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Copyright Legal Protection Results Photographic Works

Ahmad Ansyari Siregar

Lecturer, Department of Law, Labuhanbatu University, Indonesia

Risdalina

Lecturer, Department of Law, Labuhanbatu University, Indonesia

Kusno

Lecturer, Department of Law, Labuhanbatu University, Indonesia

Muhammad Yusuf Siregar

Lecturer, Department of Law, Labuhanbatu University, Indonesia

Abstract:

Legal protection for the creators of photography is very important. This study discusses and analyzes the forms of legal protection for photographic results produced by someone. The method used in this study is normative juridical, normative juridical is a research method using legal or regulatory sources and literature relating to problems in research. The regulations used as research material such as the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. The results of the study indicate that the legal protection of photographic works is regulated in the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. Photography results will be given legal protection if registered at the Directorate General of Intellectual Property, Ministry of Law and Human Rights. The legal protection for photography works is 50 years.

Keywords: Copyright, photography, juridical review

1. Introduction

Many of today's society has a hobby in the world of Photography, where not a few of the people use the hobby as their main job in making a living. A photographer in his work or just a hobby will still find clashes in the activities carried out, it does not mean the work done by a photographer does not have obstacles and risks of work.

In the world of Photography, the problem that often occurs is the work they get by taking an object, person or scenery can be enjoyed by others for free, even to be used without permission from the photographer itself for commercial purposes.

In the conflict referred to above where there is a Violation of the Copyright of an Author, namely the Photographer in the Photography art, namely the ownership status of the rights of the main source of the first Photographer, in which the copyright of the Photographer's Photograph was the first to publish his creation [1]. Photographers only need to have ideas, creativity and originality, which have not been claimed and used by others for their ideas, creativity, and originality which are manifested in the real form, namely Photo.

Copyright is an exclusive right that is owned by the creator or recipient of the right to publish his work or give permission to others to announce it by not reducing restrictions in accordance with statutory regulations. A person's copyrighted works will automatically become the property of the creator, even if they are not registered with the Directorate General of IPR [2].

In article 4 of Law No. 28 of 2014 concerning copyright, it is explained that exclusive rights are moral rights and economic rights, which arise automatically after a creation of the creator is manifested in tangible form in accordance with the provisions of the legislation [3]. Based on these exclusive rights, we cannot act haphazardly against the values and forms of other people's creations, including in the focus of this discussion about the results of photography of a person. So based on this description, it is necessary to conduct an in-depth study of the legal value of a Photographic Work based on the applicable laws and regulations in Indonesia.

2. Material and Methods

The method used in this research is to use the normative juridical method. Normative juridical is a method using applicable laws and regulations. As well as using literature that is related to the focus of research conducted As for the laws and regulations that are applicable in Indonesia relating to copyrights to photographic works as follows:

- Code of Civil law;
- Criminal Code;
- Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright.

In addition to laws and regulations, it also uses literature such as books, journals, dictionaries and electronic media related to the research conducted. The data used in this study is using secondary data. After the data is collected it will be analyzed using qualitative data, four stages that will be used in analyzing data qualitatively, namely:

- Collection, namely the collection of data obtained from materials collected related to legislation as well as books, books, scientific works, and other literatures.
- Reduction, namely the selection and sorting of key and important data needed in the preparation of research, so that the direction of discussion and flow are clear;
- Display, i.e. to insert the results of data reduction into patterns that are carried out in the form of a brief description. If the pattern has been found, then it is as a standard guideline which will then be displayed at the end of the study.
- Conclusion, i.e. drawing temporary conclusions that may change if at the time of writing the research new data is found to support the research. In applying this stage, using two methods, namely:

Inductive Analysis, which is a method of thinking that departs from the facts of specific events and then generalizes generalizations.

Deductive Analysis, namely the mindset that departs from general facts or events which are then drawn by generalizations that are special in nature.

3. Result and discussion

3.1. Provisions for Legal Protection in Copyright

Copyright termed first proposed by St. Moh Syah, at the Cultural Congress in Bandung in 1951 which at that time was accepted by the Congress to replace the term Author Rights which was considered less extensive in terms of its understanding. Where the term Author's Rights is a translation of the Dutch term namely Auteurs Recht [4].

In Law No. 28 of 2014 concerning Copyright article 1 number 1 explains Copyright is an exclusive right of the creator that automatically arises or is attached to an Author whose creation is manifested in a tangible form without reducing the limitations in accordance with statutory provisions. In a broad sense which explains the copyright ownership of a work which is a work that has been realized in a tangible form that does not conflict in the rule of law that can be protected by law.

In the principle of copyright there is and is attached to the creator together when the creation of a copyrighted work or creation, from the legal point of view this must also be affirmed to know when the actual copyright was born or realized. In the Copyright law to determine the need for legal protection of Copyright, where the Work was deemed to have existed since it was first announced or published, broadcast, voiced or disseminated by any means or means so that it could be read, heard and seen by others [5]

In the event that a protected work is regulated in article 40 paragraph (1) of Law No. 28 of 2014 concerning Copyright, namely:

Protected creations include Works in the fields of science, art and literature, consisting of:

- books, pamphlets, typographical papers published, and all other written works;
- lectures, lectures, speeches and other similar creations;
- teaching aids made for the benefit of education and science;
- songs and / or music with or without text;
- drama, musical drama, dance, choreography, puppetry, and pantomime;
- works of art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture, or collage;
- applied art;
- architectural works;
- map;
- batik artwork or other motif art;
- photography works;
- Portrait;
- cinematographic works;
- translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation;
- translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- compilation of Works or data, both in a format that can be read by a Computer Program or other media;
- compilation of traditional cultural expressions as long as they are original works;
- video game; and
- Computer program.

The works that cannot be protected are regulated in Articles 41 and 42 of Law 28 of 2014 concerning Copyright, namely:

Works that are not protected by Copyright include:

- Work that has not been realized in tangible form;
- Every idea, procedure, system, method, concept, principle, finding, or data even though it has been disclosed, stated, illustrated, explained or combined in a Work; and

- Tools, objects or products that are created only to solve technical problems or whose forms are only indicated for functional needs;

While some that do not have Copyright on a result of the Work as follows:

- Results of open meetings of state institutions;
- Laws and regulations ;
- State speeches or speeches by government officials;
- Court verdict or legal stipulation; and
- Scriptures or religious symbols.

4. Legal Protection of Photographic Copyright

In the activities of Photography concerning the Creator and Copyright Holder of the results of Photography called Portrait is a Photographer. There are 2 roles of the Photographer, namely as the Creator of the Photos that have been produced and the Copyright Holder of the photos that have been produced. In the case of the creator and copyright holder of a photography that must be considered by a photographer, the object, when the object of the photo taken from a photographer in the form of natural scenery, flora or fauna does not require prior permission for the object, but when an object is photographed is a person / person, it is compulsory for a photographer to ask permission to the object of that person before publishing, or publishing their copyright.

Photography activities are creations of works that can be considered unique. In creating works of Photography requires high skill and art [6]. The results of the works of photographers as Copyright Holders can be made a result if they have high value in an artistic work.

The results of copyrighted works in the field of Portrait are creative works created from unique and personal works based on the imagination of the creator, the Photographer. In the Copyright, portrait art is a copyrighted work that has the legal protection contained in Law No. 19 of 2002 which was amended to Act 28 of 2014 concerning Copyright.

Legal Protection of Copyrights in the Art of Photography develops in line with the development of the Photography world, where the world of Photography from the types of cameras that use film develops with a Digital system that uses a Memory Card that can be stored on a variety of electronic media such as mobile phones, laptops and computers. Thus the nature and value of the results of the photo object makes it easy for everyone to copy and print the results. The results of these photos are also easily used by others and utilized in various interests without the knowledge of their owner or creator [7].

Based on this, the creators referred to as Photographers tend to get a loss for what others do on the object of the work they produce. Not a few of their work is used to carry out promotions of a business even in the world of Education that uses the work of photographers who look attractive for the sake of increasing turnover or income.

5. Legal Remedies against Photography Copyright Infringement

Humans have a tendency towards various desires to do something that gives birth to copyrighted works, to the extent of cheating to imitate the creations of others. Where if a work can become an interesting object and grow in society there will usually be a tendency and often the creation is copied and reproduced until it is traded. In this case what can be done by a creator in this case a photographer whose work is used by other people to benefit.

In this case there is what is called Preventive effort, which is an effort to prevent and or avoid repairs - acts of infringement of a copyrighted work where the creator as the owner of the copyright is the party who has the most important role in seeking protection of copyright as an act of preventing infringement [8].

In Copyright Law No. 28 of 2014 concerning copyrights is regulated against the protection of rights as follows [9]:

- Copyright protection is done for a longer time;
- Better protection of the economic rights of the creators and / or owners of related rights, including limiting the transfer of economic rights in the form of sold out;
- Effective settlement of disputes through mediation, arbitration or court proceedings, as well as the application of complaint offenses for criminal prosecution;
- The manager of the trading place is responsible for the place of sale and / or infringement of copyright and / or related rights in the shopping center that he manages;
- Copyright as an intangible movable object can be used as an object of fiduciary security;
- The Minister is given the authority to erase the work that has been recorded, if the work violates religious norms, moral norms, public order, national defense and security, as well as statutory provisions;
- Creator, copyright holder, owner of related rights to become a member of the Collective Management Institution in order to collect rewards or royalties;
- The creator and / or owner of the related rights receive a royalty fee for the creation or product of the related right which is made in an official relationship and is used commercially;
- Collective Management Institution that functions to collect and manage the economic rights of the creator and the owner of related rights must submit an application for an operational permit to the Minister;
- Use of copyright and related rights in multimedia tools to respond to developments in information and communication technology.

Regarding the longer period of copyright protection, Article 29 paragraph (1) of Law 19/2002 states that the period of copyright protection is as long as the life of the author and lasts up to 50 years after the author dies, whereas in

the new copyright law, the validity period of copyright is divided into 2 (two), namely the validity period of moral rights and economic rights.

Factors that influence citizens to violate Intellectual Property Rights include:

- Violation of Intellectual Property Rights is carried out to take a shortcut to get the maximum benefit from the violation;
- The violators consider that the legal sanctions imposed by the court so far have been too light even that there are no preventive or repressive measures carried out by law enforcers;
- There are some community members as creators who are proud if their work is copied by others, but this has begun to disappear due to an increase in legal awareness of Intellectual Property Rights;
- By conducting violations, taxes on the products resulting from such violations need not be paid to the government; and
- The community does not pay attention to whether the goods purchased are genuine or fake, which is important for them to be cheap and affordable with economic capacity

With respect to copyright ownership, the Law acts and guarantees an Author to be able to master and enjoy exclusively the work of his creation and if necessary with the assistance of the State to be able to enforce its laws. This provides an explanation of the legal protection of the interests of the copyright owners both individually and in groups as the subject of a right, where the law also guarantees the maintenance of community ownership and guarantees a work by balancing between 2 (two) interests of the copyright owner and the interests general public [10].

Actions that violate the creator's exclusive rights constitute a threat to actions that intentionally conflict with government policies in the field of religion, defense and state security. Procedurally, copyright infringement from a criminal perspective is carried out in a general court (district court). Therefore, the granting of this criminal threat in its regulation needs to get a more detailed assertion in law enforcement for copyright infringement in the field of creative industries, this affirmation also needs to be done by involving several elements of the government and law enforcers as well as from the public [11].

In law enforcement against violations of intellectual property rights, especially IPTA rights are only able to solve problems that arise on the surface, but more than that, efforts are needed to solve the root problems that can arise below the surface through preventive action as a comprehensive protection by involving all government agencies as the responsible parties [12].

The forms or forms of acts of copyright infringement vary according to applicable law, it can be seen that the elements included in the violation are [13].

- *Whoever*
- *Purposely*
- *Without rights*
- *Announce, reproduce, broadcast and distribute or sell*
- *Copyright or related rights*

In the case of copyright infringement, criminal and civil legal measures can be taken. On the issue of copyright infringement, especially copyright, the result of photography is not a few victims of the violation through criminal law whose purpose is to provide a deterrent effect on the perpetrators of other people's work without permission. With regard to the remedy referred to regulated in article 113 of Law No. 28 of 2014 concerning Copyright which is explained as follows:

- Every person who without right violates economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be liable to a maximum imprisonment of 1 (one) year and / or a maximum fine of IDR 100,000,000 (one hundred million) rupiah).
- Any person who without the right and / or without permission of the Author or the Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and / or letter h for Commercial Use shall be liable to a maximum imprisonment of 3 (three) years and / or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).
- Any person who without the right and / or without permission of the Author or the Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and / or letter g for Commercial Use shall be convicted of a maximum imprisonment of 4 (four) years and / or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).
- (2) Every person who fulfills the elements referred to in paragraph (3) committed in the form of piracy, shall be liable to a maximum imprisonment of 10 (ten) years and / or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah).

Protection and legal efforts against violations of copyright photography can also be done by taking a civil route whose element is the Act against the Law (onrechmatigedaad) contained in article 1365 of the Civil Code whose elements are as follows [14]:

- Actions that are contrary to the rights of others;
- Actions that are contrary to their own legal obligations;
- Actions that are against morality;
- Actions that are contrary to prudence or necessity in good community relations.

A legal photographer may file a lawsuit against the use of his work without permission can be submitted to the Commercial Court or the Mediation and Arbitration Board of Intellectual Property Rights that has been regulated in article 95 paragraph 9 (1) and (2) as well as article 99 Law No. 28 of 2014.

6. Conclusion

With respect to Copyright Photography from the work of a photographer included in the object of copyright protection that is obviously protected by law which is the protection of copyright photography will be attached to the work created by a photographer as the creator. Likewise, the rights and legal remedies of a photographer against copyright infringement of his work can be taken through legal channels both criminal and civil, as one of the real legal protections provided by the Government for lovers and creators of works of art, especially photographers. To get legal protection, photographers who have work are required to register their photographic works with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. These provisions as regulated in Law No. 28 of 2014 concerning Copyright.

7. References

- i. Nurul Liza Anjani dan Etty Susilowati, Jurnal : Perlindungan Karya Seni Fotografi Berdasarkan Uu No.19 Tahun 2002 Tentang Hak Cipta, UNDIP
- ii. Eva Puspitarani, et.al, 2013, PERLINDUNGAN HUKUM TERHADAP POTRET ORANG LAIN YANG DIGUNAKAN PROMOSI OLEH FOTOGRAFER BERDASARKAN UNDANGUNDANG NO. 19 TAHUN 2002 TENTANG HAK CIPTA, Jurnal, Fakultas Hukum, Jember
- iii. Undang-undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta
- iv. Ajip Rosidi, 1982, Undang-Undang Hak Cipta Pandangan Seorang Awam, Jakarta: Djambatan
- v. Suyud Margono, 2003, Hukum Perlindungan Hak Cipta, Jakarta; CV Novindo Pustaka Mandiri
- vi. M. Hafidz Maulana, Perlindungan Karya Cipta Fotografi dalam suatu Hubungan Kerja di Kota Banda Aceh, Skripsi Fakultas Hukum UNSYIAH Banda Aceh.
- vii. Rifai AL Arif, 2016, Perlindungan Hukum atas Karya Cipta Fotografi oleh Kementrian Hukum dan HAM di daerah Istimewa Yogyakarta. Fakultas Hukum Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Skripsi.
- viii. Ade Hendra Yasa dan A.A Ketut Sukranatha, Jurnal: Upaya Hukum Penyelesaian Sengketa Karya Cipta Musik. Fakultas Hukum Universitas Udayana
- ix. Akmad Munawar dan Taufik Effendy, Jurnal: Upaya Penegakan Hukum Pelanggaran Hak Cipta Menurut Undang-undang No. 28 tahun 2014 Tentang Hak Cipta, Fakultas Hukum Universitas Islam Kalimantan, Al'Adl, Volume VIII No. 2, 2016
- x. Tim Lindsey, 2006, Hak Kekayaan Intelektual, PT. ALUMNI, Bandung,.
- xi. Zainul Amin, 2018, Penegakan Hukum Terhadap Hak Cipta Dalam Bidang Industri Kreatif di Negara Kesatuan Republik Indonesia. Mimbar Keadilan Jurnal Ilmu Hukum
- xii. Supanto, 2010, Kebijakan Hukum Pidana dalam Rangka Penanggulangan Tindak Pidana di Bidang Hak Cipta, Universitas Diponegoro,
- xiii. Arif Lutviansori. 2010, Hak Cipta dan Perlindungan Folflor di Indonesia. Graha Ilmu. Semarang.
- xiv. Munir Fuady, 2002, Perbuatan Melawan Hukum. Bandung: Citra Aditya Bhakti,