painted by legendary painters such as Michaelangelo, Monet, and even Basuki Abdullah. It seems that creating nudity has become a kind of convention for artists so that it is considered as a matter of course [15].

The world of photography has long known the term nude photography or nude photos, even at the age of the advent of photography itself. Nude photography usually shows photos of models without clothes, male or female, but the photos do not only show fun. The angles of the photo are displayed with lighting and composition in such a way that the impression of fun on the naked photo does not become a special spotlight. Nude photos for a photographer displayed with certain photographic techniques are not pornographic works [16].

This is where the pros and cons often arise whether a nude photo deserves to be called art or includes pornography. There are two things that cause a reaction if the nudity is displayed through photography, compared to painting. First, that the tradition of a

painting showing naked women has been going on before, which causes people to have accepted nudity as a convention. This makes people no longer see nudity as a part of life but as a part of art wherein painting and sculpture there is a distance between the viewer and the work of nudity that is displayed. However, the nude paintings that are displayed are very realistic, people assume that the paintings are another world with reality. Whereas in photography there is no distance between the audience and the photo work because the photos displayed are part of reality. Both relate to industries that can multiply in large numbers. For example, in a photo exhibition that displays photos of naked women, even though the nudity is relatively bolder than that shown in a magazine because the reaction is relatively smaller. While in a magazine, the same photo is displayed and then there is a reaction because there is an element of duplication. basically, the notion of pornography appears when it is reproduced and disseminated, not its substance [17].

In portrait works, there are other parties who use the portrait work for certain purposes. In this case, it is intended as a company for the purpose of advertising the products it produces, it requires a model as well as a party who is able to take pictures, then the company can be said to be the party that uses the portrait work for commercial purposes and seeks company profits. In this case, cooperation and agreement must be made between the party taking the photoshoot and the advertising model as the party being photographed. If it is not based on a clear collaboration or is not based on an agreement or without the knowledge of the owner of the portrait in the use of the portrait, it can result in an act of violating the rights of the subject in the portrait. This provision is in accordance with Article 12 paragraphs (1) and (2) of the Copyright Law that anyone who wants to use a portrait commercially must be based on the approval of the person in the portrait or his heirs.

Generally, copyright is infringed if the copyrighted material is used without the permission of the creator who has exclusive rights to the work. In the event of a violation, there must be similarities between the two existing creations [18]. Copyright violations are encouraged to seek quick financial gain at the expense of the interests of the creators and copyright holders. The actions of the perpetrators clearly violate the law which determines that everyone can obey, respect, and respect the rights of others in civil relations, including new inventions as creations of others which are recognized as property rights by legal provisions [19].

One of the creations that are prone to be violated is the work of photography. The practice that often occurs for violations of photographic creation is the property of a creator, called the photographer. Most photographers themselves do not know or understand less about copyright and its laws. Portrait work is one of the works that is protected by copyright law even though the work has not been registered at all [20]. Nudist portraits are the work of photographers which are protected as

intended in Article 12 of Law Number 28 of 2014 concerning Copyright. This protection is given to creators, copyright holders, and other people who are the object of the photoshoot. The legal protection is to provide legal understanding to the public that photography is protected by law. So that someone cannot duplicate and change it to be inconsistent with the original portrait of another person without approval because photography has been protected in Law Number 28 of 2014 concerning Copyright.

Acts that can be categorized as commercialization of photographic works without permission are very diverse, ranging from the case of celebrity portraits related to privacy rights to violations of the material or economic rights of the party being photographed. In the case of celebrity portraits related to the privacy rights of the party being photographed, sometimes there is a spread of portraits of celebrities who are in private places such as changing places and other private places, as in the case of Kate Middleton who was photographed while on vacation in France. [21].

A company that displays nudist works (considered violating immorality) must obtain permission from the owner of the portrait made at the request of the person being photographed or someone else on behalf of the person being photographed and the portrait image being made for the benefit of the person being photographed. Companies that display nudist works (considered violating immorality) without the permission of the person being photographed can be sued in court, as happened in the case of Dewi Soekarno who sued the editor-in-chief of Watch On magazine, Warsito Wahono, on charges of publishing a photo from Madam de Syuga's book without permission [22].

The company must get permission from the person photographed to be an advertisement or commercial company promo. A person who is the object of the photoshoot agrees that his photo will be used as an advertisement or promo for the company, but if that person is not pleased then the photographer cannot use the photo as an exhibition or may not announce it.

If a person who is the object of the photoshoot dies, permission is obtained through the approval of the heirs of the person concerned dies within a period of 10 years. The heirs of the person who is the object of the photoshoot can decide that the photo can still be used by the photographer or can be terminated so that the photographer can no longer use the photo of the person who is the object of the photoshoot in a commercial exhibition or show.

The granting of permission by the person who is the object of the photoshoot is very crucial because the approval of the copyrighted work that is announced or distributed can trigger copyright infringement. The company is the holder and creator of the resulting portrait, but the company still has to obtain permission from the person who is the object of the photoshoot.

#### 4. FINAL REMARKS

Companies that use works such as photos for certain purposes without permission violate the Copyright Law, as stated in Article 4 of the Copyright Law which explains that copyright is an exclusive right consisting of moral rights and economic rights.

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