

Written Approval for Commercialization of Portrai Photography: A Study of Law No. 28 of 2014 in the context of Improving the Distro Business in Indonesia

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Written Approval for Commercialization of Portrait Photography: A Study of Law No. 28 of 2014 in the context of Improving the Distro Business in Indonesia

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ABSTRACT

Purpose: The purpose of this research is to examine the rules of written approval for the Commercialization of Portrait Photography as contained in Article 12 Paragraph (1) of the Copyright Law No. 28 of 2014 in the context of Improving the Distro Business in Indonesia.

Design/methodology/approach: The type of legal research used is normative juridical research. The approach used in this research is the statutory approach and the conceptual approach. The sources of legal materials used in this doctrinal research consist of primary legal materials and secondary legal materials. The collected legal materials will be analyzed in a qualitative normative manner by reviewing, interpreting, and constructing statements contained in in-laws and regulations and other legal documents related to issues related to photo commercialization.

Findings: Given the increasing competition in the business world, many creative business actors make their productions interesting, one of which is done by making t-shirts with portraits of artists and public figures obtained from the photographer who took the photo shoot. For example, example, a photographer takes a photo of an artist and uses it to line up his photo studio by making advertisements or billboards for the artist's portrait in his photo studio and has obtained permission from the artist, then the photographer sells the results of his work to the person, who by that person takes the portrait of the artist in the photo. fit on t-shirts to produce and sell. In this case, the photographer and the person who bought the photographer's portrait (portrait photography) violated copyright because the commercialization of portrait photography contained in the t-shirt was carried out without written permission from the person being photographed, while the regulation of portrait commercialization in Law No. 28 the year 2014 concerning Copyright, permission or approval of the person being photographed is only limited to commercialization for advertising and billboards, even though there are economic benefits that the t-shirt seller gets from the sale of the t-shirt and in fact, the t-shirt sells because the buyer bought the t-shirt because of the artist's portrait. in the shirt.

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I. INTRODUCTION

One of the actual developments that have received careful attention in the last ten years and a trend that will continue in the future is the increasingly widespread flow of globalization, both in the social, economic, cultural, and other fields of life. The development of information technology and transportation has made activities in the trade sector increase rapidly and have even placed the world as a single common market. The problem of copyright to photography in Indonesia is also growing along with the enactment of copyright laws because the existence of copyright laws alone is not enough to guarantee the protection of the rights of the creator, there are still many violations of a copyrighted work caused by lack of copyright. understanding of IPR

law, especially copyright, and also the lack of public awareness of the rights protected by science and technology law, especially copyright protection in the field of photographic works.

Problems that arise are related to the content of provisions of Article 12 of Law No. 28 of 2014 concerning Copyright which essentially prohibits commercial use, reproduction, announcements, distribution, and/or communication of portraits made for advertisements or advertising without the written consent of the person who photographed or his heirs. This means that the prohibition of commercialization of portrait photography is prohibited for advertising and billboards (Perdana et al. 2021). The problem that arises is, what if the commercialization of portrait photography is not done through and not for advertising or billboards.

For this reason, it is necessary to find the right understanding and benchmarks that are universal, considering that copyright is a universally recognized right. Furthermore, because there are still no statutory provisions on copyright that stipulate strictly regarding photographic copyrighted works and their supporting rights, it is necessary to develop and find an appropriate and appropriate legal framework for the protection of the commercialization of portrait photography in Indonesia.

II. METHODOLOGY

A. Types of research

The type of legal research used is normative juridical research, namely the type of research by reviewing or analyzing laws and regulations as well as from various other library sources that can explain and provide a juridical basis (Muhaimin 2020), related to problems related to services in the management of free wifi in the Surabaya area in particular and East Java in general.

Thus, this research includes normative legal research, namely legal research conducted by examining various library materials (Benuf and Azhar 2020) using the deductive reasoning method. The deductive reasoning method is a way of thinking in drawing conclusions drawn from something general that has been proven true and the conclusion is intended for something specific (Sobur 2015).

B. Research Approach

The approach used in this research is the statutory approach and the conceptual approach (Bachtiar 2018). As for what is meant by a statutory approach, which is an approach taken to various legal rules relating to Portrait Photography Copyrights in Indonesia. Meanwhile, what is meant by a conceptual approach is an approach aimed at understanding legal concepts and legal principles that can be applied in solving problems related to Portrait Photography Copyrights in Indonesia.

C. Source of Legal Material

The sources of legal materials used in this doctrinal research consist of primary legal materials and secondary legal materials (Sonata 2014):

1. Primary Legal Material
Primary legal materials are binding legal materials (Syamsudin 2021) in the form of laws and regulations that will be used as the basis for analysis in this study, including Law Number 28 of 2014 concerning Copyright.
2. Secondary Legal Material
Secondary legal materials are materials that are closely related to primary legal materials and can help analyze and understand primary legal materials (Syamsudin 2021), such as books, research results, legal journals, scientific articles, mass media, internet media, and so on.

D. Legal Material Collection Method

To be able to collect some legal materials in a systematic, comprehensive, and in-depth manner, this study used data collection methods in the form of literature and documentation (library and documentation research). In this research, literature, and documentation are intended to collect, identify and analyze various sources of legal material originating from several laws and regulations, scientific writings, and various other legal documents related to the problems that will be discussed in this research.

E. Legal Material Analysis Method

In this study, the collected legal materials will be analyzed in a qualitative normative manner by reviewing, interpreting, and constructing statements contained in laws and regulations and other legal documents related to issues related to photo commercialization. Normative because this research is based on existing laws and

regulations as positive legal norms, while qualitative means data analysis that is based on efforts to find legal principles and constructions.

III. RESULTS AND DISCUSSION

Commercialization is a complex designation of the form of trading in certain objects to be made into commodities or products, thereby producing output in the form of profits. It is undeniable that in an era that is full of the influences of modernity and globalization, this has become a fertile field for the development of commercialization of every object. What is common, such as technology being commercialized, makes everyone able to have high-tech goods without having to bother making them, just exchanging them for money can make the goods theirs. Especially now that something that we can get from nature, namely "water" is also commercialized just by putting it in a bottle and then labeling it with a certain brand. Commercialization also touched on portrait photography, many t-shirts were produced and sold by entrepreneurs with portraits of the artist which the portraits were obtained from the photographer (are the creations of a photographer who had been sold).

The cause of commercialization is also not spared from the consumptive behavior of the community, which is an opportunity for capitalists to take advantage of what the community wants by providing it, of course, the provision is also not free, but there is a background in getting profits. That was what gave rise to commercialization activities. It is also in line with what was conveyed by Freddy Yuliharto in his book *Gejolak Kapitalisme* which tries to explain commercialization. Commercialization is used as a critical term that refers to the tendency in capitalism to change everything in life into goods and services that are sold for maximum profit (Yuliharto 1993).

Portrait photography or portraiture is photography of a character or group of people that store the expression, personality, and feelings of the subject. As with other types of portraits, the focus of the photography is usually the person's face, although the entire body and background or context can also be included (Setiawan and Bornok 2015).

The development of the portrait photography genre is inseparable from the ongoing portrait tradition that occurred in the pre-photography era. The cultural artifacts found to show how portraits have become a part of human life. prehistoric statues, wall paintings in ancient Egypt, reliefs of temples in the archipelago, and other relics can be used as examples of how the portrait tradition continued in its era. As the name implies, portrait photography subjects are living and moving objects, namely humans. Each subject has its own emotion, feeling, and character.

From the description above regarding the notion of commercialization and also the notion of portrait photography, it can be concluded that the meaning or understanding of the commercialization of portrait photography is a form of trading in photographic copyrighted works with the object of a character or group of people with the focus on the person's face such as the expression, personality and feelings of the subject for turned into a commodity or product that can generate profits.

In Indonesia, there is a tendency to distinguish between billboards and advertisements based on the category of placement, so billboards are used to refer to outdoor advertising media, while advertisements refer to indoor advertising media. However, when viewed from the etymology, billboards and advertisements have the same meaning. Advertising from the word *i'lan* (Arabic) means announcements, and billboards mean repeated calls, so the two terms related to this advertising media contain the same meaning, namely for activities to convey information to the public or the target audience of the message. In an advertisement, there are important elements that can distinguish advertising from other forms of communication such as ideas, goods, and services, non-personal, sponsorship, and payments. Advertisements are made to explore and introduce goods or services to the general public or the general public and influence them so that the advertised product attracts people to try or buy it (Safitri 2021).

Billboards are large advertising media, which are usually placed in areas that are frequently traveled, for example at the side of a busy highway intersection. Advertisements are derived from the word *re-klamor* (Latin: *Re* = repeated, *klamor* = exclamation). Advertisements contain advertisements that are intended to be seen by pedestrians and motorists who pass by. Billboards generally contain large and attractive illustrations, accompanied by slogans. In Indonesia, there is a tendency to differentiate billboards and advertisements based on the category of placement; so billboards are used to describe outdoor advertising media, while advertisements are used to refer to indoor advertising media. When viewed from the etymology, billboards and advertisements have the same meaning. Advertisement from the word *i'lan* (Arabic) means announcement, and billboard means repeated call; then the two terms related to advertising media have the same meaning, namely for activities to convey information to the public or the target audience of the message. sponsors. Marketing

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management sees advertising as part of an overall promotional strategy. Other components of promotion include publicity, public relations, sales, and sales promotion (Lestari and Petri 2015).

Based on the description above about the meaning of advertising and billboards, it can be concluded that advertisements and billboards are promotional tools to introduce products or services so that people are interested. Advertisements and billboards can be used for commercialization or not, but usually, advertisements and billboards are used as a marketing tool in a company or agency to sell or attract material profits through advertising promotions and billboards.

So overall, based on the conclusions above regarding the notion of commercialization of portrait photography and also about the definition of advertising and billboards, it can be concluded that the definition and criteria for commercialization of portrait photography not for the benefit of advertisements and advertising are a form of trade in photographic copyrighted works with the object of a character or group of people with the focus of the person's face such as the expression, personality and feelings of the subject to be used as a commodity or product that can generate profits through promotional means by using advertisements or billboards to introduce products or services so that people are interested in selling or making material profits.

The rise of business competition and the development of the creative industry market in big cities today, makes business actors create innovations to continue to exist in the business world. Printing may be familiar to us that this industry serves advertising and other promotions. But what if this view is changed, from just a company's advertising needs, into a place where individual expressions can print whatever they want, and print wherever they want. Or to print souvenirs for their acquaintances.

In connection with that, many businesses have sprung up, one of which is an effort to make a business "Distro Kaos fotografi potret", which is quite a dancing and profitable business opportunity, because young people nowadays like t-shirts with portrait designs of their idols, and t-shirts are clothes that are used by people of all ages.

The Business concept that is usually carried out by "Distro Kaos fotografi potret" is a t-shirt distribution concept that sells t-shirts with portrait photography designs, and sells t-shirts in retail and orders in large quantities. Because many young people now like t-shirts with portrait designs of their idols, t-shirts are clothes that are commonly used in society in everyday life. The concept of this distro is different because it provides special designs for attractive and unique portrait photography. In addition, the main elements that are offered or sold are high-quality t-shirts made of combed cotton, neat t-shirt stitches so that they can last a long time and are comfortable to use, use modern sewing machines, and provide excellent service every time they buy a t-shirt at their distribution. In terms of competition and marketing, there are many innovative ways or strategies used by business actors of portrait photography t-shirt distributions, including by conducting unique marketing methods with portrait photography design competitions to screen talent in portrait photography design, and the winner of the portrait photography design will get a prize. and used as an exclusive production t-shirt, and a t-shirt demonstration was held in front of the distribution so that the general public could see the t-shirts made by the distribution. In addition, it also provides vouchers to consumers who make purchases of more than Rp. 100,000.00 so that consumers return to making purchases at the distribution, and also provides free delivery services for large purchases. While the price offered by "Distro Kaos fotografi potret" varied and competitive ranging from Rp. 32,000.00 to Rp. 100,000.00 depending on the short or long sleeves and the model as well as the design of portrait photography.

Based on the provisions of the formulation of the articles of Law No. 28 of 2014 concerning Copyright, Definition of Advertisements, and Advertisements contained in Chapter II of the literature review in this study, it can be concluded that a photographer when going to commercialize his work in the form of portrait photography must be accompanied by written approval from the person being photographed, with limitations on the meaning of the use of commercialization (Reproduction, Announcement, Distribution, and/or Communication of Portraits) for portrait photography that is made only to be used for advertising and billboard purposes, namely the loading of portraits, among others in commercially used advertisements, banners, billboards, calendars, and pamphlets. That means that in commercialization other than for advertising or billboards, there is no need for the written consent of the person being photographed for the commercial use of portrait photography.

Meanwhile, in the business world, commercialization is not only carried out for advertising and billboards but is carried out for business purposes, such as selling t-shirts with portrait photography designs. Of course, in this case, the person being photographed must give up their ethical and economic rights to the profits from the sale of a t-shirt with a portrait photography design that includes a portrait of himself in the t-shirt, because Copyright Law No. 28 of 2014 does not require photographers to do portrait photography. on him must ask for his approval when commercializing his copyrighted portrait photography which is not for advertising or billboards.

In this case, what the photographer is doing is commercializing his copyrighted work in the form of portrait photography without the written consent of the person being photographed because it is not for

advertising or billboards is legal, in other words, it does not violate Copyright Law No. 28 of 2014 So automatically, business actors or T-shirt distribution owners with portrait photography designs also do not violate Copyright Law No. 28 of 2014, as long as the portrait photography used as the t-shirt design is obtained with the permission of the photographer and not through piracy or plagiarism.

Some rights are not protected in this case, namely the economic rights and ethical rights of the person being photographed because in this case, it is precise because of the self-portrait that is in the t-shirt as a t-shirt design that makes t-shirt sales from the distribution sell out. According to the author, it is better to add a broader provision in article 12 paragraph (1) of the Copyright Law No. 28 of 2014 regarding the meaning of commercialization of portrait photography which is not only for advertising or billboards but added for the benefit of the business world, there must be written approval from the person who photographed so that the rights of the person photographed are also protected.

IV. CONCLUSION

From the discussion that has been done, some conclusions can be drawn as follows:

1. Whereas according to Law No. 28 of 2014 concerning Copyright, the use of commercialization of portrait photography for business purposes T-shirt distributions that sell t-shirts with self-portrait photography designs according to Law No. 28 of 2014 concerning Copyright do not require written approval from the person being photographed.
2. People who produce, reproduce and sell t-shirts with portrait photography images for the business interest of T-shirt distributions, which are obtained with permission from the copyright holder but are not accompanied by the approval of the person being photographed are not included in the violation of Law No. 28 of 2014 concerning Copyright.

Based on the existing conclusions, some suggestions can be made as follows:

1. That it is necessary to stipulate a provision in the Copyright Law No. 28 of 2014 concerning the use of commercialization of portrait photography not only for advertisements and billboards but to be expanded for or added to business purposes which are carried out not through advertisements or billboards but also any other means, which yields material benefits.
2. That it is necessary to stipulate a provision in the Copyright Law No. 28 of 2014 for people who produce, reproduce and sell t-shirts with portrait photography images for the business interest of T-shirt distributions, which are obtained with permission from the copyright holder, must be accompanied by the approval of the person being photographed.

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