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## IMPLEMENTATION OF LEGAL PROTECTION OF PHOTOGRAPHIC WORKS BASED ON ARTICLE 40 PARAGRAPH (1) LETTER K OF ACT NUMBER 28 OF 2014 CONCERNING COPYRIGHTS

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### ABSTRACT

Legal protection for photographic works has been regulated in Act Number 28 of 2014 concerning Copyright. The more people who are connoisseurs and practitioners of photography, as well as the methods and patterns of publication in the field of photography, the more interesting it is to analyze how the law is applied in society. This study aims to analyze the application of legal protection to photographic works based on Article 40 paragraph (1) Letter K of Act Number 28 of 2014 concerning Copyright, as well as what efforts should be made by the government to provide protection for photographic works. This research was conducted by empirical method. The results of this study indicate that the implementation of legal protection for photographic works based on Article 40 paragraph (1) Letter K Act Number 28 of 2014 concerning Copyright is still lacking in its application, due to several factors that become obstacles. Many parties are actually aware of the existence of protection for photographic works, but many also underestimate the violations committed. This happened due to several factors, including firstly a lack of understanding of the protection of Photographic Copyrights. As well as the government should make more efforts to disseminate understanding about the importance of protecting copyrighted works of photography, because regional offices of the Directorate General of Intellectual Property Rights are only in big cities, it is necessary for Regency or City Governments to participate in carrying out preventive and repressive legal protection efforts.

**Keywords:** Copyright. Photography. Legal protection.

### 1. Introduction

Indonesia is a vast country, with a population of around 200 million people from various ethnic groups, as well as various cultures and customs. With these facts, there are many mindsets, intellectuals, creative ideas, and creative works that are born. To protect Intellectual Property Rights, the Government of Indonesia protects the Intellectual Property Rights of creators.

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Taking into account the realities and trends that occur in today's society, it is understandable that there is a demand for the need for regulations to be enacted in the framework of legal protection for Intellectual Property Rights, especially for copyright protection that is more adequate and guarantees these rights.<sup>4</sup>

Increasing technological developments make everything easy to access and publish. As technology develops, so do systems, patterns, and creativity in the world of photography. In ancient times, photography was used only to capture certain moments, but in this era the functions and uses of photography are increasingly widespread, it is not uncommon for photographers to use their photography results for economic needs.

The patterns and systems used by photographers today are also getting more modern. To create a photographic work, photographers use special equipment and develop concepts, creative and innovative ideas so that the results obtained can compete in the realm of photography and do not seem outdated.

In this digital era, photography actors and works are increasing in Indonesia. Judging from the analogy of the internet such as Instagram, Pinterest and others, various types of concepts and creativity in the field of photography are increasingly diverse. This makes it easier for photography connoisseurs to view, download, and use copyrighted works from other people for personal use. It's not uncommon for copyright holders to feel disadvantaged because concepts, ideas, and results that combine in a photographic work are used without permission. This is what can cause legal problems related to Copyright, because the work of a photo is protected by the Copyright Act.

The existence of broad copyright protection regulations is not sufficient to protect the rights of the creators, due to the many and varied results of intellectual property ideas that arise, the Indonesian government regulates

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<sup>4</sup> Suyud Margono, *Hukum dan Perlindungan Hak Cipta*, Novindo Pustaka Mandiri, 2003, hlm.28

more specifically regarding the protection of copyrighted works, where the protection of photography is regulated in Article 40 paragraph (1 ) Letter K Act Number 28 of 2014 concerning Copyright which reads:

“Protected works include works in the fields of science, art and literature, consisting of: a. books, pamphlets, appearances of published works, and all other written works; b. lectures, lectures, speeches, and other similar creations; c. visual aids made for the benefit of education and science; d. songs and/or music with or without subtitles; e. drama, musical drama, dance, choreography, wayang, and pantomime; f. works of art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture, or collages; applied art; architectural works; map; batik artwork or other motif art; photographic works; Portrait; m. cinematograph works; n. translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation; o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions; p.s. compilation of Works or data, both in readable formats with Computer Programs and other media; q. a compilation of traditional cultural expressions as long as the compilation is an original work; r. video games; and S. Computer program”.<sup>5</sup>

Laws governing the protection of copyrighted works of photography have been enacted. The importance of a copyrighted work being protected, in this case photography, is because infringement often occurs along with ownership status, where the ownership rights of a photographic work are obtained by someone who takes and publishes a photographic work for the first time.<sup>6</sup>

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<sup>5</sup> “Ciptaan yang dilindungi meliputi Ciptaan dalam bidang ilmu pengetahuan, seni, dan sastra, terdiri atas: a. buku, pamflet, perwajahan karya tulis yang diterbitkan, dan semua hasil karya tulis lainnya; b. ceramah, kuliah, pidato, dan Ciptaan sejenis lainnya; c. alat peraga yang dibuat untuk kepentingan pendidikan dan ilmu pengetahuan; d. lagu dan/atau musik dengan atau tanpa teks; e. drama, drama musikal, tari, koreografi, pewayangan, dan pantomim; f. karya seni rupa dalam segala bentuk seperti lukisan, gambar, ukiran, kaligrafi, seni pahat, patung, atau kolase; karya seni tepan; karya arsitektur; peta; karya seni batik atau seni motif lain; karya fotografi; Potret; m. karya sinematograh; n. terjemahan, tafsir, saduran, bunga rampai, basis data, adaptasi, aransemn, modifikasi dan karya lain dari hasil transformasi; o. terjemahan, adaptasi, aransemn, transformasi, atau modihkasi ekspresi budaya tradisional; p. kompilasi Ciptaan atau data, baik dalam format yang dapat dibaca dengan Program Komputer maupun media lainnya; q. kompilasi ekspresi budaya tradisional selama kompilasi tersebut merupakan karya yang asli; r. permainan video; dan s. Program Komputer.”

<sup>6</sup> Nurul Liza Anjani, Etty Susilowati “*Perlindungan Karya Seni Fotografi Berdasarkan Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta*” Law Reform, 2015

The regulations, protections and sanctions contained in Act Number 28 of 2014 concerning Copyright have been in force for years. With the development of methods and genres in the world of photography, more and more photographers are publishing their works in exhibitions and social media. It is also not uncommon for photography connoisseurs to copy it and then use it for commercial purposes without the permission of the copyright holder. Because in practice photography services are not only carried out by a business entity, but also many freelancers or freelancers who provide services for photography services, which means that not only business entities deserve copyright protection.

## **2. Research Method**

This research is included in social legal research. The empirical location of this study is that data will be sought by observing what is happening in society, analyzing to find facts, then identifying problems that lead to problem solving. This research was conducted using observation techniques. In this case, research on data sources or materials is collected in the form of books, journals, articles, news, YouTube content written and made by experts in their fields which scientifically and theoretically discuss the issues discussed in the process of writing this research.

## **3. Results and Discussion**

### **3.1. Application of legal protection for photographic works based on Article 40 Paragraph (1) Letter K of Act Number 28 of 2014 concerning Copyright**

Legal protection is a protection given against legal subjects through the applicable laws and regulations and in implementing them there is a sanction, in the form of legal instruments both preventive and repressive in nature, in other words legal protection as an illustration of the function

of law, namely the concept where law can provide justice, order, certainty, benefit and peace.<sup>7</sup>

Legal protection is the right of every citizen, on the other hand, legal protection is an obligation for the state itself. In principle, legal protection for society is based on and originates from the concept of recognition and protection of human dignity and worth, in the case of copyrighted works of any kind, especially photographic copyrighted works, respect and respect for copyrighted works need to obtain what is called legal protection.<sup>8</sup>

This form of preventive and repressive legal protection has been explained in Act Number 28 of 2014 concerning Copyright. This form of preventive legal protection is regulated in Article 9 which states that the Author or Copyright Holder has the right to give permission or prohibit other people without their consent from renting out their work for commercial purposes.

Preventive legal protection aims to prevent disputes from occurring. Preventive legal protection is very significant for government actions based on freedom of action because the government is encouraged to be careful in making decisions based on wisdom in terms of deciding something that is not based on the provisions of regulations, laws or applicable law. but on the basis of wisdom, consideration or justice.

Several cases have occurred in Indonesia, such as in July 2017, an influencer named Danar Tri Atmojo expressed his frustration with the actions of Hipwee, a youth segmented digital media, who had uploaded his shots without permission. Danar uploaded his photo in 2015, but Hipwee re-uploaded and modified it using a watermark and text without

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<sup>7</sup> Skripsi Ndaru Noer Prabowo. "Perlindungan Hukum Karya Cipta Fotografi yang Tidak Didaftarkan Menurut Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta". 2015

<sup>8</sup> Ida Bagus Kde Fajar Bukit Prnama, Si Ngurah Ardy, Ni Ketut sari Adnyani.

"*Perlindungan Hukum Atas Karya Cipta Fotografi Berdasarkan Pasal 40 Ayat 1 Huruf K Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta*". Program Studi Ilmu Hukum. Universitas Pendidikan Ganesha. Singaraja, Indonesia. 2021.

official permission from Danar, a photo that belonged to Danar in 2017. Hipwee uploaded the photo accompanied by credit, but Darat was still annoyed because there was no official permission. According to Danar, information can change if the viewer does not read the caption and only sees a photo with the Hipwee account name watermark. Before expressing his frustration on his Instagram account, Danar sent an email and provided an invoice for the use and modification of the photo. But Hipwee only deletes content that has already been used and uploaded, then considers the problem solved.

According to Kumparan.com, legally based on Act no. 28 of 2014 concerning Copyright, Danar's position is indeed at a weak point. However, when viewed from an ethical perspective, Hipwee is clearly in the wrong position because it steals other people's work and modifies the work (although in the end it is not for commercial purposes). In Instagram, there are many provisions regarding copyright, including modifications. However, these regulations are certainly not enough to strengthen Danar's position in the realm of Indonesian law. This is because Instagram's provisions are only limited to community rules and are not legally binding. Even though they don't have legal force, the Instagram rules have power as evidence in court. The community rules can be used as supporting evidence for indications of unlawful acts committed by someone who is considered to have violated the community rules. The unlawful act here is that one party feels harmed either materially or morally by the other party, and because of this loss, the guilty party is obliged to make compensation.<sup>9</sup>

Then in May 2017, Junaidi Hanafiah, a photographer from Aceh, filed a summons regarding copyright against the Governor of Aceh. Junaidi argued against the use of three photos in the book "Flash Back on Their Development of Aceh After the Helsinki MoU/Flash Back on Their Development of Aceh After Helsinki MoU". The book is published by

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<sup>9</sup> <https://kumparan.com/konner-indonesia/hak-cipta-kerikil-sandungan-hipwee/full>.

the Government of Aceh/Office of the Governor of Aceh. Before the Aceh Government duplicated Junaidi's work, the work had been published before.

According to Maulana Ridha as Junaidi's attorney, in the subpoena stated that the Government of Aceh had clearly and convincingly violated Economic Rights and Moral Rights in the form of pirated and printed photographs in an unlawful manner.<sup>10</sup>

In September 2019 Pitra Romadhoni from the Pitra Romadhoni Law Firm and Attorney for senior journalist A. Y Amazon Dalimunthe, filed the first subpoena to Falcon Picture. The subpoena was filed regarding the alleged violation in the form of a photo belonging to Amazon Dalimute "Warkop DKI Berjas Merah" which was used and commercialized in the film Warkop DKI Reborn 3, which has been shown in a number of cinemas in Indonesia.

According to Pitra Romadhoni, the subpoena was taken after Amazone Dalimunthe notified Ms. Frederica as the film's producer of copyright infringement, then Feredica's mother appointed Ody Mulya Hidayat, Max Picture producer as a mediator. Pitra explained that before using the work of his client, Falcon Picture should have asked permission before showing or producing the film Warkop DKI Reborn 3, as the owner of the rights to the photo.

Pitra believes that Falcon has not shown good faith in resolving copyright disputes for his client's work, as evidenced by Amzone Dalimunthe being offered a loss of only five million rupiah, accompanied by a statement that they borrowed photos that were considered to be worth less than that. Pitra also regretted the attitude of the Falcon representative who considered the copyright infringement trivial, and considered that the Amazon Dalimunthe photo had not had a major influence on the film Warkop DKI Reborn 3.

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<sup>10</sup> Bajasan.net. Diakses 5 Februari 2023

A period of 3 days was given by Pitra for the first subpoena and gradually up to the third subpoena. If there is no response, his party will report the alleged case to the police for legal proceedings. According to him, Falcon Pictures fulfills the requirements for copyright infringement as written in Article 12 and Article 115 of Act No. 28 of 2014 concerning Copyright. The partners are also investigating the possibility that the photo was used for the previously circulated Warkop DKI Reborn 1 and 2 films where the film was also produced by Falcon Pictures.

Amazone Dalimunthe confirmed that he was the copyright owner of the photo. Amazone said he owns his negative clichés and has never transferred the rights to the photo to anyone else, if anything it is only the physical form, not the Intellectual Property Rights.

According to Tigor Lubis, a senior photographer, as long as it can be proven what is the basis, in this case the cliché or photo file and can be proven technologically, then that is the right of the Copyright Owner.<sup>11</sup>

In 2021, online shop owners posted photos of their products on Instagram on behalf of fashion goods and women's needs on behalf of Nerdy Shop, Dindin Shop, Diga House, Ramay Store and Novi Chery Boutique. Nerdy Shop claims that Gallery Suci Ready Stock has stolen photos of its products and this is a form of copyright infringement and can result in losses for Nerdy Shop because Nerdy Shop has incurred quite high fees for product photos. Likewise with Dindin shop and Diga House who have designed catalog product photos using models to optimize product photos so that consumers are interested in their products. However, there are still many irresponsible online shops taking product photos from Dindin Shop and Diga House by claiming that the product photos are theirs.

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<sup>11</sup> [www.koranpelita.com.html](http://www.koranpelita.com.html). Diakses 5 Februari 2023



According to the product photo owners in Banda Aceh City, product photo piracy is considered trivial and rarely processed. Law enforcement officials are also considered to lack socialization regarding copyright infringement in photography, so that duplication and piracy are considered commonplace.<sup>12</sup>

Then in 2018 Aryono Hubono Djati uploaded a portrait of filmmaker Tino Saroengallo on his personal Instagram account as a condolence, knowing that his photography results were re-uploaded by online media. Aryono Hubono Djati reported that as many as eight online media he found had used his photographic work without permission. The 8 online media are Detik.com, MetroTVNews.com, MataMata.com, Politik.com KapanLagi.com, Merdeka.com, TribunNews.com, Grid.id.<sup>13</sup>

According to several cases that have occurred in Indonesia, there are several points in common regarding how Copyright protection for photography is implemented, among others:

#### 3.2.1. Factors causing copyright infringement of photography

The cases that have occurred in Indonesia seen from several online media in Indonesia have occurred due to several reasons including, firstly a lack of understanding of the protection of Photographic Copyrights. This is seen from among influencers and business people who do multiplication and think it is trivial. The use of official credit and permits must be made to the owner of the Photography Copyright, especially since the photo will be used for commercial purposes. Copyright owners must respect their right to protection

#### 3.2.2. Moral Rights and Economic Rights.

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<sup>12</sup> Cut Gebrina Tassha. perlindungan hak cipta karya foto produk yang dipublikasikan melalui *instagram* berdasarkan undang undang nomor 28 tahun 2014 ( suatu penelitian di banda aceh ). Fakultas Hukum. Universitas Syiah Kuala.2021

<sup>13</sup> www.radarindonesia.com. Diakses 6 Februari 2023

Second, there is a lack of socialization regarding the understanding of the protection of Photographic Copyrights among the public, so that the limitations on Copyright protection are still poorly understood among the public. Copyright is an exclusive right owned by the creator of a work, but the limitations on copyright protection have not been understood so that if a work has been published and has not been registered or received an official license, its strength will be weak in the eyes of the law even though morally the copyright owner is still disadvantaged. for the violations committed.

3.2.3. Third, the presumption of complexity in registering copyright licenses is one of the factors that discourages photographers from registering their work. According to photographers, if there is no binding legal force in a work, at least there is a procedure that must be followed before duplicating his work. However, this can be a weakness in the eyes of the law. Whereas if a reporting mechanism is carried out, the legal apparatus will carry out an investigation, forward it to the public prosecutor, and try it before the court.<sup>14</sup>

3.2.4. Settlement in violation of Photography Copyright

Of the several cases that have occurred in Indonesia according to sources read, the first step taken by the Copyright Owner is to issue an early warning, if there is no good faith from the Copyright infringer, both parties will mediate and negotiate, if the Owner does not find a clear spot Copyright will carry out a report which will then be investigated, then proceed to the public prosecutor, then

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<sup>14</sup> Cut Gebrina Tassha. perlindungan hak cipta karya foto produk yang dipublikasikan melalui *instagram* berdasarkan undang undang nomor 28 tahun 2014 ( suatu penelitian di banda aceh ). Fakultas Hukum. Universitas Syiah Kuala.2021

will be tried in court. Most of the cases that have occurred were resolved in mediation, and compensation was made outside of legal channels. However, the lack of understanding of the reporting mechanism makes it rare for reports to law enforcement officials.

Copyright registration is not mandatory, but creators must receive protection because it protects the creator's rights, such as economic, moral and exclusive rights. In this case, if there is a problem with copyright piracy, the Directorate General of Intellectual Property Rights can follow up on piracy problems that occur on reports from creators or copyright holders with the aim of providing protection for these copyrights.

The law enforcement process can occur if there is a report from the copyright holder. However, what happened was that there was never any incoming report on violations that occurred in the Banda Aceh area. Reports of copyright holders play a very important role in protecting a work, as well as a product whose copyright has been registered. Data from the Aceh Ministry of Law and Human Rights states that there has never been a report on a product photography work on Instagram that has been violated to the reporting stage. The practice of protecting the copyrights of photographic works is very weak because a lack of knowledge regarding the Copyright Act has an impact on Copyright holders being negligent in reporting if there is a violation.

### **3.2. Efforts that should be made by the government to provide protection for photographic works in Indonesia**

Legal protection is given to legal subjects through several regulations, namely laws that apply in society and in their implementation there is a sanction in the form of legal instruments that are both preventive and repressive in nature.

### 3.2.1. Preventive Legal Protection

Protection provided by the government with the aim of preventing violations before they occur. This is contained in the Laws and Regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation.

Preventive efforts taken by law enforcement officials to prevent the taking of photographic works without the permission of the creators are by socializing the Copyright Law to all members of society. Law No. 28 of 2014 regarding Copyright which is being widely discussed actually has the opportunity to be disseminated by the government to the public since this law was enacted. With a cursory observation, it seems that the socialization efforts have not been maximized in society because in the field many members of the public seem unprepared to carry out the mandate of this law.

The existence of the Copyright Law is very important for society because it covers so many interests, it is appropriate that socialization efforts are carried out more seriously so that its application becomes effective. The lack of socialization process for this Law is evident from the fact that there are so many violations that are still ongoing in society after this Law was enacted.

### 3.2.2. Repressive Legal Protection

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment and additional punishment given if a dispute has occurred or a violation has been committed.

Dispute resolution mechanisms through litigation can be pursued through interim decisions, civil lawsuits and criminal lawsuits, while alternative dispute resolution is carried out by means of mediation, negotiation, conciliation and arbitration.

Responding to the frequent occurrence of copyright infringement on the internet, the Ministry of Law and Human Rights together with the Ministry of Communication and Information Technology issued Ministerial Regulation Number 26 of 2015 concerning Implementation of Closing Content and/or Related Rights in Electronic Systems 58 to facilitate the complaint process and follow-up to sue violations Copyright which can be accessed on the web page of the Directorate General of Intellectual Property Rights. The steps needed are to report suspected violations, then fill out the form online, then the Directorate General of Intellectual Property Rights will verify it.

The Ministry of Communication and Information will close (takedown) part or all of the content that violates copyright or makes the site inaccessible for 14 working days after the court's decision.

According to sources from this study, it is still rare to use litigation settlement. Several cases only regretted the behavior of the violators who only copied a photographic work. So that many cases are resolved in the non-litigation route. If the Copyright owner wants to fight for his rights and takes the litigation route, the application of the Law and sanctions will apply in accordance with the judicial process that will be conducted.

Awareness of the protection of photographic works in Article 40 paragraph (1) Letter K of Act Number 28 of 2014 concerning Copyright is still minimally realized and tends to be taken for granted. The government has carried out socialization but what has happened is that

there are still many people who still underestimate the violations. Not only ordinary people, but also the media and people involved in digital media still often commit these violations.

Technological developments where all information can be uploaded and accessed easily on social media should be an alternative used by the government to spread understanding about the importance of protecting photographic works. Starting from the importance of protecting photographic copyrighted works and the mechanism for registering works with the Directorate General of Intellectual Property Rights. It would be better if in every City or Regency there was a regional regulation that established a special agency that was formed to deal with problems regarding Copyright. This will be more effective for the dissemination of understanding and resolution of problems in terms of Copyright.

#### **4. Conclusion**

From the research results, the implementation of legal protection for photographic works based on Article 40 Paragraph (1) Letter K Act Number 28 of 2014 concerning Copyright has not been carried out properly. This happened due to several factors, including firstly a lack of understanding of the protection of Photographic Copyrights. This is seen from among influencers and business people who do multiplication and think it is trivial. Second, there is a lack of socialization regarding understanding of the protection of Photographic Copyright among the public, so that restrictions on Copyright protection are still not well understood among the public. Third, the presumption of complexity in registering Copyright licenses is one of the factors that makes photographers reluctant to register their work. Dispute resolution will be carried out in accordance with judicial procedures if a report has been made, but the lack of understanding of the reporting mechanism makes it rare for reports to law enforcement officials.

The government has made efforts to protect photographic works in Indonesia in two ways, namely preventive and repressive protection. Efforts that should be made by the government to provide protection for photographic works in Indonesia are that the government should use these technological media to convey information about how important it is to protect copyrighted works of photography. Repressive protection is carried out for dispute resolution to occur. The need for legal counseling regarding an understanding of detailed registration procedures, including benefits, processes, requirements in the registration of copyrights, especially photographic works carried out by the authorities, in this case, the Directorate General of Intellectual Property Rights. And it would be better if there were regional regulations that established a special body to handle Copyright in the City/District, that way socialization would be easier to do, and the process of dealing with Copyright would be easier.

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