

# Analysis of Legal Protection on the Moral Rights of Creators of Photographical Works Against the Use of Photographic Creations by others on Social Media "Instagram" Commercially Based on Law NO. 28 of 2014 on Copyright

Khusbu Vaswani<sup>1,\*</sup>, Christine S. T. Kansil<sup>1</sup>

<sup>1</sup>School of Law, Tarumanagara University of Law, West Jakarta, 11440, Indonesia

\*Corresponding author. Email: khushbu.vaswani@hotmail.com

## ABSTRACT

In today's era, technological developments occur very rapidly and this can greatly help economic development by selling products without face to face. Social media can be used for unlawful purposes, and can be the best place to do other negative things, thus raising questions regarding how the legal protection of the moral rights of the creators of photography against the use of photographic creations by other parties on social media "Instagram" is commercially based on the Act. -Law No.28 of 2014 concerning copyright. The method used is normative law. The results of the study show that legal protection for the moral rights of the creators of photographic works against the use of photographic works by other parties on the social media "Instagram" commercially based on UUHC. Photographic works are very important in the online business world for commercial use of the products sold and these works must be copyrighted to be protected. However, there are many obstacles in online business ventures that occur due to the theft of photographic works of business competitors which are further regulated in Law Number 28 of 2014.

**Keywords:** Legal Protection, Copyright, Photographic Works

## 1. INTRODUCTION

Indonesia is a country that is very famous in their internet usage and Indonesia is a country where searching the internet or buying internet is not a complicated thing. Social media is greatly assisted by the internet and because of this, there are now various kinds of social media that many people can upload for their own interests. The social media that internet users want can be easily uploaded in the store or app store on the respective user's cellphone. The history of the internet in Indonesia began in the 1990s and at that time the internet was known as the 'paguyuban network' which occurred because of community cooperation. The atmosphere of the internet in Indonesia is more commercial and individual in its activities when internet trading began in 1988, which utilized CIX from the UK and Compuserve from the United States.[1]

Legal protection can also be considered as a description of the workings of legal functions that can help to realize the objectives of the law given to the subject. The legal

protection is divided into 2 (two) types, namely legal protection that is preventive (prevention) and also in the form of repressive (coercion), both written and unwritten in the context of law enforcement.[2]

Instagram social media can be a trigger for a Copyright issue as listed earlier because social media seems less responsive to solve problems where similar photos or images are re-uploaded or stolen by other accounts. This happened without the permission of the previous owner of the photo. Instagram also provides a little solution to the photo theft that occurs. This can be successful if several Instagram user accounts are busy reporting or reporting a photo or image that indicates a theft or retrieval process without the previous owner's permission.

All activities on Instagram social media have been associated with various legal rules. Social media is one of the easy tools for someone to use in terms of harming someone else if used improperly. All the rules in Instagram social media serve to avoid legal loopholes.[3]

According to Law Number 28 of 2014 concerning Copyright, if there is a photo or video work that is disseminated then it is included as an object, namely one of the works that is protected under Article 40 paragraph (1) letter k of Copyright. Copyright protection for photographic works is valid for 50 years from the first announcement, such as reading, broadcasting, exhibition, a work by any means, either electronic or non-electronic or in any way that can make a work read, heard or seen by others.

The widespread development of the internet and social media makes it difficult for legal performance to keep up with any advances in the existing technological system. And, in this day and age, everyone prefers to communicate via the internet rather than having to meet face to face. This is because, the internet saves time and money, the internet and social media are also easier to reach for all ages. These things make social media worthy of getting the best protection in a country, so that people who use social media get comfort and security while being users of that social media.[4]

There are millions of kinds of social media applications that everyone can upload and usually the use of these applications is according to the needs of the party who buys or uploads the application on their mobile phone. For example, someone who likes to cook can upload a cooking application full of cooking videos or menus that internet users want. Online sales continue to increase, such as in a social media called Instagram, in that social media, many sellers promote their merchandise by including photos and videos about the products they want to sell.

As we know that nowadays, all the content we want can be found online. People in all corners of the world have begun to understand and use the internet network in their daily lives for hours and recognize that the internet is very useful for various things. The benefits of the internet also include buying or selling goods, seeking information, ideas, opinions, facts, and so on.[5]

The internet is most popular among young people and adults because the internet can help everyone to know everything they want to know. The increasing use of the internet for various things, such as online shopping, can also harm some shops or markets in Indonesia that have not introduced their products online.

Of course, everyone has the right to post anything on the internet as long as it doesn't violate the law and they can also use the internet to get to know new people far away or nearby. Unfortunately, the internet also has many problems such as cheating or stealing other people's ideas, images and content. The internet can be exemplified like a house made of glass which means that whatever comes in is very difficult to get out or is erased forever but can be seen by everyone like a transparent glass room.[6]

## ***1.1. Related Work***

### ***1.1.1. Photographic Works***

Photography is the term for the activities carried out while the photographer means the people who carry out these activities. Of course, these two things are very closely related so it is not a new thing if there are some people who are mistaken about the original meaning of the two words. Photography and Instagram have a very close relationship because Instagram contains photography and videos that have many kinds and forms. Every human being can be said to be happier if they can choose the goods they want and then pay online and just wait until the products they buy arrive at their homes. Because of that, Instagram has grown from a platform that can contain anything to become more focused on online sales and this is very helpful for business people, especially those who work from home and don't have an office or shop.[7]

### ***1.1.2. Instagram***

Instagram, can be used by various users, from children to adults to share photos and videos and contains a lot of information that is needed by everyone from students to business people. Instagram is a very popular social media and every feature of the application continues to grow over time and it gives satisfaction to all its users. The name Instagram itself is divided into two and has two meanings, 'instant' means fast or immediately and 'telegram' which means a tool that serves to send information to other people quickly. Instagram social media can be a trigger for a Copyright issue as listed earlier because social media seems less responsive to solve problems where similar photos or images are re-uploaded or stolen by other accounts. This happened without the permission of the previous owner of the photo. Instagram also provides a little solution to the photo theft that occurs. This can be successful if several Instagram user accounts are busy reporting or reporting a photo or image that indicates a theft or retrieval process without the previous owner's permission.[8]

#### ***1.1.2.1. Photographic Law***

According to Law Number 28 of 2014 concerning Copyright, if there is a photo or video work that is disseminated then it includes an object, namely one of the works that is protected under Article 40 paragraph (1) letter k UU Copyright. Copyright protection for photographic works is valid for 50 years from the first announcement, such as reading, broadcasting, exhibition, a work by any means, electronic or non-electronic or in any way that can make a work read, heard or seen by others

The law has recognized that copyright is born automatically after the creation is completed. Completely realized in this case means in material form in accordance with the wishes of the creator and also in accordance with the uniqueness of the created character. The litigation path in this litigation path is divided into two tigers, namely the Civil route and the Criminal route. For the civil case, this is pursued through a process of claiming compensation in the Commercial Court. As for the criminal route, the procedure is through reporting the injured party to the authorized agency.[9]

Then, other legal remedies can be taken through non-litigation channels known as alternative dispute resolution. The alternative is often interpreted as an alternative to litigation, but often it can also be interpreted as an alternative to adjudication. The choice of one of the two meanings has different implications. If the first definition becomes a reference for alternative to litigation, it can cover all alternative dispute resolution mechanisms outside the court. Every entrepreneur wants their company to thrive and wants their business to continue to grow. In today's era, there are many companies that have just been established with various plans or product innovations or even various kinds of services and this is good for economic development in Indonesia to be more advanced. For this development, every business actor must know the rules regarding intellectual property rights in Indonesia.[10]

### 1.1.2.2. History

The history of legislation in the field of intellectual property rights in Indonesia has existed since the 1840s. At that time, the Dutch colonial government introduced the first law regarding the protection of intellectual property rights in 1844. Then, the Dutch government enacted the Trademark Law in 1885, the Patent Law in 1910, and the Copyright Law in 1912. Indonesia at that time was still called the Netherlands East-Indies and had been a member of the Paris Convention for the Protection of Industrial Property since 1888 and a member of the Berne Convention for the Protection of Industrial Property since 1914. During the Japanese occupation from 1942 to 1945, all regulations the legislation in the field of IPR remains in effect. In the end, efforts to harmonize every statutory regulation in the field of IPR were approved by the TRIPS Agreement and in 2001 the Government of Indonesia passed Law No. 14 of 2001 on Patents, and Law No. 15 of 2001 on Marks. In the middle of 2002, the Copyright Law also replaced the old Law which has been effective since its promulgation. Now the Copyright Law has been amended and ratified into Law No. 28 of 2014 concerning Copyright.[11]

Intellectual Property Rights are rights derived from the results of human intellectual activities that have economic benefits. The conception of Intellectual Property Rights is based on the idea that intellectual works that have been produced by humans require the sacrifice of energy, time and also costs. This sacrifice makes the work that has been produced has economic value because of the benefits that it can also enjoy. This encourages the need for appreciation for the results in the form of legal protection.

### 1.1.2.3. Assumption generation based on normative research

Legal protection is part of the protection of the community. In today's era, technology is so advanced that it can be said that all citizens without exception must be given protection. In the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) it is determined that the form of protection to the community helps in every violation of the law that occurs around us which includes violations of copyright law. Therefore, the manufacture of legal products must be able to guarantee the rights and obligations of every citizen are protected. And the legislators must also absorb every legal aspiration from the people. Intellectual property rights are equivalent or words that are very often used for intellectual property rights, namely rights that come from a mindset where legal products have been born or become a process that benefits humans. So basically, intellectual property is the right to enjoy economically and the result of intellectual creativity. The form of the work born of human intellectual ability is the object of intellectual property. The legislation guarantees every citizen to get protection, without any exceptions. So, the law designed by the legislature in order to protect the rights of everyone, and must also protect the aspirations and justice that exists in society.[12]

## **1.2. Our Contribution**

This paper presents some improvements based on the probabilistic assume-guarantee framework proposed in Protection of Photographic Works. The provisions of the law are intended so that violations of the law can be prevented and also provide guidelines and restrictions in carrying out obligations. If the work is made up of many separate parts made by more than one person, then the creator in question is the leader of the work and can also supervise the work of any work but if there is no such person, then the collector of the work will be the creator without reducing rights create each other who are part of the creator. Independent photographic works can be used to fulfill specific functions. One of the requirements for a work to be considered as a work of expression photography is if the work is designed based on a

predetermined concept and has objects that have been selected and distributed to express its own artistic expression. Photography works are original works of art. This is because the form of appearance is more of an expressive artistic value than art itself. Photographic works can also have social value because they can function as intermediaries that add value to certain functions to symbolize the validation of one's identity in society.

According to Law no. 28 of 2014, Copyright is the exclusive right of the creator that appears automatically, based on declarative principles after a work has materialized in a tangible form, without reducing the restrictions that have been regulated in the provisions of the legislation. Exclusive Intellectual Property rights granted to rights holders are awards for compensation and achievements from thoughts, creativity, and efforts that have been realized or produced by the creator or designer. Intellectual property rights are also defined as a set of rights, which in the sense of authority or power, to carry out further the intellectual property concerned. Further arrangements are regulated in the current legal norms.

### ***1.3. Paper Structure***

The rest of the paper is organized as follows. Section 2 introduces the preliminaries used in this paper, which include photographic works and the law protecting it especially in social media sites. Finally, Section 6 concludes the paper and presents direction for future research.

## **2. BACKGROUND**

### ***2.1. Subject and object of Photographic Work***

Legal protection for subjects in portraits or photographic works uploaded to social media accounts is very important to find out what can be said to be a violation. The act of creating or producing a work of art in the form of a photographic work can be done by anyone, and this can make everyone the subject of photography.

The problem that very often arises with the subject of a photographic work is when someone inspires or claims to own the property rights of a photographic work and uses it without the permission of the creator. The Copyright Law regulates any relevant norms regarding the legal protection of portraits or photographic works. A portrait is a work of art that reflects the combination of the subject in the portrait and the light captured by a camera.[13]

So to produce a portrait work, at least a combination of two subjects is needed, namely the subject who took the portrait with the camera and the subject in the portrait. A photographer is someone who is the subject of taking portraits using a camera, that is, someone who has the

ability to use a camera to produce portraits that have artistic value and the photographer is the creator of the portrait.

A creator is a person or several people who in their own way or together produce a creation that is unique and personal. Copyrighted objects are the result of the invention itself. Copyright in the field of photography has two types, namely portraits as explained in Article 1 number 10, namely photographic works with human objects and photographic work itself in accordance with Article 40 letter k means all photos produced using a camera. Then, in accordance with the provisions of Article 4 of the Copyright Law, it is stated that in Copyright there is a work attached to exclusive rights in the form of Moral Rights and Economic Rights.[14]

So, Copyright -protected portrait works have Moral Rights and Economic Rights. In accordance with the provisions of the Copyright Law, what is meant by portraits are included in the classification of photographic works, namely photos with human objects produced through the camera. In the provisions of the Copyright Law is not mentioned the procedure and form of agreement between the creator of the photo and the object that has been photographed.

In general, the definition of commercial is an activity carried out by an individual or entity that aims to gain profit, either directly or indirectly in the economic field.

According to the Copyright Law, commercial use is the use of works and or related rights products with the aim of obtaining economic benefits from various sources or for a fee.

Copyright itself is one part of intellectual property which has the broadest scope of protected objects, because it includes science, art and literature. The development of the creative economy has become one of the mainstays in Indonesia and various other countries where the rapid development of information and communication technology requires the renewal of the Copyright Law, because copyright is the most important basis in the national creative economy.

Copyright objects under the Copyright Law are creations. In Article 1 point 3 of the Copyright Law, a creation is any result of a copyrighted work in the fields of science, art and literature which is expressed in a tangible form. Based on this definition, a work to obtain Copyright must be tangible or can also be seen, heard or also read. Copyright is not granted for works that are still ideas. In addition to having a tangible form, another requirement for a work to get a Copyright is that it must show authenticity or originality.[15]

In copyright law, there are certain aspects of each person's work that are protected. Like an intellectual work and also a work of art in the form of expression. These expressions can be in the form of writing, song lyrics, articles and books, poetry, in the form of images such as photographs, architectural drawings, maps and sound or video forms such as song recordings, speeches, performance videos and choreography videos.

A work created is something personal and unique which means that the creation made by the creator can only be owned by the creator because it is personal and also unique because it has been made according to the imagination of the creator and one of the creator's works in the field of art is portrait.

In copyright, a portrait is a copyrighted work that has received legal protection. The legal protection is made to protect the rights of the creator in all matters including the distribution of the work, the sale or the creation of a continuation or derivative of the work that has been created previously. The protection obtained by the author or author is protection from plagiarism or plagiarism from others.[16]

With the Copyright Law which fulfills the elements of protection and development of the creative economy, there must be hope for the contribution of the copyright sector and related rights to the country's economy so that it can be more optimal.

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in tangible form without reducing restrictions in accordance with the provisions of the legislation in Article 1 point 1 of Law Number 28 of 2014. The so-called or considered creator namely the person whose name:

- a. Mentioned in Creation
- b. Declared as the creator of a creation
- c. Mentioned in the letter of registration of the creation and or
- d. Listed in the general register of creation as the creator.

Legal protection for copyright is born automatically in a work that is realized in a tangible form, announced and can be reproduced. This is clarified in Article 64 paragraph (2) of the Copyright Law, which states that the Registration of Works and Related Rights products is not a requirement for obtaining Copyright and Related Rights.

### 3. CONCLUSION

Legal protection for the moral rights of the creators of photographic works against the use of photographic works by other parties on social media "instagram" commercially based on law no. 28 of 2014 concerning copyright is that the creator must be protected and facilitated an easier way to register the work of their respective photographic copyrights.

The photographic work created by the creator apparently has not received proper legal protection, especially in social media that focuses on selling online shopping businesses on the 'instagram' platform because of the many account users who steal the work of other online shops for commercial use. The Copyright Law in Indonesia is obliged to provide legal protection for those who have stated that the photographic work created is the property of the creator himself.

According to Law Number 28 of 2014 concerning Copyright, which adheres to the principle of mandatory registration, if there is a photo or video work that is disseminated, it includes an object, namely one of the works that is protected under Article 40 paragraph (1) letter of the Copyright Act. Copyright protection for photographic works is valid for 50 years from the first announcement, such as reading, broadcasting, exhibition, a work by any means, electronic or non-electronic or in any way that can make a work read, heard or seen by others.

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