

Legal Protection Against Photographers Whose Works are Uploaded to Instagram Social Media Without Permission

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ABSTRAK

Karya fotografi merupakan ciptaan yang dilindungi sebagaimana ditegaskan pada Pasal 40 ayat (1) huruf k Undang-Undang 28 Tahun 2014 tentang Hak Cipta. Namun dalam prakteknya masih terjadi permasalahan mengenai Hak Cipta. Tujuan dilakukannya penelitian ini, untuk mengetahui perlindungan hukum terhadap fotografer yang karya ciptanya diunggah ke media sosial instagram tanpa izin dan untuk mengetahui upaya hukum yang dapat dilakukan oleh fotografer yang karya ciptanya diunggah ke media sosial instagram tanpa izin. Cara pengumpulan data dilakukan dengan wawancara dan studi dokumen. Cara analisis data dianalisis secara deskriptif kualitatif, yaitu dengan menjelaskan dan mengumpulkan permasalahan-permasalahan yang terkait dengan penelitian ini. Hasil penelitian menjelaskan bahwa, perlindungan hukum terhadap fotografer yang karya ciptanya diunggah ke media sosial instagram tanpa izin telah diatur dalam Undang-Undang Hak Cipta, Undang-Undang Informasi dan Transaksi Elektronik. Upaya hukum yang dapat dilakukan oleh fotografer yang karya ciptanya diunggah ke media sosial instagram tanpa izin, penyelesaiannya mulai dari tahap secara damai melalui secara mediasi, negoisasi atau konsultasi. Selain itu, pemilik hak cipta dapat mengajukan gugatan perdata dan berhak melakukan tuntutan pidana terhadap pelaku pelanggaran hak cipta karya fotografi yang diunggah tanpa izin pemilik hak cipta.

Kata Kunci : Perlindungan Hukum; Hak Cipta; Fotografer.

ABSTRACT

The Narcotics Unit of the Central Aceh Resort Police revealed 9 (nine) drug cases handled by his party, of which 3 (three) of the 9 (nine) suspects were known to be underage. The law on the criminal justice system for children requires every law enforcement officer to carry out diversification of cases of criminal acts committed by children. The purpose of this research is to find out the process of investigating children as perpetrators of narcotics crimes and to find out the problems of investigators in applying diversion to children as perpetrators of narcotics crimes. This research is a normative juridical research using a case approach and laws and regulations. The results of this study explain that the process of investigating children as perpetrators of narcotics crimes uses methods that have been regulated in the regulations of the juvenile justice system. Problems with investigators in the application of diversion, investigators consider that narcotics crimes carry a penalty of more than 7 years, so that the application of diversion against children who commit narcotics crimes cannot be carried out, and there are no guidelines (SOP) from the National Police leadership in terms of diversion so that investigators only rely on juvenile justice system law.

Keywords: Legal Protection; Photografer; Copyright.

I. Introduction

The preamble to the 1945 Constitution formulated the goals of the Indonesian nation, namely the creation of a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution and protecting all of Indonesia's bloodshed, educating the life of the nation, advancing public welfare and contributing to creating world order. Copyright is intellectual property in the fields of science, art and literature which has a strategic role in supporting national development and promoting public welfare as mandated by the 1945 Constitution of the Republic of Indonesia.

The development of information and communication technology has a strategic role in the development of Copyright, but on the other hand it is also a tool for law violations in this field. Proportional arrangements are necessary, so that positive functions can be optimized and negative impacts can be minimized. Given the rapid development of globalization as it is today, the existence of Intellectual Property Rights specifically in this case Copyright is something important to be able to protect the rights of creators produced, not only regarding moral rights but also economic rights in order to guarantee welfare for creators.

Legal protection for Copyright in Indonesia is currently regulated in Law Number 28 of 2014 concerning Copyright. Protected works include works in the fields of science, art and literature, consisting of: a). Books, pamphlets, published versions of written 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). Fine art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collages; g). applied art; h). architectural works; i). Map; j). Batik artwork or other motif art; k). photographic work; l. Portrait; m. Cinematographic 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). Compilation of Works or data, both in readable formats with Computer Programs and other media; q). Compilations of traditional cultural expressions as long as they are original works; r). video games; and s). Computer program.

Photographic works are creations that are protected as stated in Article 40 paragraph (1) letter k of Law 28 of 2014 concerning Copyright. However, in practice there are still problems regarding Copyright, as experienced by photography in Indonesia and the application of the Copyright Law alone is not enough to guarantee the protection of the rights of creators, there are still many violations against a copyrighted work. Such as copyright infringement on photographic works as creators of photographic works as copyright holders on photographic works and feel that their photographic works are used, published and reproduced by someone for commercial purposes without permission and do not include the original name of the creator of the photographic work. Such was the case with photographer Bambang Rizkiyanto, whose work was used as a sample for buying and selling on an Instagram account of an unknown person without the permission of the copyright owner.

Based on the description above, the problems that will be examined and discussed in this study can be formulated as follows:

1. What is the legal protection for photographers whose works are uploaded to Instagram social media without permission?
2. What are the legal remedies that can be taken by photographers whose works are uploaded to Instagram social media without permission?

II. Metode

This type of research is empirical juridical, that is, the legal research studied initially is secondary data, then it is continued with research on primary data in the field or on the community. The nature of this research is descriptive analysis, namely the results obtained in this study are able to

provide an overview of legal protection for photographers whose copyrights are uploaded without permission. The type of data used in this research is literature study and field study. The method of collecting data is done by means of interviews and Document Study. The data that has been collected from both primary and secondary data will be analyzed qualitatively, so that facts are found as symptoms of primary data that are connected with theories from secondary data. The data is presented descriptively, namely by explaining and collecting the problems associated with this writing.

III. Discussion and Analysis

Legal Protection Against Photographers Whose Works Are Uploaded To Instagram Social Media Without Permission

Indonesia does adhere to a civil law legal system, but in depth terms of protection of this copyright, universally countries with the common law and civil law systems basically use the same basic principles in providing rights protection create. Both of these systems base their theory on the use of reason or reason so that the law is considered as the work of reason or reason. Legal protection is any effort that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those who take legal action.

Copyright law protection in Indonesia is contained in Law Number 28 of 2014 concerning Copyright, which is a regulation that contains preventive and repressive legal protection. Copyright is the exclusive right of the creator which is automatically created with the real absence of restrictions in statutory provisions. Where this exclusive right is the right for the creator so that no other party uses it without the permission of the creator. This automatic protection is based on the Berne Convention (Automatically Protection) (Dharmawan et. al., 2018).

In today's increasingly sophisticated era where social activities can be accessed through social media. Activities on social media are activities that

are easy for all people to do, apart from that social media is very much used for copyrighted works of photography. The act of creating or producing a work of art can be done by everyone, this makes anything and everything can be used as an object of a photographic work. A portrait is part of a copyrighted work that is protected by Law Number 28 of 2014 concerning Copyright, which is emphasized in Article 1 number 10 what is meant by a portrait is a photographic work with humans as its object.

At first, photographic works still used film media, but along with the development of technology, photographic works no longer use film media to record or capture light reflections on objects but are now in the form of a digital file that can make it easier for other people to copy or print the results of the photo. . With these digital files, it can make it easier for other people to take advantage of someone's photographic work for their own interests without including the name of the creator or copyright holder or without the knowledge of the creator by duplicating or taking the photographic work on his personal Instagram social media.

As was the case with photographer Bambang Rizkiyanto, where the incident occurred in 2020, he posted his work via the Unsplash application. According to his presentation, this application is also a free application, in the sense that it is free to post, free to download. Then, he casually posted his photos to the (Unsplash) application, it turned out that one day after a few months, he saw an advertisement on the Instagram application, unexpectedly his work appeared, he had time to wonder, it seems he has never made an advertisement on the website. Instagram, inquired had inquired, it turned out that it came from an account of an unknown person who actually worked in the preset buying and selling section, because the photo he uploaded had been edited and used as a sample of buying and selling on the account of the unknown person.

The aforementioned act of uploading a photographic work without the permission of the copyright owner on Instagram social media, either to be re-uploaded personally or re-uploaded for commercial purposes, constitutes a violation of photographic works, both in terms of moral rights and economic rights. As previously explained that in accordance with article 9 paragraph (2) of Law Number 28 of 2014 concerning Copyright which explains that if there is a third party who wants to use the economic rights of the creator, then the third party must obtain permission from the creator or copyright holder. . Article 9 paragraph (3) of the Copyright Law also explains the prohibition of duplicating or using a work, including a photographic copyright, commercially without the permission of the creator or copyright holder.

According to Harry Fauzi, legal protection for copyright has indeed been given directly by law, one of which is as stated in Law Number 28 of 2014 concerning Copyright, namely "better protection for the economic rights of creators and/or owners related rights, including limiting the transfer of economic rights in the form of a sold flat." and "Use of copyright and related rights in multimedia tools to respond to developments in information and communication technology".

Harry Fauzi added, this protection could be after uploading to social media or before uploading. To defend his creation, what must be done is: 1). Registering the copyright of his photographic work, for the purposes of proof; 2). Include the photographer's logo/watermark in each photo. its function is so that others do not easily edit, duplicate or copy protection from duplication or piracy of ownership rights by others.

Legal protection is created to protect the rights of creators or copyright holders in all matters which include distributing works, selling or making continuations or derivatives of works that have been previously created. A photographic copyright is a creation that is protected exclusively considering that a photographic work is a creation that is embodied in a

tangible form, as explained in Article 4 of Law Number 28 of 2014 concerning Copyright which explains that: "Copyright is an exclusive right which contains two essences, namely moral rights and economic rights.

According to Ridwan, another effort made by the government regarding legal protection against copyright infringement of photographic works is the Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Closing Content and/or User Access Rights Violation of Copyright and/or Related Rights in Electronic Systems. This regulation explains that reporting of copyright infringement can be done through electronic or non-electronic media.

Ridwan added, apart from being protected by laws on copyright, legal protection for photographers' works is also protected under Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions as described in Article 25 that: "Electronic information and/or electronic documents compiled into intellectual works, internet sites, and the intellectual works contained therein are protected as Intellectual Property Rights based on the Provisions of Legislation".

Referring to Article 26 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, "every transfer of personal data of a person must first obtain permission from the data owner (prohibition of transfer arbitrary personal data). Based on the above, it can be concluded that the form of legal protection for photographic works uploaded on social media Instagram has been regulated in Law Number 28 of 2014 concerning Copyright.

Legal protection has also been regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and the Joint Regulation of the Minister of Law

and Human Rights of the Republic of Indonesia and the Minister of Communication and Information of the Republic of Indonesia Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Closing Content and/or Access Rights.

Legal Remedies That Can Be Taken By Photographers Whose Their Works Are Uploaded To Instagram Social Media Without Permission

Seeing the phenomenon of progress in the internet and social media, of course there are positive and negative things. The internet itself can be two opposite blades seen from who is in control of the social media. Can be a "blade" that is useful when in the hands of the right person. Such as being a means for exchanging information, exchanging opinions, providing useful knowledge and so on. However, if it is in the hands of the wrong people, the internet and social media actually become an arena that can harm others and far from a beneficial aspect.

Many modes of fraud today occur in the public space of the internet and social media, especially in social media Instagram, which incidentally is a social media for sharing photos or images for personal or business interests. Instagram can be one of the soft nests for fraudsters to live in. Several cases related to the abuse of the rights of the creator of a work occurred on Instagram social media and were originally from a violation committed by someone by admitting that the creation was a work of his own creation.

Social media Instagram can be a trigger for a copyright issue. Because Instagram itself seems less responsive to dealing with photos or similar images that are re-uploaded without the permission of the previous photo owner. Instagram works when the owners of Instagram accounts are busy reporting a photo or image that indicates a plagiarism or retrieval process without the permission of the previous owner. Instagram itself is a photo and video sharing application that allows users to take photos, take videos, apply digital filters, and share them with various social networking services,

including Instagram's own. One unique feature on Instagram is cropping photos into square shapes, so they look like the results of Kodak Instamatic and Polaroid cameras. As for the word "gram" comes from the word "telegram" which works to send information to other people quickly. It's the same as Instagram which can upload photos using the Internet network, so that the information you want to convey can be received quickly. That's why Instagram is a combination of the words instant and telegram.

Copyright law has provided various arrangements as a form of protection for the economic rights owned by the owner of the related rights. This comprehensive arrangement aims to make copyright law a progressive law that will lead to a just, prosperous and happy life for the owners of the related rights through the fulfillment of the economic rights of the owners of the related rights. This regulatory protection must be followed by consistent law enforcement by law enforcement officials in accordance with the provisions of the Copyright Law for the benefit of creators, copyright holders or related rights owners.

Actions that are harmful in social media, today the regulation of legal regulations is very strict. Law enforcement against copyright infringement has been carried out through legal efforts by the parties and sanctions have been applied to copyright violators based on Law Number 28 of 2014 concerning Copyright.

According to Ridwan, the copyright holder who has been harmed can express his request to stop the activity which he feels is detrimental, by requesting the confiscation of the work that has been announced or reproduced, and/or the means of copying used to produce works resulting from copyright infringement and related rights.

The same thing was conveyed by Harry Fauzi, efforts that can be made from social media in this regard are being able to block or report on social media by reporting onlineshop accounts or parties on social networks

who upload portraits without the permission of the copyright holder so that the account is closed. . However, this of course applies if the copyright holder himself makes a complaint to the social media, if you don't make an automatic complaint the account will still exist on the social network.

Dispute handling can be done other than through court media, namely by way of arbitration or alternative processes in accordance with the Copyright Law regulated in Article 95 paragraph (1), which states "alternative dispute resolution" namely conflict processes resolved by mediation, negotiation or conciliation. This settlement is an alternative route because it can resolve disputes in a peaceful way.

According to Ridwan, other efforts that can be made by copyright owners whose copyright works are used or uploaded by other people without permission can be resolved through mediation, negotiation or conciliation.

Ridwan added, if peace or mediation efforts cannot be reached by both parties, then the copyright owner can file a civil lawsuit in the form of compensation, as stated in Article 96 of Law Number 28 of 2014 concerning Copyright. Apart from being able to file civil lawsuits, copyright owners also have the right to file criminal charges against perpetrators of copyright infringement of photographic works uploaded without the copyright owner's permission.

Criminal sanctions that can be given to uploaders of other people's photographic works are regulated in Article 113 paragraph (3) of Law Number 28 of 2014 concerning Copyright which explains that: "A person who does not have the rights and/or permission of the creator or copyright holder or the copyright holder commits a violation of the economic rights of the creator or copyright holder as referred to in Article 9 paragraph (1) letter a, 42 letter b, letter e, and/or letter g for the sake of commercial use may be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

Based on the explanation above, it can be concluded that efforts that can be made by cipat photographers' works that are uploaded on social media by other people without permission can be resolved starting from the peaceful stage through mediation, negotiation or conciliation. In addition, copyright owners can file civil lawsuits and have the right to file criminal charges against perpetrators of copyright infringement of photographic works uploaded without the copyright owner's permission.

IV. Conclusion

Legal protection for photographers whose copyrights are uploaded to Instagram social media without permission is regulated in Law Number 28 of 2014 concerning Copyright. Legal protection has also been regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia and the Minister of Communication and Information of the Republic of Indonesia Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Closing Content and/or Access Rights. Legal remedies that can be taken by photographers whose works are uploaded to Instagram social media without permission, the settlement starts from the peaceful stage through mediation, negotiation or conciliation. In addition, copyright owners can file civil lawsuits and have the right to file criminal charges against perpetrators of copyright infringement of photographic works uploaded without the copyright owner's permission.

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B. Regulation

The 1945 Constitution of the Republic of Indonesia

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