

UNDERGRADUATE THESIS

LEGAL PROTECTION FOR PORTRAIT OBJECTS

COMMERCIALIZED ON PHOTO MARKETPLACE (FOTOYU)



By:

Rifqi Aiman

Student's ID B011201366



BACHELOR OF LAW PROGRAM

FACULTY OF LAW

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SUPERVISOR APPROVAL

LEGAL PROTECTION FOR PORTRAIT OBJECTS COMMERCIALIZED ON PHOTO MARKETPLACE (FOTOYU)

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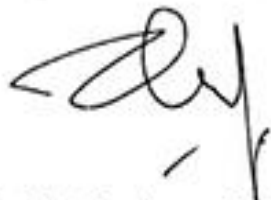
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LEGAL PROTECTION FOR PORTRAIT OBJECTS COMMERCIALIZED ON PHOTO MARKETPLACE (FOTOYU)

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Starting truly that the writing of a thesis entitled

LEGAL PROTECTION FOR PORTRAIT OBJECTS COMMERCIALIZED ON PHOTO MARKETPLACE (FOTOYU) is truly my work. As for that is not my work in writing this thesis, it is given a citation mark and show in bibliography.

If in the future it is proven that my statement is not true, I am willing to accept sanctions in accordance with the regulations of the Minister of National Education of Republic of Indonesia Number 17 of 2010 and the applicable laws and regulations.

Makassar, 29 October 2024

Stated By,



Rifqi Aiman

B011201366

FOREWORD

All praise to Allah SWT, the Almighty god who has created the world and within for his power, mercy, and his blessing given to the writer, so that may complete the final thesis with the title **“LEGAL PROTECTION FOR PORTRAIT OBJECTS COMMERCIALIZED ON PHOTO MARKETPLACE (FOTOYU)”** which be a requirement for me to achieve my bachelor degree and obtaining a Bachelor of Law degree at the faculty of law of Hasanuddin University. Shalawat and salam do not forget the author haturkan to the king of Rasulullah SAW. May we all get his syafa'at on the promised day.

During the writing of this final project, I certainly gets some obstacles, thanks to the Grace and help of Allah SWT I can complete the writing of this final project, as well as to people who have helped and encouraged me in order to complete the writing of this final project. So on this occasion the I would like to express my gratitude to:

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2. Prof. Dr. Hamzah Halim, S.H., M.H., M.A.P. as Dean of the Faculty of Law, University of Hasanuddin, Prof. Dr. Maskun, S.H., LL.M. as Vice Dean for Academic and Student Affairs, Faculty of Law, University of Hasanuddin, Prof. Dr. Iln Karita Sakharina, S.H., M.A. as Vice Dean for Resource Planning and Alumni, Faculty of Law, Universitas Hasanuddin, Dr. Ratnawati, S.H., M.H. as Vice Dean for Partnership, Research and Innovation, Faculty of Law, Universitas Hasanuddin;
 3. My parents who are the biggest support for the author, *Bapak* and *Mama* who never stop providing financial support and the best prayers to the author so that the author can complete this final project.
 4. Dr. Oky Deviany, S.H., M.H. as author's supervisor who has guided and provided input and advice to the author during the writing of this final project.
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6. International class batch 2020 friends, Rizal, Annisa, Fitri, Asda, Tely, Fadly, Hisyam, Yayat, and Sansan became the author's comrades-in-arms during the collage journey.
7. My friends in AMPUH, especially Batch 2020 Natalie, Raga, Khusnul, Zani, Olive, and so on, have provided a pleasant and unforgettable organizational experience for the author. Also, to the younger siblings of Batch 21 who have helped the author.
8. And to all my friends in Insan Cendekia Kendari, it such an honor and happiness to know you all, wish the best luck to all of you guys.

The author realizes that there are still very many shortcomings of the author during writing so that this thesis also certainly still has shortcomings both in writing and in the substance in it. So that the author humbly expects criticism and suggestions for readers so that this thesis can provide benefits for readers.

Makkasar, 29 October 2024

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line and a vertical stroke, resembling the name 'Rifqi Aiman'.

Rifqi Aiman

ABSTRACT

RIFQI AIMAN (B011201366) with the title “**LEGAL PROTECTION FOR PORTRAIT OBJECTS COMMERCIALIZED ON PHOTO MARKETPLACE (FOTOYU)**” under the guidance of **Oky Deviany** as the main supervisor

This research aims to examine the legal position of a person who becomes an object in a portrait which is then commercialized in a photo marketplace without the person's permission and the form of protection that can be given to a person who becomes the object of the portrait.

This research uses normative research methods by examining legislation, legal literature reading materials, and previous studies, which will then be further reviewed through a statutory approach and conceptual approach to obtain clear and clear research results.

The results of this study are (1) The use of an individual's portrait by a photographer, regardless of its personal or commercial application, is subject to the photographer's rights as the creator. However, this use is contingent upon obtaining prior consent from the portrait subject. This authorization requirement serves as a protection for the subject's privacy rights, which are upheld as constitutional rights. These rights are additionally supported by a range of legal frameworks, including copyright law, electronic information and transaction law, and personal data protection law. (2) a person whose portrait is commercialized without their consent is given civil protections, including the right to sue in court, as well as protection through criminal penalties such as imprisonment and fines. Specifically, under copyright law, the maximum fine can reach IDR 500 million. Also, under the Electronic Information and Transactions Law, there is a maximum penalty of eight years in prison and/or a maximum fine of IDR 2 trillion. Furthermore, protection can also be provided by third-party entities, such as photo marketplaces, by guaranteeing user privacy safety while adhering to existing regulatory standards.

Keyword: Privacy, Portrait, Commercialized, Photo Marketplace, Copyrights.

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CHAPTER I

INTRODUCTION

A. Background

Humans as creatures given reason by God are perfect creatures and can think and find an innovation. Intellect itself can be defined as one of the human spiritual equipment that functions as a tool to remember, analyze, and conclude a matter.¹ With this reason, humans can show their vast potential to innovate and create inventions, this is what is called intellectual property or intellectual intelligence.

The development of intellectual property itself is in line with the history of the development of human civilization, even since ancient times. Various kinds of technological technology developed by human civilization ranging from very simple to very innovative inventions that can be felt until now.

The rapid development of technology provides a new wind for the development of intellectual property rights itself. The history of technological development itself has started since the 18th century which was marked by

¹ Wikipedia, Reason, <https://en.wikipedia.org/wiki/reason> , Accessed on May, 13, 2024 at 07.10 WITA

the discovery of the steam engine by James Watt.² The invention of the steam engine made it easier for humans to produce all goods at a time when they were still dependent on human and animal labor. Along with the development of technology, steam power began to switch to Electric power which signaled the second Industrial revolution. The beginning of this period was marked by the discovery of electricity by Nicolas Tesla in the 1870s.³ During this period, machines were increasingly used, making the production process more efficient and cheaper. It didn't stop there, in the 20th century technological advances thanks to the combination of digital systems and spinning machines changed everything. At that time computers and robots became very efficient drivers for producing goods, in this era the internet was also discovered which then greatly facilitated all human work. In this period not only technology developed, but also many sciences and theories in it also developed so that it influenced the shape and system of human civilization.

The form of development of intellectual works is created through a very time-consuming and costly process, so that all intellectual works can

² Rizki Dewi A & Vivia Agarta F., 2023, *What is industrial revolution? History, Growth, and Impact*, accessed via <https://koran.tempo.co/read/ekonomi-dan-bisnis/482384/apa-itu-revolusi-industri-ini-sejarah-perkembangan-dan-dampaknya>, Accessed on May 10, 2024 at 14.13 WITA

³ Ikhsan, 2023, *History of the Development of the Industrial Revolution Era 1.0 to 4.0*, accessed via <https://sasanadigital.com/mengintip-perkembangan-revolusi-industri-mulai-era-1-0-sampai-4-0/#:~:text=Revolusi%20Industri%203.0%20adalah%20era,yang%20perlahan%20mendisrupsi%20peran%20manusia>. Accessed on May 10, 2024, at 14:30 WITA

also have economic value for the owner of the rights to intellectual works. this is what is called an exclusive right to intellectual property. The exclusive rights must certainly get a legal protection.

The protection of intellectual property itself is an interesting topic because there are many intellectual works created, also assisted by the rapid development of technology that raises various challenges to the protection of intellectual property. In addition, what makes the topic of the study of intellectual property rights interesting is that it can be seen from various perspectives including political, economic and legal perspectives.

Basically, intellectual property rights can be divided into two, namely copyright and industrial property rights.⁴ The protection of intellectual property rights is fundamentally necessary, especially for creators, so that they can utilize it freely. Commercialization of intellectual property rights is a common thing to do, which is done as a means to obtain a profit. Each use of intellectual property rights has different rules both copyright and industrial property rights.

Copyright is one of the types of intellectual property that provides protection for copyrighted works in the fields of science, art, and literature⁵ that has been realized in a tangible form. One of the creations protected

⁴ Marcelina Sutanto, 2021, *Legal protection of creations produced by artificial intelligence*, Undergraduate Thesis, Faculty of Law Hasanuddin University, p. 3

⁵ Law number 28 of 2014 on copyright article 1

under Law number 28 of 2014 on copyright (hereinafter referred to as the Copyright Law) is a photographic work. Photography is one type of art of painting or writing with light media and cameras as a tool to capture the light.⁶

In recent times photography has become a very popular field of art in society, with many people starting to pursue photography, especially young people and teenagers. The art of photography is one that is a favorite this is because they can capture every moment that they consider valuable so it is common for them to hire a photographer or take pictures using both their gadget cameras and professional cameras to capture these precious moments. Seeing the many opportunities in the field of photography, because in addition to being a hobby it also raises opportunities as a source of income makes many people who have a hobby in photography motivated to pursue this and make it a profession. In the context of photography as a source of income, photographers typically receive requests to hire their services for capturing events to be memorialized.

Commercialization of this work is a common occurrence where a photographer wants to benefit economically from his or her work by selling it online. The work can be in the form of landscapes, images of animals in the wild, and so on. Commercialization of these works is also supported by

⁶ Wikipedia, *photography*, <https://id.wikipedia.org/wiki/Fotografi>, Accessed on May, 13, 2024 at 21.10 WITA

the Copyright Law. The Copyright Law stipulates in article 8 that "Economic Rights are exclusive rights to obtain economic benefits from creation". Furthermore, Article 9 explains the definition of Economic Rights in Article 8 that one of the economic rights owned by the creator is the distribution of the Creation or its copy, which when referring to Article 1 of the Copyright Law, what is meant by distribution is the sale, distribution, and / or dissemination of creation and / or related rights products.

The development of the times that requires everyone to be more productive makes everything move very quickly. The emergence of so many innovations and breakthroughs that are so interesting among the community. PT Super Giga Generasi is one of the application developers that is quite popular. This is due to the fact that the innovation it offers is entirely novel. PT Super Giga Generasi is a developer of a social commercial application known as FotoYu (hereinafter referred to as the FotoYu). FotoYu creates a tool where a photographer and its yusers (term for FotoYu user, hereinafter referred to as the yusers) can interact where a photographer can take pictures and users can buy the photos. This makes it easier for photographers to get economic benefits from their work and also for users to capture moments without having to hire a photographer first.

As a platform to connect photographers and yusers, FotoYu provides freedom to photographers to upload their photographic works, which can then be sold immediately at various prices. These photographic

works typically include portraits of individuals or groups running, whether intentionally or unintentionally. Initially, the development and utilization of the FotoYu application appear acceptable. However, upon closer examination, several potential legal issues arise regarding its use. The commercialization of individuals portraits can lead to legal violations if a photographer sells these images to a third party without obtaining consent from the individuals depicted. This situation could infringe upon the rights of the person in the portrait, potentially violating both copyright and privacy rights.

Potential violations in photographic works, especially human portraits, are not only about copyright but also violations of privacy. The Copyright Law itself regulates the economic rights to portrait works that everyone must still obtain written permission from the person photographed or from his heirs in order to use the portrait for the benefit of commercial advertising or advertising.⁷ In addition to the security of one's privacy as the object of the portrait, there is also a potential violation of the provisions of the Law on Electronic Information and Transactions Article 26 which states that the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned, unless otherwise provided by laws and regulations.

⁷ Copyright Law Article 12

Reflecting on the case of *Nussenzweig v. DiCorcia*⁸ (February, 2006). In 2001 a photographer named Philip-Lorca DiCorcia photographed members of the Hasidic Jewish community in New York without their knowledge. One of the photos taken was a portrait of a member named Ermo Nussenweig. DiCorcia then sold some of the prints for high prices ranging from USD 20,000 to USD 30,000 to photo agencies. It wasn't until 2005 that Nussenweig found out and felt that this was commercial exploitation of him without his permission. In response, Nussenweig filed a lawsuit against DiCorcia and the photo agency for alleged violation of her privacy and publicity rights.

Based on the description above, author discovered a similarity in patterns, according to the author, this pattern could become an issue related to law and author want to examine the legal status of someone who becomes the subject of a portrait that has been commercialized without permission at the Photo Marketplace.

B. Formulation of Problem

Based on the background description above, the problem formulations in this study are as follows:

⁸ Detiknet, 2014, *7 photo theft cases that went to court*, accessed via <https://inet.detik.com/fotostop-news/d-2732821/7-kasus-pencurian-foto-yang-sampai-ke-meja-hijau>, Accessed on May 14, 2024 at 23.31 WITA

1. What is the legal standing of portrait objects commercialized without permission on the FotoYu app?
2. What is the Legal Protection of Portrait Objects that are commercialized without permission on the FotoYu application?

C. Research Purpose

Based on the Problem of Formulation above, Purpose of this research are as follows:

1. To know what is the legal standing of portrait objects commercialized without permission on the FotoYu app.
2. To Know What is the Legal Protection of Portrait Objects that are commercialized without permission on the FotoYu application.

D. Research Benefits

1. Theoretical Benefit
 - a. To increase knowledge, especially for matters relating to the regulation of portrait object legal standing and protection
 - b. To be a material consideration for lawmakers related to copyright, and personal data protection especially on the commercialization of portraits of people
2. Practical Benefits
 - a. Become a means of consideration for FotoYu in order to further enhance the protection of the rights of the portrait object.

- b. Become a means of knowledge and reminder for photographers to be more aware of the rights of portrait objects.
- c. Being a means of fulfilling the requirements for Bachelor graduation in the Law Study Program so that the author can obtain a law degree

E. Originality of Research

There are several research related to this research which become a guidance to writing this thesis, namely:

Author Name	Hana Aprilia Annisa	
Article Title	Hak Moral Penggunaan Potret Candid untuk Komersialisasi Menurut Undang-Undang Nomor 28 tahun 2014 Tentang Hak Cipta	
Category	Thesis	
Published Year	2018	
University/Institution	Universitas Indonesia	
Description	Previous Research	Research Plan
Issues and Problems	This research aims to examine whether portrait objects have moral rights according to Law No. 28 of 2014 concerning copyright and how the consequences of the existence of moral rights on the use of candid photos for commercial purposes.	This research aims to study the position and legal protection of a person's personal portrait that is commercialized without permission in the FotoYu application.
Research Method	Normative	Normative
Result and Discussion	The result of this research is based on monist theory, it turns out that moral rights and economic rights are not only owned by	The results of this research indicate that a person who becomes the object of a portrait commercialized without permission on the

	the creator but also owned by the portrait object as given a special article on copyright law Article 12 on economic rights to portraits.	FotoYu application can be given protection both according to copyright, personal data protection law and Information and Electronic Transaction law which all focus on protecting the right to privacy to the person who is the object of a portrait.
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Author Name	Satria Perdana, O.K. Saidin, T. Keizerina Devi Azwar, Jelly Leviza	
Article Title	Perlindungan Hukum Bagi Karya Fotografi Ditinjau Dari Undang-Undang Hak Cipta (Studi Kasus Putusan Pengadilan Negeri Surabaya Nomor: 10/HKI/Hak Cipta/2014/PN. Niaga Sby)	
Category	Iuris Studia Jurnal Kajian Hukum Vol. 2 No. 3	
Published Year	2021	
University/Institution	Bunda Media Grup	
Description	Previous Research	Research Plan
Issues and Problems	This study aims to examine how the actions that can be categorized as commercialization of photography without permission, how the legal provisions on the settlement of copyright disputes in the event of commercialization of photographic works without permission, as well as how the legal considerations of judges in Decision Number 10/HKI/Hak Cipta/2014/PN.Sby	This research aims to study the position and legal protection of a person's personal portrait that is commercialized without permission in the FotoYu application.

	reviewed from Law Number 28 of 2014 on Copyright.	
Research Method	Normative Juridicial	Normative
Result and Discussion	The results of this study that researchers found commercialization intended only limited to as stipulated in copyright law, does not open the potential for a broader understanding of commercialization and dispute resolution in the event of commercialization without permission can be done in various ways both litigation and non-litigation.	The results of this research indicate that a person who becomes the object of a portrait commercialized without permission on the FotoYu application can be given protection both according to copyright, personal data protection law and Information and Electronic Transaction Law which all focus on protecting the right to privacy to the person who is the object of a portrait.

Based on the above, it can be concluded that the research plan of the researcher has a difference with some of the previous studies as the author has shown in the table above. The author believes that the author's research plan is an original idea from the author and can be accounted for.

CHAPTER II

LITERATURE REVIEW

A. Privacy Right

1. Privacy Right Definition

In the increasingly advanced digital age, personal data has become a valuable commodity. Every step in the online world leaves a digital footprint that reflects everyone's identity and life. However, the existence of this personal data also brings inevitable risks. Privacy and security of personal data are important cornerstones that must be carefully guarded.

The concept of personal data is basically derived from the concept of the right to privacy as something that should be protected so that a person can enjoy life and to demand the law to protect that privacy, this concept was proposed and developed by Warren and Brandeis in an article entitled *The Rights to Privacy*.⁹

There is also another opinion about the concept of privacy as stated by Daniel J. Solove. According to him, there are at least six concepts about privacy, namely:¹⁰

⁹ Sugeng, 2024, *Indonesian Telematics Law*, Jakarta: Kencana, p. 70

¹⁰ *Ibid*, p. 62

- a. Right to privacy is conceived as the right to be alone. The concept of privacy as the right to be alone was popularized by Samuel Warren and Louis Brandeis which later became the pillar of modern privacy law thought adopted by legal thought and practice in America and Europe.
- b. Right to privacy is conceived as limited access to the self. Basically, this concept emphasizes on protecting a person from unwanted access.
- c. Right to privacy as a concept of confidentiality as a form of covering up something. According to Judge Richard Posner this is called Concealment of Information or the right to conceal discreditable facts about himself.¹¹
- d. Right to privacy is conceived as control over personal information, an ability to exercise control over information about oneself
- e. Right to privacy is conceived as personhood. which means to protect someone's personal integrity.
- f. Right to privacy dikonsepan sebagai intimacy as a control or limited access to oneself relation or aspect of life. The theory is not only limited to individual creation but human relation.

¹¹ Kristopher A. Nelson, 2011, accessed via <https://inpropriapersona.com/articles/daniel-soloves-six-general-types-of-privacy/>, accessed on April, 6, 2024, 14:27 WITA

Based on some of the explanations above, basically personal data is part of a person's privacy rights that must be respected and protected. There are several reasons why personal data must be protected, namely¹²:

- a. in order to maintain one's position at a certain level, one needs to cover some of one's personal parts in building relationships with others
- b. a person needs time to be alone so having a privacy space is very necessary
- c. because privacy is an independent right, it is a right that will be lost if it is shared or made public
- d. When there is a loss due to the violation of one's right to privacy, it will be very difficult to measure the value of the loss experienced by the person, besides that sometimes the physical loss experienced is smaller than the immaterial loss.

Personal data itself has the meaning of data relating to a person such as name, gender, marital status, occupation or residential address, medical records and so on. This is something that is attached to a person and can also be very sensitive data so that it can be said

¹² Sekaring Ayumeida Kusnadi & Andy Usmina Wijaya, 2021, *Perlindungan Hukum Data Pribadi sebagai hak privasi*, Jurnal Al-Wasath Vol 2 No. 1, Universitas Nahdlatul ulama Indonesia, Jakarta, P. 21.

that all of this information is a privacy right that is owned and should be protected.

2. Privacy Protection in Indonesia

Nowadays with the rapid development of technology, the protection of privacy is very crucial and important for everyone. Awareness of the importance of privacy rights is growing rapidly, especially in this era where all information can be easily obtained without caring about the existing boundaries.

It is undeniable that the protection of privacy in Indonesia is late when compared to neighboring countries such as Malaysia and Singapore, and even further behind with European countries.¹³ The protection of privacy in Indonesia or better known as the protection of personal data in Indonesia was only formalized and took effect at the end of 2022 yesterday or more precisely on October 17, 2022 with Law No. 27 of 2022 concerning Personal Data Protection.

This law specifically regulates the processing of a person's personal data as privacy and the limits that must be obeyed and must not be violated by the data manager. In relation to data regulation, this

¹³ Mochamad Januar Rizki, 2022, *Comparing the Contents of the Personal Data Protection Law in Indonesia with Other Countries*, Accessed via <https://www.hukumonline.com/berita/a/membandingkan-isi-uu-pelindungan-data-pribadi-di-indonesia-dengan-negara-lain-lt633b5e0a02300/> accessed on July 16, 2024, at 01.44 WITA

law distinguishes personal data into two parts, namely specific data and general data. Sensitive data according to this law are:

- a. Data and health Information
- b. Biometric Data
- c. Genetic Data
- d. Criminal Record
- e. Children Data
- f. Personal Financial Data
- g. other data in accordance with regulatory provisions legislation.

The general data according to this law are:

- a. Full Name
- b. Gender
- c. Citizenship
- d. Religion
- e. Marital status; and/or
- f. Private data that combined to identify someone

In addition to the Personal Data Protection Law, the actual protection of privacy already exists but is not specifically regulated in one law but can be found in several laws, such as the Information and Electronic Transaction Law, the Health Law and so on.

B. Intellectual Property

1. Intellectual Property Right

Intellectual property or intellectual property rights is a type of wealth that consists of intangible creations of an intellect.¹⁴ Intellectual property rights themselves are an immaterial right that comes from the work of the brain that reason and from the work of the heart, or it can be said that it is a combination of the results of brain and heart work.¹⁵ Intellectual property rights also refer to the legal and exclusive rights that should be granted to owners of their intellectual works. These works can be in the form of designs, drafts, names, and so on. This is in line with the definition of intellectual property rights according to WIPO (World Intellectual Property Organization) "Intellectual Property refers to creations of the mind, such as inventions, literary, artistic works, designs, and symbols, names and images used in commerce".

Furthermore, it can also be seen the definition of intellectual property according to the WTO (World Trade Organization), namely "Intellectual property rights are rights granted to a person for the creation of his mind. This right usually gives the creator the exclusive right to use his creation for a certain period of time."

¹⁴ Wikipedia, *Intellectual properties*, https://id.wikipedia.org/wiki/Kekayaan_intelektual
Accessed on May 12, 2024 at 15.00 WITA

¹⁵ Ok. Saidin, *Op.Cit*, p. 10

In addition, there is also a definition of intellectual property rights according to W.R. Cornish in Marcelina's thesis, namely¹⁶ "Intellectual Property Rights protect applicants of Ideas and Informations that are of Commercial Values"

Based on some of the definitions above, it can be formulated that Intellectual Property or intellectual property rights is an intellectual creation that can be in the form of literature, artistic works, designs, symbols, and other intellectual results that have commercial value and the owner of the intellectual property has rights that must be protected.

Furthermore, intellectual property rights when viewed according to civil law are included in the category of property law. This can be seen in the Civil Code in the second book on Objects precisely in article 499 which regulates that what is meant by property is all goods or every right that can be controlled by property rights, further in article 503 which regulates that objects can be classified as bodily objects or bodiless objects. In this case, what is meant by the object is the ownership rights attached to intellectual property.

¹⁶ Marcelina Sutanto, *Op.Cit*, p. 21

2. The History of Intellectual Property

The development of intellectual property rights in general can be divided into three periods, namely ¹⁷:

1. The Territorial Period

The Territorial Period is a period of development of intellectual property rights when there was no treaty or International Convention on intellectual property. This began with the establishment of The Venetian Patent Statute in 1474 in Venice.¹⁸

Furthermore, England also created an anti-monopoly regulation known as The Statute of Monopolies of 1623. Although the regulation was made as an attempt to fight monopolistic activities carried out by the nobility because it was considered incompatible with the Common Law of England, this statute excluded monopolies carried out by an inventor for his inventions which were True and First. Furthermore, right after the French revolution in 1791, the National Assembly of France voted the first patent regulation

¹⁷ Peter Drahos, *et al.*, The Universality of Intellectual Property Rights: Origins and Development, in *Intellectual Property and Human Rights*. p. 15

¹⁸ Known as the first patent law has been made, as has been quoted from <https://www.lsd.law/define/venetian-patent-statute> on June 13, 2024 at 21:23 WITA

into law.¹⁹ The development of Intellectual property outside Europe began in America, when America enacted the Patent Law in 1790. Then the area of intellectual property expanded further where in 1862 and 1875 England made regulations on Trade Marks, France in 1857, Germany in 1874 and America in 1870 and 1876.

It should be noted that at this time the protection of intellectual property is still regional in nature so that the protection of intellectual property will be different in each country.

2. The International Period

In the 19th century, interest in international cooperation on intellectual property grew. However, because at that time the nature of the protection of intellectual property was still regional, the countries felt the need to create a common system to overcome this. The Paris Convention of 1883 for the protection of industrial property and the Berne Convention of 1886 for the protection of literary and artistic works were created.

¹⁹ Jérôme Baudry, 2020, A Politics of Intellectual Property: Creating a Patent System in Revolutionary France, *Technology and Culture Journal*, Vol. 61, No. 4, Johns Hopkins University Press, Maryland, p. 1017

Starting from these two conventions eventually gave birth to other conventions in the field of intellectual property, such as trademarks in the Madrid agreement 1891, plant varieties in the International Convention for the protection of new Varieties of Plants, acts of 1961 and 1991, and so on.

The making of this treaty in the field of intellectual property encourages the formation of an international organization as a forum for member countries to promote and introduce the intellectual property system, the organization is The United International Bureaux for the protection of intellectual property which later turned into the World Intellectual Property Organization (WIPO) in 1967 and was under the auspices of the United Nations (UN) in 1974 in the field of Intellectual Property Rights.

3. The Global Period

Along with the rapid trade between countries involving intellectual property rights, WIPO is considered insufficient to protect intellectual property more broadly, especially in the trade area. This is due to the absence of international standards that protect intellectual property rights comprehensively in the trading system.

This prompted GATT (The General Agreement on Tariffs and Trade) members to start a meeting called the Uruguay Round in 1986. The round lasted for 8 years and the object of the round was to modernize and strengthen the international trading system including the protection of intellectual property in the trading system. Finally, on April 15, 1994, the WTO was formed.²⁰ (World Trade Organization) which replaced the GATT to regulate the trading system. There are more than 100 countries signed this pact. In addition to the formation of the WTO, the agreement born from the last Uruguay round was the birth of the TRIPs Agreement (Agreement on Trade-Related Aspects of Intellectual Property Right).

TRIPs Agreement basically aims to regulate and set minimum standards for the protection of IPR for WTO member countries. TRIPs Agreement also covers various types of IPR so that the scope of protection against IPR can be reached by TRIPs Agreement.

The TRIPs Agreement also greatly influences Indonesia to immediately adjust all regulations relating to intellectual property as a condition set for each WTO member country to

²⁰ Peter Drahos, *et al.* Op Cit. p. 21

adjust its national regulations to comply with the standards in the TRIPs Agreement.

With the TRIPs Agreement, the regulation of intellectual property rights, especially in the context of its protection when conducting bilateral trade and globally, the protection of the rights of the creator itself regardless of the jurisdiction where the intellectual property was created. However, each country still has the right to formulate its own rules. The TRIPs Agreement only provides a minimum standard that each member country must have in relation to the regulation of intellectual property.

The alignment of regulations on intellectual property based on the minimum standards set by the TRIPs Agreement is also carried out by Indonesia as a result of ratifying the WTO-TRIPs Agreement through Law no. 7 of 1994.

3. The Scopes Intellectual Property

As mentioned earlier that basically intellectual property or intellectual property rights can be divided into two, namely copyright and industrial property rights. More fully, intellectual property is divided into 7 (seven) parts, namely:

1. Copyright as stipulated in Law No. 28 of 2014 concerning Copyright. In short, copyright is an exclusive right that arises

naturally to the creator based on the declarative principle as stipulated in the Copyright Law.²¹

2. Patents as stipulated in Law No. 13/2016 on Patents. A patent is an exclusive right granted to inventors for their inventions in the field of technology.
3. Trademarks and Geographical Indications as regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications.
4. Trade Secrets as stipulated in Law No. 30 Year 2000 on Trade Secrets.
5. Layout design of integrated circuits as regulated in Law No. 32 Year 2000 on Layout Design of Integrated Circuits.
6. Industrial Design As stipulated in Law No. 31 of 2000 on Industrial Design.
7. Plant variety protection as stipulated in Law No. 29/2000 on Plant Variety Protection

C. Copyright

1. Copyright Definition

It has been mentioned earlier that copyright is an exclusive right that arises automatically based on the declarative principle after a

²¹ Ok. Saidin, *Op Cit*, p. 199

creation is realized in a tangible form without reducing the restrictions in accordance with the provisions of the legislation.²²

The use of the term copyright is still not known with certainty who first used it, nor is it clear which legislation first used it. However, according to Stanley Rubenstein, it was in 1740 that the term copyright was first used.²³

Copyright first entered Indonesia based on the principle of concordance of Dutch colonial law, namely Auteurswet 1912 Staatblad No. 600²⁴ Furthermore, after Indonesia's independence, the government is trying to make a regulation in order to support the intellectuals of the Indonesian nation can produce many innovations and refer to the original pragmatic values of Indonesian culture based on the ideology of Pancasila so that Indonesia's first Copyright Law was born, namely Law No. 6 of 1982 which was subsequently amended so that it became the current Copyright Law, Law No. 28 of 2014.

²² Copyright Law Article 1

²³ Zulkifli Makkawaru, Kamsilaniah, and Almuwasir, 2021, *Intellectual Property Rights Copyright, Patent and Trademark Series*, Sukabumi: Farha Pustaka, p. 32

²⁴ Ok. Saidin, 2016, *History and Politics of Copyright Law*, Jakarta: PT RajaGrafindo Persada, p. 7

2. Copyright Scopes

Work or creation is something that should be protected in the concept of rights. The creation in question is any work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or even expertise expressed in real form and has the characteristics and personality of the creator.

Protected creation should be the creation that comes from the results of the heart and taste, this is because copyright is born from the results of creativity and human activity. The ability to do the heart and taste is only an exclusive right owned by humans, so copyright can be said to be an exclusive right that is only owned by humans.

Copyright becomes an unlimited legal object because it is a product of human thought and concept of the creation of almighty God. The more human civilization develops, the more opportunities there are to produce new innovations and works. However, national and international copyright regulations only limit copyright in three ways:

1. Works in science
2. Works in art
3. Works in Literature

Furthermore, the creations that are protected under the Copyright Law are as follows:²⁵

1. Book, pamphlets, embellishments of published works, and all other written works;
2. Religious lectures, lectures, speeches, and other similar works;
3. Teaching aids made for the benefit of education and science;
4. Song and/or Music with or without lyrics;
5. Drama, musical drama, dance, choreography, puppetry, and pantomime;
6. Works of fine art in all forms such as paintings, drawings, engravings, calligraphy, sculpture, statues, or collages;
7. Applied art works
8. Architect Works
9. Map;
10. Batik artwork or other motif art;
11. Photography;
12. Portrait;
13. Cinematographic works;

²⁵ Copyright Law Article 40

- 14.translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works of transformation;
- 15.Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- 16.Compilation of works or data, either in a format that can be read by a computer program or other media;
- 17.Compilation of traditional cultural expressions as long as the compilation is an original work;
- 18.Video game; and
- 19.Computer Program

4. **Copyright Subject**

According to Volmar, every living being has something called the authority of rights, namely the authority to have rights and each right must have a subject of rights as a supporter of these rights. Every right certainly comes along with an obligation. The supporter of a right and obligation is called a legal subject. The legal subjects in question are humans (natuurlijk person) and legal entities (rechtsperson).²⁶ Every subject always comes together with an object as Pitlo said "... on the

²⁶ Peter Ahmad Marzuki, 2008, *Introduction to the Science of Law: Revised Edition*, Kencana: Jakarta, p. 206

one hand there is a person, namely the subject of the right and on the other hand there is an object, namely the object of the right."²⁷

If associated with copyright, then the subject of copyright is a creator of both humans and legal entities obtained legally. While the object of copyright is an immaterial property rights over the creation that has been realized in real form. The creator in question is if mentioned in the creation, stated as the creator on a creation, mentioned in the creation registration letter, and / or listed in the list of creations as the creator.

5. Moral Right and Economy Right

Exclusive rights in copyright are a right owned by the creator in order to exploit the work. Exclusive rights according to copyright law consists of two rights, namely moral rights and economic rights.²⁸ According to Hutauruk, there are important elements that must be contained in it, namely:²⁹

1. Rights that can be transferred, assigned to another party
(economy right)
2. Moral rights which under no circumstances and in no way
can be abandoned to him.

²⁷ Ok. Saidin, *Op Cit*, p. 235

²⁸ Copyright Law Article 4

²⁹ Ok. Saidin, *Op Cit*, p. 200-201

Moral rights are rights that will always be attached to the creator even after the creation changes hands for the implementation of these rights can be transferred by will after the creator dies. The rights owned by the creator are:³⁰

1. That the creator has the right to include or not include his/her Name on the copy of his/her work in the case of public use.
2. The creator has the right to use his/her real name or pseudonym on his/her work.
3. To change his/her creation in accordance with the propriety in the society.
4. Change the title or subtitle of his/her work
5. Defend his/her rights in the event of distortion of the work, mutilation of the work, modification of the work, or anything that is detrimental to his/her honor or reputation.

In addition to moral rights, the exclusive rights of copyright are economic rights. Economic rights are intended for owners and holders of copyright can get economic benefits from the creation. As for what is meant by economic rights owned by the owner or copyright holder is³¹:

³⁰ Copyright law Article 5.

³¹ Ibid, Article 9

1. Publication of creation
2. Multiplication of creation in all its forms
3. Translation of creation
4. Adapting, arranging, or transforming the creation
5. Distribution of the work or copies thereof
6. Performance of creation
7. Announcement of creation
8. Creation communication
9. Leasing of creation

Economic rights as mentioned earlier that can be transferred ownership, the transfer of ownership as stipulated in the Copyright Law can be passed in several ways, namely:³²

1. Inheritance
2. Gift
3. Waqf
4. Will
5. Written Agreements; or
6. Other permissible reason by the law provision

³² Ibid, Article 16

D. FotoYu

1. FotoYu Definition

The development of technology is very rapidly affecting aspects of human life, especially in the economic sector. This development produces many creative ideas that can be used to advance the economy in a country, this is what is then known as the creative economy.

According to Howkins³³ The creative economy is an economic activity where the input and output are ideas. From that idea, a creative person participates in this activity and gets a large income. Some examples of creative economic activities are in the culinary field, digital marketing, artwork, and the like.

At this time where the creative economy is growing very rapidly, there are also various startup companies in the community, one of which is FotoYu. FotoYu itself is a platform founded by PT Giga Generasi. FotoYu itself is a marketplace photo platform that connects users and photographers.

FotoYu, a photo marketplace, provides an innovation that uses artificial intelligence technology called RoboYu to help users find their photos on the FotoYu platform.

³³ Ahmad Thariq Syauqi, 2020, *Startups as Economic Digitalization and its Impact on Creative Economy in Indonesia*, Universitas Gajah Mada: Yogyakarta

2. How FotoYu works

As a marketplace that matches users with photographers, FotoYu offers a resolution so that one does not need to hire a photographer to get a portrait from a photographer. As mentioned earlier, FotoYu offers an innovation, namely using artificial intelligence technology on its platform, RoboYu.

Before using FotoYu, FotoYu first requires its users to collect user data first, the data required is the user's facial biometric data which will later be used by Roboyu to search for user photos that have been uploaded to the FotoYu server by photographers. In addition to facial biometric data, Roboyu also collects location data from the user's cellphone, both of which will be encrypted by each Roboyu.³⁴

The technology used by each roboyu to find user photos is Face Recognition technology, where searches are based on matching user biometric data against photos that have been uploaded on the FotoYu server by photographers. Furthermore, photos that are considered to have the same level of similarity will be displayed on the user's

³⁴ FotoYu, How it Works, Accessed via <https://www.FotoYu.com/how-it-works> Accessed on July 5, 2024 at 20.55 WITA

homepage with two types of watermarks, namely face veil watermark³⁵ dan paid watermark.³⁶

In the FotoYu application, photos that have been uploaded to the server and then displayed on the user's homepage are classified into two types, namely individual photos and team photos. Own photos are photos where there is only one person in the photo, while team photos have several people in one photo either intentionally or unintentionally. Each of these photos can be purchased by users according to the transaction flow set by FotoYu.

³⁵ Face Veil Watermark is a watermark that partially covers the face in the FotoYu application but can still be recognized as the person in the photo.

³⁶Paid Watermark is a watermark placed on content that has not been purchased by the user and will be removed once the user has confirmed payment.