LEGAL PROTECTION OF COPYRIGHTED PORTRAIT IN MAGAZINE

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THESIS ADVISOR RECOMMENDATION LETTER

This thesis entitled “LEGAL PROTECTION OF COPYRIGHTED PORTRAIT IN MAGAZINE” prepared and submitted by Amalia Ulfa Safarina Dewi in partial fulfillment of requirements for the degree of bachelor of law in the faculty of humanities has been reviewed and found to have satisfied the requirement for a thesis fit to be examined. I Therefore recommend this thesis for oral defense

Cikarang, June 13th 2017

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DECLARATION OF ORIGINALITY

I declare that this thesis, entitled “LEGAL PROTECTION OF COPYRIGHTED PORTRAIT IN MAGAZINE” is to best of my knowledge and belief, an originality piece of work that has not been submitted either in whole or in part, to another university to obtain degree

Cikarang, June 13th 2017

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The panel of examiners declares that the thesis entitled “LEGAL PROTECTION OF COPYRIGHTED PORTRAIT IN MAGAZINE” that was submitted by Amalia Ulfa Safarina Dewi majoring in Law from the Faculty of Humanities was assessed and approved to have passed the Oral Examination on Cikarang, Indonesia

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ABSTRACT

LEGAL PROTECTION OF COPYRIGHTED PORTRAIT IN MAGAZINE

Portrait is one of the copyrighted works that is protected by the law, namely Law No. 28 of 2014 on Copyright. But in the practice often happen infringements of portrait which is the owned by a copyright holder such as portrait used by the magazine. Most photographers or copyright holder themselves do not know and less-understand about copyright and the laws that govern it. Generally, photographers or copyright holder do not know that his work is protected by the Copyright law and has never registered his creation with the Directorate General of Intellectual Property Rights. The problem that arises now is how the legal protection of portrait works. The protection given to portrait works can be done in 2 ways, namely: first, preventively the protection given by the government with the aim to prevent the occurrence of infringements. And secondly, repressively is the protection provided by the government with the aim of resolving the dispute. This research includes the type of normative research to answer research problem.

Keywords: copyright law, portrait, legal protection
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Amalia Ulfa Safarina Dewi
CHAPTER I

INTRODUCTION

1.1 Background

In the globalization era is an era where human beings are required to develop themselves. Human being is said to be a creature that has the speciality of other creatures of His creation, due to the privilege possessed by a rational human being called intellectual – with the existence of his intellectual ability, human is capable of giving birth an "idea" formed in the mind which is an idea or thought. With a logical process, the already manifested idea is called “Works”

Works is born with time, energy, mind, creativity. The sacrifice makes the resulting work has added value with the economic benefits that can be enjoyed. So that, the economic value that attached can foster the conception of intellectual property

Intellectual Property, a work created from the intellectual of human in the field of literature, art, science and technology. The law that regulates protection for creators and inventors is called the law of intellectual property rights. The meaning of the explanation, which is protected intellectual property rights are not objects of his creation. Thus, intellectual property rights are called exclusive rights. The exclusive rights in question shall mean the rights attached to the right holder, if any person wishes to exploit or use those rights to recreate or reproduce the work of such copyrights shall obtain a permission or also called the license from the owner or the rights holder.

With the diversity of art and culture in Indonesia is very necessary to have law that is used to protect the creation of the Indonesian. Indonesia has participated as a member of Agreement Establishing The World Trade

In Indonesia, the protection of IPR law has been accommodated through various laws and regulations, such as Law No. 28 of 2014 on Copyright, Law 13 of 2016 on Patents, Law 20 of 2016 on Trademarks and Other Legislation Invite 29 Year 2000 on Plant Variety Protection, Law No. 30 of 2000 on Trade Secrets Act No. 31 of 2000 on Industrial Design.

Lack of public understanding to appreciate the work of others is minimal. This requires the enforcement of legislation in the field of IPR law. Legal protection of copyright in Indonesia is regulated in Law Number 28 Year 2014 concerning Copyright which gives the understanding that Copyright is “Hak Cipta adalah hak eksklusif pencipta yang timbul secara otomatis berdasarkan prinsip deklaratif setelah suatu ciptaan diwujudkan dalam bentuk nyata tanpa mengurangi pembatasan sesuai dengan ketentuan peraturan perundang-undangan.”. Copyright Law provides legal protection to copyrights, such as books, computer programs, pamphlets, layouts, lectures, lectures, speeches, music, drama, art, architecture, maps, batik art, photography, portraits and so on.

Actually there is no necessity to register any creation to the directorate of IPR, because if the Copyright is automatically obtained when the idea is finished expressed in the form of a work or a tangible creation. But it is recommended to register the work with the intention of becoming the material of proof if a dispute arises related to the creation. As regulated in Article 12 paragraph 1 of Law No. 28 of 2014 described providing legal protection to portraits. Number of violations

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1 General explanation about Law No. 28 of 2014
of a work of portrait, caused by the lack of public awareness of rights protected by copyright law, especially portraits

A correct understanding of the scope of Copyright is necessary to avoid confusion of understanding that often occurs in society. However, the understanding of the application of Article 12 paragraph (1) of Law no. 28 Year 2014 on Copyright is poorly understood by the public it is proven someone doing a photo shoot without the knowledge and permission of the person who became the object of shooting. So the result of shooting that without the consent of the person being photographed can be the benefit of the party taking the shoot with commercial purpose or gain profit.

Examples of a case is when a portrait is put into a magazine without the permission of the copyright holder. Then the person who saw his or her photograph was displayed or published without his or her knowledge and consent and subsequently filed a copyright infringement lawsuit, And there are still many examples of copyright infringement but one does not know yet that there is legal protection for people who feel harmed from copyright infringement of the portrait. Therefore, the writer raise the research entitled “LEGAL PROTECTION OF COPYRIGHTED PORTRAIT IN MAGAZINE”

1.2 Research Problem

In accordance with the description of the background, the discussion in the thesis entitled "Legal Protection of Copyrighted Portrait in Magazine", the following issues are raised:

A. How to determine the copyright holder and creator of the portrait under the Copyright Act?
B. How is legal protection against portrait infringement through magazines?
1.3 Research Objective

This research is also conducted with the aim that the research can provide benefits in accordance with what is desired. The purpose of this research are:

A. Objective Objectives
   a) To explain creator and copyright holder of portrait under copyright law
   b) To explain the legal protection of copyrighted portrait in magazine

1.4 Scope of Research

So many scope of issues and legal provisions that exist in the copyright arrangements in Indonesia, it is not possible to be discussed in a single article in the form of thesis writing. So in this writing the scope of the problem is limited only to the discussion of who holds the copyright of all kinds, copyright infringement that can be in the magazine and the effort of adjudication itself.

1.5 Research Benefit

In the research is expected to have benefit which can be taken. The benefits of this research are:

A. Theoretical benefits
   a. To give thought in the development of law science especially copyright law.
   b. As a reference for further research
   c. As reference material in terms of deepening the science of copyright law, especially in the field of portrait works

B. Practical Benefits
   a. For the government it is hoped that this research can be included to compile the legal product of its relation in the protection of copyright
b. For the people can be a source of knowledge and can help the parties related to the problem under study

c. For the creator can be a guide in obtaining the rights that must be accepted by the creator

d. For magazine companies can be a reference to avoid copyright infringement.

1.6 The Framework of The Research

This research was conducted systematically. Here is the systematic writing of this scientific research:

A. CHAPTER I INTRODUCTION
   This chapter discusses the background of the issues on which this paper is based. This chapter also loaded the purpose, benefits

B. CHAPTER II. LITERATURE REVIEW
   This chapter contains the law, the definition of copyright, the definition of exclusive rights, the understanding of the work relationship made by the holder of creation, all kinds of copyright, magazine,

C. CHAPTER III. RESEARCH METHODS
   This chapter covers the research methods used for this thesis writing

D. CHAPTER IV. ANALYSIS AND DISCUSSION
   This chapter contains discussion of the results of the analysis, answers to the questions that are in the research problem.

E. CHAPTER V. CONCLUSIONS AND RECOMMENDATIONS
   This chapter contains the meanings of the results of analysis and research aimed at policy making, users of research results and for subsequent researchers
CHAPTER II
LITERATURE REVIEW

2.1 Legal Protection

The law serves as a protection of human interests so that human interests are protected. The law must be implemented professionally so that the law can be done normal, peaceful, and orderly. Laws that have been violated must be enforced through law enforcement. Law enforcement requires legal certainty, legal certainty is a *justisiable* protection against arbitrary acts. People expect the legal certainty because with the legal certainty society will be orderly, safe and peaceful. The people expect benefits in the implementation of law enforcement. The law is for the people then the implementation of the law must provide benefits, the usefulness for the people should not be implemented law cause anxiety in society. People who get good and right treatment will realize a peaceful situation. The law can protect the rights and duties of each individual in the reality, with strong legal protection will materialize the general purpose of law: order, security, peace, prosperity, peace, righteousness and justice.

Legal Protection for people is really necessary. Legal protection for Indonesian people can be found in *UUD 1945*, therefore for every law which made by legislative have to provide legal protection for peoples, and has to be able to capture the aspirations of law and justice that develop in society.

There are a lot of expert opinions which can be quoted. According to *Satjipto Raharjo*, legal protection is providing a guidance to human rights harmed by others and the protection is given to the public so that they may enjoy all the rights granted by law. And The last one is, according to *Philipus M. Hadjon*,

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2 Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia*, Kompas, Jakarta, page. 121
Legal Protection is the protection of prestige and dignity, as well as the recognition of human rights owned by legal subjects under the legal provisions.³

Legal protection is divide into 2 two. First, Preventive Legal Protection is given by the government with the purpose to avoid before the infringement happened. It is contained within the laws with the intention to avoid the infringement or violations. The rule of law in the form of law or unwritten law, thus, contain a general rule which guides individuals in behaving in their social life. These rules become the limits for society in taking action. The existence of such rules and the enforcement of these rules give rise to legal certainty. The legal certainty contains meanings are, A general rule of to make the individual aware of what it may or may not do and in the form of legal security for people from the authority abuse, because with the existence of a general rule the individual can know what the State may charge or do to the people, Repressive legal protection is a final protection in the form of sanctions such as fines, imprisonment, and additional penalties provided if there is a dispute or an offense has been committed. One of the characteristics and at the purpose of the law is providing protection to the people. Therefore, the legal protection for the people must be realized in the form of legal certainty. ⁴

Justice is formed by right thinking, done fairly and honestly and is responsible for the actions taken. The sense of justice and the law must be upheld under the Positive Law to uphold justice in law in accordance with the reality of the people who desire the achievement of a safe and peaceful society. Justice must be built in accordance with the ideals of law (Rechtidee) in the rule of law (Rechtsstaat), not the state of power (Machtsstaat). The law serves as the protection of human interests, law enforcement should pay attention to 4 elements: Legal certainty (Rechtssicherkeit), legal Benefit (Zeweckmässigkeit), Legal justice (Gerechtigkeit), Legal guarantee (Doelmatigkeit).⁵

³ Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat Indonesia, PT Bina Ilmu, Surabaya, page 10
⁴ Ibid, Page 20
The role of government and the courts in maintaining legal certainty is very important. Governments may not publish rules that are not regulated by law or are contrary to law. In that case, the court must declare that such a rule is null and void, meaning that it is considered never existed so that the consequences of such a regulation must be restored to normal. However, if the government still does not want to revoke the canceled rule, it will turn into a political issue between the government and the legislator. What is worse if the legislator does not question the reluctance of the government to revoke the rules declared null and void by the court. Of course, such a thing does not provide legal certainty and consequently the law has no predictibility.\(^6\)

Based on the description above can be seen that the legal protection is any form of effort to human dignity and recognition of human rights in the field of law. The principle of legal protection for the people of Indonesia derives from *Pancasila* and the concept of the State of Law, both of which prioritize the recognition and respect for human dignity and prestige. Legal protection means there are two forms, namely preventive and repressive law protection facilities.

### 2.2 Intellectual Property Rights

#### 2.2.1 Intellectual Property Rights Definition

Based on the substance, Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

International organization under United Nation called as WIPO (*World Intellectual Property Organization*) defining Intellectual Property as creations of

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the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.\(^7\)

A more general definition, raised by United Nations Conference On Trade And Development (UNCTAD) - International Center for Trade and Sustainable Development (ICTSD). According to the two institutions, IPR is "The results of creative human effort protected by law."\(^8\)

The Directorate General of Intellectual Property Rights in the IPR guidebook explains that Intellectual Property Rights or the abbreviated "IPR" are rights arising from the brain's thought. Which produce a product or process that is useful to humans. In essence of Intellectual property rights is the right to relish economically the result of an intellectual creativity. Objects that are regulated in IPR are works that arise or are born due to human intellectual ability.\(^9\)

### 2.2.2 Scope of Intellectual Property Rights

To understand the scope of Intellectual Property Rights (IPR), it is necessary to know the types of objects, that are tangible (material) and immaterial objects as specified in Article 503 BW. This intangible item in Article 499 BW is called the right. Example, Mortgage Rights, Intellectual Property Rights. Both tangible and intangible objects may be the object of rights. Intellectual Property Rights (IPR) can be the object of rights, especially when participated exploited by other parties through license. The right to a tangible object is called the absolute right of an object, while the right of intangible objects are called the absolute right of a right.

Intellectual Property Rights (IPR) in general can be classified into in two main categories, namely:

A. Copyright (Law No. 28 of 2014);
B. Industrial Property Rights consists of:


\(^8\) Tomi Suryo, Hak Kekayaan Intelektual (HKI) di Era Global: Sebuah Kajian Kontemporer, Graha Ilmu, Yogyakarta, 2009, page 1

a. Patent (Law No.13 of 2016); 

b. Trademark (Law No.20 of 2016); 

c. Industrial Design (Law No.30 of 2001); 

d. layout design of Integrated circuit (Law No.32 of 2000); 

e. Trade Secret (Law No. 30 of 2000).

2.2.3 History of Intellectual Property

Appreciation of Intellectual Property Rights (IPR) has been conducted jointly by the relevant government officials and educational institutions and non-governmental organizations. But so far the socialization effort seems not quite successful. There are several underlying reasons. First, the concept and necessity of IPR have not been properly understood among the people. Secondly, less optimal enforcement efforts, either by IPR owners themselves or law enforcement officers. Third, the lack of common views and understanding on the importance of protection and enforcement of intellectual property rights among intellectual property owners and law enforcement officers, whether police officers, prosecutors or judges.

In the practice of international relations, IPR has become one of the important issues that have always been considered by developed countries in conducting trade relations and/or other economic relations. In short, IPR is the equivalent of the word used for Intellectual Property Rights (IPR), the right that arises for the results of the brain thought that produces a product or process that is useful to humans.

Historically, the laws on the IPR were first established in Venice, Italy in the case of patents in 1470. Caxton, Galileo and Guttenberg were listed as inventors who emerged during this period and had monopoly rights over their discovery. The laws on patents were then adopted by the British Empire in the TUDOR era of the 1500s and later was born the first law of the patent in the United Kingdom namely the Statute of Monopolies (1623). The United States has
new patent laws in 1791. The harmonization effort in the field of IPR first occurred in 1883 with the birth of the *Paris Convention* for patent, trademark and design issues. Then *Berne Convention* 1886 for copyright issues. The objectives of the conventions are standardization, discussion of new issues, information exchange, minimum protection and right acquisition procedures. The two conventions then formed an administrative bureau called the *United International Bureau for the Protection of Intellectual Property* which became known as the *World Intellectual Property Organization (WIPO)*. WIPO then became a special administrative body under the UN that handles the issue of the UN member's intellectual property rights. In addition to 2001, the *World Intellectual Property Organization (WIPO)* has established April 26 as *International Intellectual Rights Day*. Every year, WIPO member countries including Indonesia organize various activities in order to enliven the world's IPR Day. Since the signing of a *general agreement on tariffs and trade (GATT)* on 15 April 1994 in Marrakesh-Morocco, Indonesia as one of the States has agreed to implement the agreement with all its attachments through Law no. 7 of 1994 on *Agreement on Establishment of World Trade Organization (WTO)*. Appendices relating to *intellectual property rights (IPRs)* are the *Trade Related Aspects of Intellectual Property Rights (TRIP's)* which are a guarantee for the successful holding of fair and fair trade relations between countries.  

The conception of intellectual property ultimately also provokes to protect or sustain that wealth. This necessity creates a conception of legal protection of the IPR, including the recognition of rights to it. In accordance with the nature also, IPR is grouped as individual property rights that are intangible.

Introduction of IPR as an intangible property of private individuals and its simple explanation in the positive legal order especially in economic life is new in Indonesia. From the point of view of the IPR, the rule is necessary because respect, protection and protection will not only provide a sense of security, but

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10 Haris Munandar dan Sally Sitanggang, Mengenal Hak Kekayaan Intelektual (Hak Cipta, Paten, Merek dan Seluk-beluknya), Penerbit Erlangga, Jakarta, 2008, page 21
also create a conducive climate for increased enthusiasm or passion to produce innovative, inventive and productive works.

The historical background of IPR shows that in western countries awards of intellectual property or whatever individual thought results have long been applied in their culture which is then translated into legislation. The intellectual property rights of the western society are not merely legal instruments that are used solely for the protection of the intellectual work of a person but are used as a means of business strategy whereby because of a commercial invention or intellectual property, it is possible that the inventor may exploit his/her creation economically. The result of the commercialization of the invention allows the creator of intellectual work to continue working and improving the quality of his work and be an example for the individual or other party, so that there will be the desire of others to also be able to work better so that the competition arises.

In Indonesia, IPR became popular in 2000 until now. But, when the popularity has reached its peak, the graph will go down. When going down, came the law of cyber which was the development of the intellectual property itself. So the intellectual property will be carried along with the new sciences and along with the development of information technology that never stops innovating. IPR legislation in Indonesia began since the Dutch colonial era with the promulgation of Octrooi Wet No. 136 Staatsblad 1911 No. 313, Industrieel Eigendom Kolonien 1912 and Auterswet 1912 Staatsblad 1912 No. 600. After Indonesia's independence, the Minister of Justice of the Republic of Indonesia issued an announcement. JS 5/41 of 12 August 1953 and No. JG 1/2/17 dated 29 August 1953 on Temporary Registration of Patents. In 1961, the Government of Indonesia passed Law no. 21 of 1961 concerning Trademarks. Then in 1982, the Government also promulgated Law no. 6 of 1982 on Copyright. In the field of patents, the Government enacted Law no. 6 of 1989 concerning Patents which became effective in 1991. In 1992, the Government replaced Law no. 21 of 1961 concerning Marks with Law no. 19 of 1992 on Marks. With Indonesia participating in the Agreement Establishing the World Trade Organization, as a material of the agreement to participate in the WTO-GATT-TRIPs by endorsing
and enacting Law No. 7 of 1994 on the ratification of the Agreement Establishing the World Trade Organization. Indonesia is required to create and enforce legal provisions concerning intellectual property in accordance with the provisions of that WTO-GATT-TRIPs.

2.3 Copyrights

2.3.1 Legal Basis, Definition and History of Copyright

At first copyright is set according to Auteurswet Staatsblad 1912 No. 600, then amended and replaced by the Law No. 6 of 1982 regarding Copyright (State Gazette of the Republic of Indonesia Year 1982 No. 15, with addition to State Gazette No. 3217), which passed and enacted in Jakarta on 12 April 1982, Then amended by Law No. 7 of 1987 (State Gazette of the Republic of Indonesia Year 1987 No. 42, with addition to State Gazette No. 3362), enacted and enacted in Jakarta on 19th September 1987, which was amended again with the Law of the Republic of Indonesia Number 12 of 1997 on Copyright (State Gazette Year 1997 Number 29, with addition to State Gazette Number 2679), ratified and enacted on May 7, 1997, and amended again with Law of the Republic of Indonesia Number 19 Year 2002 regarding Copyright (State Gazette Year 2002 No. 85, with addition to State Gazette Number 4220), which was ratified and enacted in Jakarta on 29 July 2002, hereinafter referred to as Law Number 19 Year 2002 (Act No. 19 of 2002). And the last amendment of Copyright law is Law No. 28 of 2014.

Law No. 28 of 2014 give definition about copyright in article 1

A. Hak Cipta adalah hak eksklusif pencipta yang timbul secara otomatis berdasarkan prinsip deklaratif setelah suatu ciptaan diwujudkan dalam bentuk nyata tanpa mengurangi pembatasan sesuai dengan ketentuan peraturan perundang-undangan.11

B. Pencipta adalah seorang atau beberapa orang yang secara sendiri-sendiri atau bersama-sama menghasilkan suatu ciptaan yang bersifat khas dan pribadi.12

C. Ciptaan adalah setiap hasil karya cipta di bidang ilmu pengetahuan, seni, dan sastra yang dihasilkan atas inspirasi, kemampuan, pikiran, imajinasi, kecekatan, keterampilan, atau keahlian yang diekspresikan dalam bentuk nyata.13

D. Pemegang Hak Cipta adalah Pencipta sebagai pemilik Hak Cipta, pihak yang menerima hak tersebut secara sah dari Pencipta, atau pihak lain yang menerima lebih lanjut hak dari pihak yang menerima hak tersebut secara sah.14

Understanding Copyright or Hak Cipta is literally derived from two words namely hak and cipta. In Indonesian Dictionary, the word "hak" means a power given to a certain party that is free to use or not. Whereas the word “cipta” refers to the work of human by using the mind, feeling, knowledge, imagination and experience. So it can be interpreted that copyright is closely related to human intellectuals.

Copyright is an exclusive right or that only the Creator or Copyright Holder owns to govern the use of the work or the outcome of certain ideas or information. Basically, copyright is "the right to copy a work" or the right to enjoy a work. Copyright also allows the holder of such rights to restrict utilization, and prevent unauthorized use of a work. Exclusive rights contain economic value that not everyone can afford to pay, then to be fair the exclusive right in copyright has a limited certain validity period.

12 Ibid., Article 1(2)
13 Ibid., Article 1(3)
14 Ibid., Article 1(4)
WIPO (World Intellectual Property Organization) says copyright is legal from describing right given to creator for their literary and artistic works. Which means copyright is a legal terminology that describes the rights granted to the author for their works in art and literature.

Basically, copyright is a kind of private ownership of a creation in the form of an embodiment of a creative idea in the arts, literature and science. When people buy a book, people just buy the right to lend and keep the book as they wanted. The book is theirs in its real form of a book. But, they do not buy the copyright of the paper in the book owned by the author. So they don’t have the right to reproduce it.

With that frame of mind about the nature of copyright, you do not have the right to copy or reproduce books without the author's permission. Moreover, selling commercially by multiplicating book without permission from the author. The right to reproduce a work of writing is the exclusive right of the author or the person to whom the author diverts the right to multiply by granting a license.

The Writer conclude that, Copyright is an exclusive right. From the definition of copyright in Law Number 28 Year 2014 stated that copyright is an exclusive right; Is defined as an exclusive right because copyright is only granted to the creator / rights holder, and others may not use it or are prohibited from using it except by permission of the creator as the rights owner, or the person receiving the rights of the creator (rights holder) .The copyright holder Which is not the creator only has a portion of the exclusive right that is only in the form of economic rights only.

Copyright is related to the public interest. As has been pointed out that copyright is an exclusive privilege, but there are certain restrictions that Copyright must also pay attention to public interests. In general, the copyright of a particular creation that is considered important for the public interest is limited to its use so that there is a harmonious balance between individual interests and the public
interest. These common interests include: the interests of education, science, and research and development activities. If the state deems necessary, then the state may require the copyright holder to translate or reproduce it or the copyright holder may permit the other party to do so.

Copyright can be transferred or transferred. Like other forms of moving objects, copyright can also be transferred, either partially or in its entirety. This transfer in copyright is known in two ways: a transfer of copyright in the form of disposal of rights to other parties/persons, such as inheritance, grants, wills, written agreements, and other reasons justified by laws and regulations. And through Assignment, represents the transfer of copyright from one party to another in the form of granting permission/approval for the use of copyright within a certain timeframe, for example license agreement.

Copyright can be shared or itemized (divisibility)

Based on copyright implementation practices and also the 'Principle of Specification' norm in copyright, copyright is limited by: Time: for example the length of the production of an item for many years, Amount: for example amount the production of the goods of in one year, Geographic: for example the tape cover reads "For Sale in Indonesia Only"

2.3.2 Scope, Characteristic and principle of Copyright

Referring to the Copyright Act, the creations that has legal protection are art, literature, and science. From these three scopes, it explained by details in the provisions of Article 40 of Copyright law. Subject to the provisions of Article 40 of the Copyright Act, the protected creation consists of:

   a. Books, pamphlets, writings of published papers, and all other written works;
   b. Lectures, lectures, speeches, and other similar creations;
   c. Props made for educational and scientific purposes;
d. Songs and / or music with or without text;

e. Drama, musical drama, dance, choreography, puppetry, and pantomime;

f. Works of art in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, or collage;

g. Works of applied art;

h. Architectural works;

i. Map;

j. Works of batik art or other motif art;

k. The work of photography;

l. Portrait;

m. Cinematograph work;

n. Translation, interpretation, adaptation, arranger, modification and other works of transformation;

l. Hi. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expression;

o. Compilation of Creation or data, whether in a format that can be read by Computer Program or other media;

p. The compilation of traditional cultural expressions during this compilation is the original work;

q. Video games; And

r. Computer Program.

Characteristics on Copyright can be found in the terms

1) Copyright is considered a moving and intangible object

2) Copyright may be transferred or transferred, either entirely or partly because:

   a. Inheritance;

   b. Grant;

   c. Will;
d. Written agreement;

e. Other causes justified by the Laws and Regulations.

The main requirement if the Copyright is transferred to the assignee the transfer cannot be done verbally but must be in writing by an authentic or under-hand or under-seal deed.

Copyright contains some basic principles that are conceptually used as the basis for copyright arrangements in all countries, whether those embracing the Civil Law System or the Common Law System. Some of the principles are: ¹⁵

a. Copyright is idea that has been realized and be a tangible thing and original. This principle is the most fundamental principle of copyright protection, meaning that Copyright is concerned only with the embodiment of a creation. This principle can be derived into several other principles as lower principles. such as, A work must have originality to enjoy the rights granted by the law. originality is closely related to the embodiment of a creation, A work, has copyright if the relevant creation is manifested in writing or other material forms. This means an idea or a thought is not yet a creation and since Copyright is the exclusive right of the author or recipient of the right to announce or reproduce the work - it means that no other person may do such rights without the author's permission or the copyright holder.

b. A Copyright will exist when a creator embodies his idea in a tangible form, with the existence of an idea then a creation, copyright will be born by itself. The work may be announced or not announced, but if a work is not made public, the copyright remains with the creator.

¹⁵ Eddy damian, Hukum Hak Cipta, Alumni, Bandung, 2014. page 98
c. A work does not necessarily need to be announced to obtain a Copyright. A published or unpublished work may obtain Copyright.

2.3.2 Rights in Copyrights

Law No. 28 of 2014 differentiates Copyright into 2 (two) types of rights, namely economic rights and moral rights.

Economic rights are the right to gain value economic on Intellectual Property Rights. It is stated that economic rights due to Intellectual Property Rights are things that can be judged by money. Economic rights are in the form of a profit amount of money derived from license that is used by another party. Economic rights are taken into account because Intellectual Property Rights may be used or utilized by other parties in a profit-making industry or trade.

The types of economic rights in each classification of Intellectual Property Rights may vary. At Copyright, more types of economic rights than Patents and trademark. The types of economic rights to Copyright are as follows:

a. Right of reproduction, that is the addition of the number of creation by making the same, almost the same, or resembling the creation using the same or unequal materials. In Law No.28 of 2014 use term “penggandaan” while in the previous law they used term “perbanyakan”

b. Adaptation rights, ie the right to make an adaptation to an existing copyright. This right is regulated in the Bern Convention

c. Right of announcement, ie the reading, voicing, broadcasting, or dissemination of the creations using any means and in such a way that the creation can be read, heard, seen, sold, or leased by others.
d. Performance rights, right to express Works of art in the form of performances or performances by musicians, playwrights, artists, and models

Recognition of moral rights represents a form of public appreciation and respect for the creator of his creative expression. The moral rights are the attached rights of the creator that cannot be eliminated or removed for no reason whatsoever. This right follows the creator, even though the economic right to the creation has been transferred to another party. Moral rights can be transferred on condition that they have to be based on the will of the creator. While moral right is attached to the person of the creator. Moral right cannot be separated from the creator or inventor because it is personal and eternal. There are two common components contained in the moral rights of which are:

a. The Right of Attribution
   This right requires that the identity of the creator be attached to the work, either by its own name or by a disguise. In certain cases, and on the basis of the rational considerations of the creator. He can negate his identity and let his creation be anonymous. This can be done under conditions and with reasonable in circumstances. Basically the right of attribution is the recognition of the original creator who has created his work. This right serves to prevent inaccurate identification errors against the actual creator and protect the creator from the claim of others as the original creator.

b. The Right of Integrity
   The most prominent representation of the right of integrity is the personal image and reputation inherent in the creator. Through this right, the author may protect his creation and the title of his creation from destruction (distortion), mutilation or other modification without the author's permission. The creator can
only approve the adaptation and change of his creation if it does not interfere with his reputation.

Restrictively, the Copyright Law of Indonesia prohibits anyone from infringe the creator's moral rights without his / her consent by means of: Exclude or alter the names of the creators or pseudonyms of the authors listed on the works or copies in connection with their general use; put the name as the creator when he is not the creator; Changing or altering the title of the creation and the title of the work; Change the content of creation; Negates or alters any electronic information about the management information of the creator. The Creator or his heirs are entitled to challenge the infringement or to demand for doing of such moral rights even if the economic right has been entirely handed over.

The period of protection of moral rights relating to attribution rights, such as: the inclusion of a name pseudonym of the creator is valid indefinitely. Whereas the moral rights relating to the right of integrity, such as: altering / destroying the creation and the title of creation) apply in accordance with the period of protection of creation that have been made.

Based on the explanation of Copyright which gives to the moral rights and economic rights is basically specific to economic rights can be owned by the creator of one or more economic rights. But in the rights to its nature can be owned by the creator of a person or legal entity. A work created by more than one person, then under the terms of Article 33 of the Copyright Law, the creation is owned by the person who supervises or leads the settlement of the entire creation, while the moral right is not the case. This moral right still follows and attaches itself to the Creator, even though the Economic Right of Copyright has been transferred or transferred to others.
2.3.3 Procedure Registration and Term

In Indonesia, the period of copyright protection in general is:

a. During his life up to 50 years after his death, is the Copyright on the creation of: books, pamphlets, and all other written works; Drama or musical drama, dance, choreography; All forms of fine arts such as painting, sculptur and Batik art; Song or music with or without text; architecture; Lectures, lectures, speeches, and other types of creations; props; map; As well as translation, adaptations, and anthologies. The length of legal protection is during the life of the creator and lasts for 70 years after the creator dies.

b. 50 years since it was first announced, is a Copyright on the creation of computer programs, cinematography, photography, databases, and the work of the outsourcing

To avoid copyright infringement done by the irresponsible parties, the creation or work must be registered. The application for copyright registration is submitted to the Minister of Justice through the Directorate General of Intellectual Property Rights in two letters, written in Indonesian on multiple polio paper. In the letter of application stated:

a. Name, nationality and address of creator;
b. Name, nationality and address of copyright holder;
c. Type and title of creation;
d. Date and place of creation announced for the first time;
e. Description of creation;
f. Date and time of application letter received;
g. Date and complete application letter;
h. Creation registration number;
i. Columns for assignment of name change, address change, deletion and cancellation.
Once posted in the general list of creation, the registered Copyright shall be published in the Official Gazette of the Directorate General of Intellectual Property Rights, the entire process of the copyright registration process shall be charged. The amount of the charge depends on the type of application. Application for registration of creation, request for transfer of rights, application of change of name and address and request to obtain passage, must fulfill the specified cost. The proceeds from the collection of fees are intended as revenue of the State to be deposited entirely to the state treasury in accordance with the Laws and Regulations.

2.3.4 Copyright Infringement

Copyright Infringement is any form of business by utilizing the works of others that may benefit a person without obtaining permission from the author of the work. In addition, attempts to imitate the work of others that may damage the integrity of the work may also be categorized as a form of copyright infringement. In simple way, copyright infringement is the perpetrator change the content material, and the offender either directly or indirectly gain profits illegally.

Copyright infringement is regulated in Law No. 28 of 2014 is a matter of strengthening the position on Copyright. As we know, Infringement of Copyright can be an act of taking, quoting, recording, reproduce, or announce some or all of other people's creations, Without the permission of the creator or copyright holder, or which is prohibited by law, or violates the agreement.

Prohibited by law means that the law does not allow the act was done because:

a. To harm the creator / copyright holder, for example, doubling all or partially some other people's creations and then sell to the people;
b. To harm state interest, for example to announce a work which is contrary to the government's policy on defense and security;
c. Contrary to public order, decency, such as reproducing and selling pornographic Video Compact Disc (VCD).
In addition to copyright infringement that occurs due to violations of agreements relating to copyright issues. In some countries, dispute resolution arising around copyright issues, usually resolved in a special court. Generally, Copyright can be said to have infringed if the copyright material is used without permission from the creator who has an exclusive right to his creation. For the occurrence of infringement there must be similarity between the two existing creations. However, the creator or copyright holder must prove that his work has been imitated or that the other works are derived from his work.

Other ways are considered as violation of are: Giving authority (in the form of approval or endorsement) to other parties for violating the Copyright, have commercial relations with pirated goods of copyright-protected creations and importing copyrighted works of copyright-protected material for sale to retail or to distribute

2.4 Portrait

Portrait is a picture produced by the process of recording an object using light. The image we take is mostly the object that we will focus on. In everyday life any portrait photographs can be found, for example the photos of school friends, photos of parents, photos of artists, and so forth. Portrait photos can be used as collections or photo albums when we take where and when.

Portrait photographs generally display humans with a variety of expressions and backgrounds that show the picture in taking a photo of the portrait. And it's not just photos that capture human faces as objects but various compositions, elements, and other objects can be considered.

Portrait photos are also photographs that display the expression of a photo object. Intended also to display the personality and sometimes the feelings of a person. For this portrait photo is not a spontaneous photograph and must wait for
the moment to take a picture, but photos that have been prepared before and are usually taken in silence. In photography portraits of any type of lens can be used because it returns again to its artistic purpose (what photos to produce) from a photographer who made the portrait.

In portrait photographs, backgrounds and contexts can be inserted into portrait photos but the focus or emphasis should be on the subject's face, expression and mood. Portrait photography is different from other photography styles. The difference is the portrait photo of the subject is a non-professional model. This means ordinary people such as fathers, mothers, children, even people on the streets can serve as subjects in portrait photos. In portrait photography there is no limit or rules. This is what makes portrait photography easy and difficult at the same time. Photos This portrait is quite popular in Indonesia, commonly used for graduation photos, wedding photos, family photos and so on.

According to Copyright Law, portrait is a work of photography with human objects. Inserted word *photography* in portrait definition which means portrait is part of photography but specifically for human object. Photography in English is derived from 2 words, namely Photo which means light and graphics which means writing or painting. In fine arts, photography is the process of painting or by using light media. As a general term, photography means a process or method for generating images or photographs of an object with light reflecting media on the object on a light-sensitive medium. The most popular tool for the release of this light is the camera.

Portrait is a photo that uses facial photos as its main focus, though so portrait photos are not photographs that physically capture a person's face to be the object in the photo being considered because of the artistic aspect but more to the soul that exists in the individual being used as the subject of the photo.
2.5 Magazine

Magazine is a media publication or periodical publication containing articles from various authors. In addition to posting articles, Magazines are also publications containing short stories, drawings, portraits, reviews, illustrations or other features that color the contents of the magazine. Therefore, the magazine used as one of the reading information center which is often used as reference material by readers in searching for something that they want. Magazines contain a wide range of writing topics that match the purpose and topic of the magazine. Not only writing, in the magazine there are also pictures that aim as an illustration of the writing and also aims to make the contents of the magazine to be beautiful and interesting. The pictures can be pictures of people, pictures of objects, or cartoons. They include photographs of various categories as needed, can be portrait categories, spot news, features, sports, and much more. To support articles and cover needs, the media use many types of portrait photographs that lift the figure of someone, both famous and ordinary people. Portrait is always associated with photographing faces, profiles, or people. So people often think of it as just a photo. Though this type of photo has its own power and in its own execution is often not easy. It was published, duplicated, reproduced for dissemination. Being public, no longer personal or private with a message that is conscious to be conveyed or disseminated.

The existence of magazines arose because of the needs of the people will be diverse information in accordance with the lifestyle of today's society. So no wonder a lot of variety of magazines currently circulating, tailored to its segmentation. Magazines can be distinguished according to the reader in general or the target audience group, the magazine can be classified by demographic segment (age or sex), or psychographic, geographic or discriminatory in terms of editorial policy. For example, for magazines based on demographic circumstances, such as Gadis Magazines, magazines for women. While magazines are based on geographical grouping, for example: school magazine. The various articles of information reviewed in the magazines are of course tailored to the
character and style of the target language of the audiences, as well as the style of approach in terms of appearance or design of the magazine.

In a magazine contains many graphic elements such as photography, portrait, typography, colors, illustrations and other elements in which it is to beautify the contents of the magazine and to draw the public's attention to read it. Magazines should also have a clear concept and something different from other magazines. To be visible to the public has the characteristics and advantages of competitor magazines. As previously mentioned, currently magazines are not only limited to free sale in stores or book kiosks created by a company to the general public, but an organization may also publish its own magazine if the need for information about the scope of the organization is deemed necessary.
CHAPTER III
RESEARCH METHODOLOGY

This research is a scientific activity that aims to get a solution to a problem. Research in science development aims to reveal systematic, analytical and co-operative truths to data that has been collected and processed.\textsuperscript{16} The function of this research is to look for explanations and answers to the problems, which is the government's efforts through the Copyright Act provides legal protection for copyright infringement of portrait committed by magazines.

The method used in the writing of this thesis is the method of normative research, normative research methods is a problem solving based on the literature and legislation relating to the issues discussed. Normative legal research consists of research on legal principles, legal system and legal synchronization level.\textsuperscript{17}

3.1 Types and Legal Material

The data obtained and processed in normative legal research is secondary data obtained from literature sources, which consists of: \textsuperscript{18}

a) Primary legal materials: is Authoritative legal materials. In writing this essay the writers review the provisions from international covenants and legislation.

- UUD 1945
- Civil Code (\textit{Burgerlijk Wetboek voor Indonesie})
- World Intellectual Property Organization Copyrights Treaty
- Berne Convention for the Protection of Artistic and Literary

\textsuperscript{16} Ronny Hanitijo Soemitro, 1998, Metode Penelitian Hukum dan Jurimetri, Jakarta: Ghalia Indonesia, hal 44
\textsuperscript{17} Bambang Sunggono, 2009, Metodologi Penelitian Hukum, Jakarta, Rajagrafindo Persada, Hal
\textsuperscript{18} Soejono dan H abudurhman, “Metode Penelitian Hukum”, (Jakarta, Rineka Cipta, 2003) hlm56
• Law No.6 of 1982 Concerning Copyright
• Law No. 7 of 1987 the change of previous law, concerning copyright
• Law No. 12 of 1997 the change of previous law, concerning copyright
• Law No 19 of 2002 concerning Copyright
• Law No. 28 of 2014, concerning Copyright

b) Secondary law materials: legal materials from the publication of the law. Such as literature books that explain about Intellectual Property Rights or about the media, research results, expert opinions, writings from experts and legal dictionaries

c) Non-legal materials: materials that provide additional explanation of primary and secondary legal materials such as Indonesian Dictionary, Encyclopedia.

3.2 Legal Material Collection Technique

The technique of collecting data is done by polarizing the normative framework by using legal material that discusses legal theories, legal protection of portrait of copyright holder. Primary and secondary legal materials are collected based on the topic and of course classified according to law and hierarchy sources for comprehensive review.

3.3. Data Processing and Legal Material Analysis

The data obtained in the literature study of legal materials will be elaborated and linked in such a way that it can be presented more systematic writing in order to achieve the desired target in the form of an answer to the Legal Protection of Portrait Copyright in Magazine

The existing legal material will be analyzed to see how the provisions of Indonesia's positive law regulate the legal protection of portrait works in relation
to the infringement done by magazines, so that it can become a reference and legal consideration to provide a solution to how Indonesian positive law provisions can guarantee Rights and obligations of the holder of the creation of portraits and magazines in a balanced way.
CHAPTER IV
Analysis

4.1 Determining the copyright holder and the creator of the portrait in Magazine

Copyright is an exclusive right of an Author or a Copyright Holder to announce or reproduce his / her Creation, which arises automatically after a creation is born. In English Copyright has meaning right to copy, the right to reproduce.

To better know the essence of Copyright, it is important to know the definition of the Creator and the Copyright Holder. The Creator is a person or people who together create a work that is characteristic and personal. When a creation is born, the creator automatically becomes owner and copyright holder, based on applicable law in Indonesia including moral rights, economic rights and related rights.

To provide copyright protection and to support and reward the creativity of a person or organization, a law on the protection of intellectual property or copyright law is created. The copyright law has undergone many changes, first made by law No. 6/1982 on copyright and has been amended by law No. 7 of 1987 and most recently amended by law No. 12 of 1997, law No. 19 of 2002 and now the law Has been amended into Law No. 28 of 2014. In this law is clearly described about what is closely related to Copyright as described on the definition of Creator, Copyright Holder

<table>
<thead>
<tr>
<th>Law No. 6 of 1982</th>
<th>CREATORS:</th>
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<tr>
<td>Article 1 (A) “Pencipta adalah seorang atau beberapa orang secara bersamasama yang atas inspirasinya lahir suatu ciptaan berdasarkan kemampuan pikiran, imajinasi, kecekatan, keterampilan atau keahlian yang dituangkan dalam bentuk yang khas dan bersifat pribadi;</td>
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31
Article 5 (1) "Kecuali jika ada bukti tentang hal sebaliknya, maka yang dianggap sebagai pencipta adalah orang yang untuk ciptaan itu namanya terdaftar sebagai pencipta menurut ketentuan Article 29, atau jika ciptaan itu tidak didaftarkan, orang yang dalam atau pada ciptaannya itu disebut atau dinyatakan sebagai penciptanya, atau orang yang pada pengumuman sesuatu ciptaan diumumkan sebagai penciptanya."

(2) "Jika pada ceramah yang tidak tertulis tidak ada pemberitahuan siapa yang menjadi penciptanya, maka orang yang berceramah dianggap sebagai penciptanya, kecuali terbukti hal sebaliknya."

Article 6 "Jika suatu ciptaan terdiri dari beberapa bagian tersendiri yang diciptakan dua orang atau lebih, maka yang dianggap sebagai pencipta ialah orang yang memimpin serta mengawasi penyelesaian seluruh ciptaan itu, atau jika tidak ada orang itu, orang yang menghimpunnya, dengan tidak mengurangi hak cipta masing-masing atas bagian ciptaannya."

Article 7 "Jika suatu ciptaan diwujudkan menurut rancangan seseorang dan dikerjakan oleh orang lain di bawah pimpinan dan pengawasannya, maka orang yang merancang itu adalah penciptanya."

Article 8 (1) "Jika suatu ciptaan dibuat dalam hubungan dinas dengan pihak lain dalam lingkungan pekerjaannya, maka pihak yang untuk dan dalam dinasnya ciptaan itu dikerjakan adalah pemegang hak cipta, kecuali ada perjanjian lain antara kedua pihak, dengan tidak mengurangi hak sipembuat, sebagai penciptanya apabila penggunaan ciptaan itu diperluas keluar hubungan dinas."

(2) Jika suatu ciptaan dibuat dalam hubungan kerja dengan pihak lain dalam lingkungan pekerjaannya, maka pihak yang membuat karya cipta itu sebagai pencipta adalah pemegang hak cipta, kecuali apabila diperjanjikan lain antara kedua pihak."

Article 9 "Jika suatu badan hukum mengumumkan bahwa ciptaan berasal dari padanya dengan tidak menyebut seseorang sebagai penciptanya, maka badan hukum tersebut dianggap sebagai penciptanya, kecuali jika dibuktikan sebaliknya."
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<th>LAW NO. 7 of 1987</th>
<th>CREATORS:</th>
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<tr>
<td>THE AMENDMENT OF Law No. 6 of 1982</td>
<td>Article 5 had had change to be:</td>
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<td>&quot;Article 5 (1) Kecuali terbukti sebaliknya, yang dianggap sebagai pencipta adalah</td>
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<td>a. orang yang namanya terdaftar dalam daftar umum ciptaan dan pengumuman resmi tentang pendaftaran pada Departemen Kehakiman seperti yang dimaksud dalam Article 29;</td>
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<td>b. orang yang namanya disebut dalam ciptaan atau diumumkan sebagai pencipta pada suatu ciptaan.</td>
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<td>(2) Kecuali terbukti sebaliknya, pada ceramah yang tidak tertulis dan tidak ada pemberitahuan siapa penciptanya, maka orang yang berceramah dianggap sebagai penciptanya.&quot;</td>
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<td>Article 7 had had change to be:</td>
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<td>Article 7 Jika suatu ciptaan yang dirancang seseorang, diwujudkan dan dikerjakan oleh orang lain di bawah pimpinan dan pengawasan orang yang merancang, maka penciptanya adalah orang yang merancang ciptaan itu.&quot;</td>
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| COPYRIGHT HOLDER : "Pemegang Hak Cipta adalah Pencipta sebagai Pemilik Hak Cipta, atau orang yang menerima hak tersebut dari Pencipta, atau orang lain yang menerima lebih lanjut hak dari orang tersebut di atas."

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<th>LAW NO. 16 Of 1997</th>
<th>CREATORS:</th>
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<td>Article 1 (2) “Pencipta adalah seorang atau beberapa orang secara bersama-sama yang atas inspirasinya lahir suatu ciptaan berdasarkan kemampuan pikiran, imajinasi, kecepatan, keterampilan atau keahlian yang dituangkan dalam bentuk yang khas dan bersifat pribadi.</td>
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<td>The provisions of Article 8 had amended by inserting the new provisions made in paragraph (1a) and amending the provisions of paragraph (2), so that the whole Article 8 reads as follows:</td>
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<td>Article 8 (1) Jika suatu ciptaan dibuat dalam hubungan dinas dengan pihak lain dalam lingkungan pekerjaannya, maka pihak yang untuk dan dalam dinasnya ciptaan itu dikerjakan adalah Pemegang Hak Cipta, kecuali ada perjanjian lain antara kedua pihak dengan tidak mengurangi hak membuat sebagai penciptanya apabila penggunaan ciptaan itu diperluas keluar hubungan dinas.</td>
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<td>(2) Ketentuan sebagaimana dimaksud dalam ayat (1) berlaku pula bagi ciptaan</td>
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yang dibuat pihak lain berdasarkan pesanan yang dilakukan dalam hubungan dinas. (3) Jika suatu ciptaan dibuat dalam hubungan kerja atau berdasarkan pesanan, maka pihak yang membuat karya cipta itu dianggap sebagai Pencipta dan Pemegang Hak Cipta, kecuali apabila diperjanjikan lain antara kedua pihak.”

**COPYRIGHT HOLDER:**

“Pemegang Hak Cipta adalah Pencipta sebagai Pemilik Hak Cipta, atau orang yang menerima hak tersebut dari Pencipta, atau orang lain yang menerima lebih lanjut hak dari orang tersebut di atas.

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<th>LAW No 19 of 2002</th>
<th>CREATORS:</th>
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<td>Article 1 (b) “Pencipta adalah seorang atau beberapa orang secara bersama-sama yang atas inspirasinya melahirkan suatu Ciptaan berdasarkan kemampuan pikiran, imajinasi, kecepatan, keterampilan, atau keahlian yang dituangkan ke dalam bentuk yang khas dan bersifat pribadi.”</td>
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| Article 5 (1) Kecuali terbukti sebaliknya, yang dianggap sebagai Pencipta adalah: a. orang yang namanya terdaftar dalam Daftar Umum Ciptaan pada Direktorat Jenderal; atau b. orang yang namanya disebut dalam Ciptaan atau diumumkan sebagai Pencipta pada suatu Ciptaan. (2) Kecuali terbukti sebaliknya, pada ceramah yang tidak menggunakan bahan tertulis dan tidak ada pemberitahuan siapa Penciptanya, orang yang berceramah dianggap sebagai Pencipta ceramah tersebut. Article 6 ” Jika suatu Ciptaan terdiri atas beberapa bagian tersendiri yang diciptakan oleh dua orang atau lebih, yang dianggap sebagai Pencipta ialah orang yang memimpin serta mengawasi penyelesaian seluruh Ciptaan itu, atau dalam hal tidak ada orang tersebut, yang dianggap sebagai Pencipta adalah orang yang menghimpunnya dengan tidak mengurangi Hak Cipta masing-masing atas bagian Ciptaannya itu.” Article 7 ”Jika suatu Ciptaan yang dirancang seseorang diwujudkan dan dikerjakan oleh orang lain di bawah pimpinan dan pengawasan orang yang merancang, Penciptanya adalah orang yang merancang Ciptaan itu.” Article 8 (1) “Jika suatu Ciptaan dibuat dalam hubungan dinas dengan pihak lain dalam lingkungan pekerjaannya, Pemegang Hak Cipta adalah pihak yang untuk dan dalam dinasnya Ciptaan itu dikerjakan, kecuali ada perjanjian lain antara kedua pihak dengan tidak mengurangi hak Pencipta apabila penggunaan Ciptaan itu diperluas sampai ke luar hubungan dinas” (2) Ketentuan sebagaimana dimaksud pada ayat (1) berlaku pula bagi Ciptaan
yang dibuat pihak lain berdasarkan pesanan yang dilakukan dalam hubungan dinas. (3) Jika suatu Ciptaan dibuat dalam hubungan kerja atau berdasarkan pesanan, pihak yang membuat karya cipta itu dianggap sebagai Pencipta dan Pemegang Hak Cipta, kecuali apabila diperjanjikan lain antara kedua pihak.

Article 9 “Jika suatu badan hukum mengumumkan bahwa Ciptaan berasal dari padanya dengan tidak menyebut seseorang sebagai Penciptanya, badan hukum tersebut dianggap sebagai Penciptanya, kecuali jika terbukti sebaliknya.”

COPYRIGHT HOLDER:
Article 1 (d).Pemegang Hak Cipta adalah Pencipta sebagai Pemilik Hak Cipta, atau pihak yang menerima hak tersebut dari Pencipta, atau pihak lain yang menerima lebih lanjut hak dari pihak yang menerima hak tersebut.

Article 2” (2) Pencipta dan/atau Pemegang Hak Cipta atas karya sinematografi dan Program Komputer memiliki hak untuk memberikan izin atau melarang orang lain yang tanpa persetujuannya menyewakan Ciptaan tersebut untuk kepentingan yang bersifat komersial.

COPYRIGHT HOLDER:
Article 3 (1) Hak Cipta dianggap sebagai benda bergerak.
(2) Hak Cipta dapat beralih atau dialihkan, baik seluruhnya maupun sebagian karena
a. Pewarisan;
b. Hibah;
c. Wasiat;
d. Perjanjian tertulis; atau
e. Sebab-sebab lain yang dibenarkan oleh peraturan perundang-undangan.

Article 4 (1) Hak Cipta yang dimiliki oleh Pencipta, yang setelah Penciptanya meninggal dunia, menjadi milik ahli warisnya atau milik penerima wasiat, dan Hak Cipta tersebut tidak dapat disita, kecuali jika hak itu diperoleh secara melawan hukum.
(2) Hak Cipta yang tidak atau belum diumumkan yang setelah Penciptanya meninggal dunia, menjadi milik ahli warisnya atau milik penerima wasiat, dan Hak Cipta tersebut tidak dapat disita, kecuali jika hak itu diperoleh secara melawan hukum
Article 10 (1) Negara memegang Hak Cipta atas karya peninggalan prasejarah, sejarah, dan benda budaya nasional lainnya.  
(2) Negara memegang Hak Cipta atas folklor dan hasil kebudayaan rakyat yang menjadi milik bersama, seperti cerita, hikayat, dongeng, legenda, babad, lagu, kerajinan tangan, koreografi, tarian, kaligrafi, dan karya seni lainnya.  
(3) Untuk mengumumkan atau memperbanyak Ciptaan tersebut pada ayat (2), orang yang bukan warga negara Indonesia harus terlebih dahulu mendapat izin dari instansi yang terkait dalam masalah tersebut.  
(4) Ketentuan lebih lanjut mengenai Hak Cipta yang dipegang oleh Negara sebagaimana dimaksud dalam Article ini, diatur dengan Peraturan Pemerintah.  

(1) Jika suatu Ciptaan tidak diketahui Penciptanya dan Ciptaan itu belum diterbitkan, Negara memegang Hak Cipta atas Ciptaan tersebut untuk kepentingan Penciptanya.  
(2) Jika suatu Ciptaan telah diterbitkan tetapi tidak diketahui Penciptanya atau pada Ciptaan tersebut hanya tertera nama samara Penciptanya, penerbit memegang Hak Cipta atas Ciptaan tersebut untuk kepentingan Penciptanya.  
(3) Jika suatu Ciptaan telah diterbitkan tetapi tidak diketahui Penciptanya dan/atau penerbitnya, Negara memegang Hak Cipta atas Ciptaan tersebut untuk kepentingan Penciptanya.  

COPYRIGHT HOLDER:  
Article 1(4) Pemegang Hak Cipta adalah Pencipta sebagai Pemilik Hak Cipta, atau pihak yang menerima hak tersebut dari Pencipta, atau pihak lain yang menerima lebih lanjut hak dari pihak yang menerima hak tersebut.  

LAW No. 28 2014  
CREATORS:  
Article 1(1) “Pencipta adalah seorang atau beberapa orang yang secara sendiri-sendiri atau bersama-sama menghasilkan suatu ciptaan yang bersifat khas dan pribadi.”  

Article 31 “Kecuali terbukti sebaliknya, yang dianggap sebagai Pencipta, yaitu Orang yang namanya:  
a. disebut dalam Ciptaan;  
b. dinyatakan sebagai Pencipta pada suatu Ciptaan;  
c. disebutkan dalam surat pencatatan Ciptaan; dan/atau  
d. tercantum dalam daftar umum Ciptaan sebagai Pencipta.
Article 32“Kecuali terbukti sebaliknya, Orang yang melakukan ceramah yang tidak menggunakan bahan tertulis dan tidak ada pemberitahuan siapa Pencipta ceramah tersebut dianggap sebagai Pencipta.”

Article 33” (1) Dalam hal Ciptaan terdiri atas beberapa bagian tersendiri yang diciptakan oleh 2 (dua) Orang atau lebih, yang dianggap sebagai Pencipta yaitu Orang yang memimpin dan mengawasi penyelesaian seluruh Ciptaan.
(2) Dalam hal Orang yang memimpin dan mengawasi penyelesaian seluruh Ciptaan sebagaimana dimaksud pada ayat (1) tidak ada, yang dianggap sebagai Pencipta yaitu Orang yang menghimpun Ciptaan dengan tidak mengurangi Hak Cipta masing-masing atas bagian Ciptaannya.”

Article 34 “Dalam hal Ciptaan dirancang oleh seseorang dan diwujudkan serta dikerjakan oleh Orang lain di bawah pimpinan dan pengawasan Orang yang merancang, yang dianggap Pencipta yaitu Orang yang merancang Ciptaan.”

Article 35 (1) Kecuali diperjanjikan lain Pemegang Hak Cipta atas Ciptaan yang dibuat oleh Pencipta dalam hubungan dinas, yang dianggap sebagai Pencipta yaitu instansi pemerintah.
(2) Dalam hal Ciptaan sebagaimana dimaksud pada ayat (1) digunakan secara komersial, Pencipta dan/atau Pemegang Hak Terkait mendapatkan imbalan dalam bentuk Royalti.
(3) Ketentuan lebih lanjut mengenai pemberian Royalti untuk penggunaan secara komersial sebagaimana dimaksud pada ayat (2) diatur dengan Peraturan Pemerintah.

Article 36 “Kecuali diperjanjikan lain, Pencipta dan Pemegang Hak Cipta atas Ciptaan yang dibuat dalam hubungan kerja atau berdasarkan pesanan yaitu pihak yang membuat Ciptaan.

Article 37 Kecuali terbukti sebaliknya, dalam hal badan hukum melakukan Pengumuman, Pendistribusian, atau Komunikasi atas Ciptaan yang berasal dari badan hukum tersebut, dengan tanpa menyebut seseorang sebagai Pencipta, yang dianggap sebagai Pencipta yaitu badan hukum.

COPYRIGHT HOLDER:
Article 1(4)Pemegang Hak Cipta adalah Pencipta sebagai pemilik Hak Cipta,
Basically to determine the creator or the copyright holder are the same in each copyright laws. The development of life, the change of law is needed. That is why copyright law had had change for five times. In Law No 6 of 1982 they don’t mention how to determine copyright holder, but Law no.7 of 1987 the amendment of Law No. 7 of 1987 they start to mention about Copyright holder.

In Relation to portrait, portrait is a work of photography with human objects according to Law No.28 of 2014. Photography is done by a person or professional photographer which means by nature, copyright is attached automatically when the shutter release or the camera has finished taking a shot. Photographers means as copyright holders whose exclusive rights, which are the right to reproduce, display works, publish, create derivative works, rent or lend, and sell works. Similarly, when the author finished typing his writing. Human as an object in Portrait, person or people which are in the photo has a moral right to the work of the photograph. In copyright there are Economic Rights and Moral Rights. The right of Economics is simply the right of the creator to gain an economic advantage over his work, while the moral right is recognition in honor of creation.

In Portrait, Photographers have two roles as creators and holders of copyright over the portrait. The photographer as the creator and holder of the portrait work he produces may announce his portrait, but photographer must still ask permission first to the person who becomes the object of the portrait in accordance with Article 12 of Law No. 28 of 2014 About Copyright. A photographer cannot announce the work of his portrait without the consent of the person who becomes the object of the portrait. There are two reasons, Economic reasons and privacy reasons. The economic reason concerns the rights of the person to be photographed in order to avoid commercial exploitation of him.
without certain consent or compensation, while privacy reason concerns the right of the person not to be publicly disclosed without permission.

The relation between photographer and a magazine company is employment relationship between them. Photographer is to make a portrait and company to make a magazine contain picture, portrait, article and publish and reproduce it to gain profit. Copyright, regulated in Law no. 28 of 2014 on Copyright ("UUHC"). According to Article 36, “Kecuali diperjanjikan lain, Pencipta dan Pemegang Hak Cipta atas Ciptaan yang dibuat dalam hubungan kerja atau berdasarkan pesanan yaitu pihak yang membuat Ciptaan.” for works created in a private employment relationship, the party who making the work is considered the Creator and the Copyright Holder, unless there is an agreement between the parties. So, As the person who created the work can claim to be the creator and the copyright holder of your work. The exception is where there is an agreement that determines who the copyright holder is.

Referred to as the creator is one or people collectively whose inspiration creates a Work based on the ability of thought, imagination, dexterity, skill or skill set forth in a distinctive and personal form (article 1 point 2 UUHC). So, basically the creator is the person (individual) not the company. In this case Photographer as a creator and Copyright Holder, if there is employment relationship magazine company may be a copyright holder through agreement not as a creator.

In the subsequent process, the Creator may also transfer the rights contained in the Copyright to his / her Work to another party under a license agreement. The other party is referred to as the Copyright Holder under license.

License is written agreement which made by the copyright holder to other parties to do economic rights of a work with term and condition. Licensee shall then be a party granted written permission granted by the Copyright Holder or the Owner of the Related Rights to exercise the economic right to his or her Work of Related Rights with certain conditions (Article 1 Sub-Article 20 of the Copyright Law). The grant of this license is made through a license agreement that is valid for a certain period of time and does not exceed the validity period of
Copyright and Related Rights (Article 80 paragraph (2) of Copyright Law). The Licensee will subsequently grant Royalty to the Copyright Holder or the owner of the Related Rights during the term of the License, unless otherwise agreed (Article 80 paragraph (3) of the Copyright Act).

Licensee may also be said as a Copyright Holder but as a Copyright Holder for a specified time and for certain matters as agreed in the license agreement. When the license agreement expires, the party is no longer the Copyright Holder. With regard to matters which may be agreed upon in the license agreement, it is also important that the License Agreement is prohibited from being a means to eliminate or take over all of the Creator's rights to his or her Works (Article 82 Paragraph (3) of the Copyright Act).

4.2 Legal Protection of Copyrighted Portrait in Magazine

Legal protection is a protection afforded to legal subjects through the applicable Legislation and in its implementation there is a sanction, in the form of both preventive and repressive law instruments, both written and unwritten. In other words, legal protection as an illustration of the function of law, namely the concept which law can provide justice, order, certainty and peace.

Legal protection for the people contains about:

a. An Effort to prevent the occurrence of disputes or reduce the occurrence of disputes,

b. The settlement of disputes through the judiciary is the last effort, the judiciary should be the ultimum remedium and the judiciary is not a forum of confrontation so the judiciary should reflect the peaceful atmosphere.

Law no. 28 years 2014. Bringing new advances in copyright protection, which in the Act states that: "Hak Cipta adalah hak eksklusif pencipta yang timbul secara otomatis berdasarkan prinsip deklaratif setelah suatu ciptaan
Exclusive rights, Copyright contains two essential rights, namely economic rights and moral rights. The content of economic rights includes the right to announce and the right to Reproduce. In the era of the global economy, the implementation of moral rights protection is increasingly neglected. The advancement of information technology and telecommunications, which has progressively facilitated the digital revolution, decreased freedom and discretion in exploiting the work of creation. Creations protected by Copyright are detailed into 19 groups of creations, in accordance with the type and nature of creation.

Recognition of the emergence of the Copyright is since an idea is poured or manifested in a tangible form. The recognition of the birth of the right to copyright does not require a certain formality or evidence, in contrast to the rights of other intellectual property rights, such as Patents, Trademarks, Industrial Designs, and Layout Designs of Integrated Circuits.

The emergence of the right requires a certain formality by first applying for the granting of rights. Thus the emergence of the right to Patent, Trademark, Industrial Design and Layout Design of Integrated Circuit first through a request, without any request, there is no recognition of it. In contrast to Copyright, in principle, Copyright is obtained not because of registration, but automatically born since the creation was created or manifested in the real form. So there is no obligation for the Creator to register his creation,

The basic concept of the emergence of copyright provides legal protection against a creative work that has a distinctive form and shows authenticity as a person's creation on the basis of personal ability and creativity. The personal nature embodied in Copyright creates a conception of the moral rights of the creator or his heirs. The moral right is regarded as a personal right owned by a creator to prevent the occurrence of deviations from his work and to gain respect or appreciation for his work.
The moral right is a manifestation of the ongoing relationship between the creator and the work of his creation even if the creator has died or has transferred his/her Copyright to another person, so that if the holder of the right omits the name of the creator, the creator or heir is entitled to claim to the right holder Make sure that the name of the creator is still included in the creations.

In addition, the copyright holder is not allowed to make changes to a work except by the consent of the creator or his heirs and if the creator has transferred the copyright to another person, so long as the creator is alive it is necessary to agree to make the change but if the author has died required permission from His heirs.

Thus even if the moral right has been left entirely or partially to another party, it shall not prejudice the right of the creator or the holder of his heir to sue someone without his consent with the reason: Remove the name of the creator listed in the work, Include the name of the creator in his creation; Changing or changing the title of the creation and Change the contents of creation.

The two main moral rights contained in the UUHC are:

a. The right to recognition, that is, the right of the authors to obtain public recognition as the creator of a work to prevent others from claiming the work as a result of their work, or to prevent the other party from acknowledging the author of the work to another without the permission of the author;

b. The right of Integrity, namely the right to object to any changes made to a work without the knowledge of the Creator.

Related to the problem of protection of the work of art including portrait and photography in Indonesia is also growing along with the issuance of Law no. 28 of 2014 on Copyrights. Copyright issues of Portrait basically often arise because of the many portraits of a person for commercial purposes without the knowledge of the person in the portrait. In previous laws, before the emergence of Law No. 28 of 2014, such as in Law no 19 of 2002 and in Law no 6 of 1982 they
provide more detail concerning portrait they put more provisions of copyright infringement of portrait that can be applied in magazines.

4.2.1 Legal Consequences for Magazine for Using Portrait Without Permission

Photographer is the creator of the portrait he has produced, but the photographer does not acquire the absolute right of his creation, if the created object is a portrait of a person's object. If a photographer working in a magazine which means there is a working relationship therein, shall be entitled to transfer his / her rights to the magazine through an agreement containing the determination of the copyright holder.

In the use of portrait in a magazine, the party contained in the portrait does not want to be published, then the magazine cannot exercise its rights (activities with a commercial purpose) because someone who becomes the object does not give permission.

Based on the elements contained in article 12 UUHC, if the magazine is proven to announce a photograph of a person who becomes the object of shooting without asking permission or approval first then publish for commercial it will be imposed with Article 115 paragraph Law no. 28 Year 2014 on Copyright. "Setiap Orang yang tanpa persetujuan dari orang yang dipotret atau ahli warisnya melakukan Penggunaan Secara Komersial, Penggandaan, Pengumuman, Pendistribusian, atau Komunikasi atas Potret sebagaimana dimaksud dalam Pasal 12 untuk kepentingan reklame atau periklanan untuk Penggunaan Secara Komersial baik dalam media elektronik maupun non elektronik, dipidana dengan pidana denda paling banyak Rp500.000.000,00 (lima ratus juta rupiah). ". If the photographer publishes the copyrighted work on the portrait with the consent of the person who is the object of the photo shoot, then the article shall not apply.

Law enforcement of copyright infringement has been done through legal efforts by the parties and has been applied sanctions against violators of copyright under Law no. 28 of 2002 on Copyright. Sanctions can be either penalties or criminal
sanctions. Sanctions are granted to photographers or magazines (copyright holders) who have declared commercial nature without seeking permission or consent from someone who becomes the object of shooting.

4.2.2 Dispute Settlement

In Article 1 (2) of Law Number 19 of 2002 on Copyright, declare the creator is a person or persons together who upon inspiration creates a creation based on the ability of mind, imagination, dexterity, skill, or expertise that is poured into a distinctive and personal form. This means "creator" is a person who has created or produced a work of creativity in accordance with his thoughts, imagination and expertise. Copyright Holder under Article 1 (4) of Law Number 28 of 2014 concerning Copyright is the Creator as the Owner of Copyright, or the party who receives the right from the Creator, or any other party who further receives the rights of the party receiving the right. This means copyright can be transferred according to the agreement of the parties involved. In this case the related is a photo, so that the photo holder can be transferred in accordance with the agreement of the parties concerned.

In the world of photography, creators and Copyright holder of the portrait is a photographer. Photographer has two roles as the creator of the photo he has produced and he is also the copyright holder of the portrait. Although, the photographer is the creator and copyright holder of the portrait he has produced, but if he will publish his portrait results in a commercial exhibition or show he should seek permission or prior approval to someone who becomes the object of shooting. If the object of the photography is from the landscape, flora and fauna, then there is no need to ask permission or approval first. If the object of the photograph is a human then it must seek permission or approval from the person who became the object of shooting in accordance with Article 12 of Law no. 28 Year 2014 on Copyright.

The photographer is the holder of copyright photo. If the photographer in this case has transferred his or her rights to the magazine company, the copyright
holder becomes a magazine company. The right to portrait is limited and he is not in full control of his creation. Restricted rights are intended because if a copyright holder announces or publishes a photo for commercial, the photographer must seek permission or prior consent to another person who is the object of the shoot. Approval is so that later someone who became the object of shooting did not object to the portrait to be published. If the person concerned does not approve of having been in conflict with the reasonable interests of that person or because it may be detrimental to him after his portrait has been published, the photographer shall not publish it.

A copyright dispute is originally a violation committed by a person by acknowledging the creation as his creation. A person's acknowledgment of another person's creation that was not previously licensed by the copyright holder or creator is a copyright infringement. In essence, a work of copyright does not need to be registered already under legal protection in Law 28 of 2014 on Copyright, but in order to prevent any copyright infringement, the creator or copyright holder must register his/her creation to the Directorate General of Intellectual Property Rights. Thus, in case of a dispute the creator need not bother to prove that the creation is his creation.

A copyright holder (a magazine company), The infringement occurred due to the magazine company publish photos of others for commercial without asking permission or approval first. A person who becomes a shooting object disagrees with his published portrait, so he can demand that his portrait no to be published

UU no. 28 Year 2014 on Copyright (UUHC) will not be enough to protect the creator if the creator himself does not know how to fight for his rights. It must be admitted that the new UUHC has clearly set out the legal paths through litigation and alternative dispute resolution that can be done by the authors namely by filing a civil suit (Articles 96, 97, 98 and 99), criminal reports (Article 105 jo 110) and Arbitration (Article 95). With these three arrangements, should the legal of the creator in the fight for his rights no longer face obstacles.
There are 3 legal mechanisms available under UUHC in case of copyright dispute. For more details below is explained explanation.

a. **Civil action.** This lawsuit contains two ways that copyright holders and related parties can do. First, the author is entitled to cancel the registration of the work (Article 97). Legitimate Creator (Article 1 Paragraph [2] UUHC) is a subject entitled to cancel the registration to the Commercial Court. This is because legitimate creators demand justice because creations had been registered by unauthorized parties. Through this provision the law opens the possibility of cancellation, so that the element of justice is fulfilled. Secondly, the creator through his / her heirs is entitled to claim compensation (Art. 96). Compensation in the form of payment of the amount of money charged to the perpetrators of economic rights of the creator, the copyright holder, and / or the owner of the related rights under a civil court which has legal binding for losses perceived by the creator, copyright holder and / or Owner of the related rights. Payment of compensation to the creator, copyright holder and / or owner of related rights is payable no later than six months after a permanent legal court ruling (*Inkracht van gewijsde*). In addition, heirs are entitled to sue anyone who has intentionally and without rights and without the author's consent to violate moral rights (Article 98). Moral Right is violated by not mentioning the personal name of the deceased creator, so that the badfaith party has been proven to violate Article 5 UUHC.

b. **Criminal action.** Creator, copyright holder and related party may report that the violation committed by the party conducting the criminal act of copyright infringement to the Police of the Republic of Indonesia. This is in accordance with Article 105 of the Copyright Law "The Right to file a Criminal Lawsuit for the Prosecute criminally." It is on this basis that criminal prosecution is open according Copyright Law and it can be done because the copyright offense is a complaint offense (Article 120) Complaint offense are personal, which has the main requirement that there must be complaints from the aggrieved party. Accordingly, the
presence or absence of any claim against this infringement will depend on the consent of the injured / victim / persons determined by the Act. Therefore, in this mechanism the creator, copyright holder and related party must actively report it and it is not appropriate to keep silent to see the violations committed by the parties that harmed him.

c. Arbitration. The final mechanism of the creator is to involve a 'private court' known as arbitration (Article 95). Arbitration is an out-of-court dispute resolution forum. That is, the creator can also use this path as an alternative fight for his rights. Using arbitarse has been regulated by Law no. 30 Year 2009 on Arbitration and Settlement of Disputes. The choice of mechanism through the arbitarse path is due to the advantages gained through this path, among which are the cases handled by experts skilled in the field consisting of three judges, the handling of the case is confidential or not publicly available so the settlement becomes known only to the parties in court, the judicial decision is relatively faster than the general court and the final decision is final and binding. That is, the arbitral award is the first and the last, so there is no other effort. By using this arbitration it is possible for the creator to obtain justice that is not too long compared to the mechanism available in fighting for his rights.

4.3 Sample Case

As was the case in 1998, a magazine called What's on Indonesia has loaded a few snapshots of Madame D'Syuga's book in Issue 132 which appeared on November 2, 1998. In showing its portrait, Doc. Madame D'Syuga was listed. However Ratna Sari Dewi feels herself has been offended by the publication and as a photo owner she filed a lawsuit against Editor What's On Indonesia.19

The court with a decision dated June 3, 2002 sentenced Warsito as editor of What's on Indonesia magazine guilty of violating Article 44 of Law No.12 of

1997 on Copyright and sentenced to 1 year imprisonment. The judge considers Warsito guilty of reproducing and disseminating Ratna Sari Dewi's photographs in Madame D'Syuga's book without rights.

According to Warsito, Warsito stated that what he did was not a copyright infringement. The reason is in an article in IWO, Warsito mentioned that the photos were taken from Syuga's book. According to Law. No. 6 of 1982 in article 14 and its change in Law No. 12 of 1997 said that “Provided that the source should be fully cited, it is not considered a copyright infringement” But there are provisions that govern what is allowed:

a. The use of the other party's creation for educational, research, scientific writing, reporting, criticism and review of a matter with the provisions of it does not harm the reasonable interests of the creator.

b. The taking of the creation of the other party either wholly or partially for the purpose of defense in and out of court;

c. The making of the other party's creation either wholly or partly for the purposes of;
   a) lectures solely for the purpose of education and science;
   b) performances or performances that are free of charge with the provisions of not harming the reasonable interests of the creator.

d. Propagation of a work of science, art and literature in braille for the benefit of the blind, unless the propagation is commercial;

e. Propagation of a work other than a computer program, in a limited way by any means or instrument or process similar to public libraries, science or educational institutions and non-commercial documentation centers solely for the purposes of its activities;

f. Changes made to architectural works such as the creation of buildings based on technical implementation considerations;

g. Making backup copies of a computer program by computer program owners is done solely for their own use.
Where put a work for commercial purposes is not mentioned as an exception. What is clear the purpose of put the portrait in IWO magazine certainly not for educational purposes. It can be concluded that it has copyright infringement,( Article 14 jo 44 Law no. 12 of 1997).

The Law No.28 of 2014 About Copyright has placed the photo as one of the Works in the field of art (art) is special compared with other Creations. Particularly for photos set forth in Articles 12 through 15 in Copyright law which essentially affirms that portraits are personal. Another feature is the portrait of having two souls, the soul of the person who is pious and the soul of the person who made the photo. Therefore, the Copyright Law of Indonesia makes the separation between the material right over the photo to the person in the picture, while the Copyright is awarded to the painter or photographer.

The photo owner has the right to display the portrait or photo in public, reproduce the portrait in one catalog or publish the portrait Creation without having to ask permission first from the Creator or the photographer. While the photographer as the copyright holder does not have the absolute exclusive rights to the propagation and publication of such photo as the holder of the Copyright on other Works which has an absolute exclusive right over his / her Creation. The exclusive right of the photographer to reproduce or publish photo creations should be synchronized with the will or permission of the person in the picture.

However, the full authority of the owner of a photo or portrait to reproduce or publish a photo of himself without the photographer's permission shall not infringe the Moral Rights of the photographer and therefore the name of the photographer as the Creator of the photo shall always be included. The owner of the photo also has an obligation to maintain the Moral Rights of the other photographer is the right of integrity and right of attribution that gives the personal right to the photographer to keep maintaining the integrity of the photo. That is, the owner of the photo is not entitled to change, modify or negate certain parts of the photo. This is a principle applicable in the theory of creation that every Creation is perfect and only the Creator has the right to edit and alter a Creation. The photo is the soul mate of the photographer even though the photo
belongs to someone else and although the photographer is not in full control of his creation.

Criminal provisions are a provision that is always included in every existing law in Indonesia, this Criminal provision is intended to provide a deterrent effect to perpetrators of violations of the Act. The Criminal Provisions contained in a Law constitute an *Ultimum remedium*, *Ultimum remedium* is one of the principles contained in Indonesian criminal law which says that criminal law should be the last resort in law enforcement. This has a meaning when a case can be resolved through another channel (negotiation, mediation, civil, or administrative law) let the path first pass.

UUHC No. 28 Year 2014 regulates the Criminal Provisions, based on Chapter XVII UUHC, there are at least about 8 Articles that regulate the Criminal Provisions, while in UUHC No. 19 of 2002 (old UUHC) Article that regulates the Criminal provisions there is only one Article only, Namely Article 72. The eight Articles regulating Criminal are regulated in Article 112 to Article 119. In eight Articles are regulated on Prison Criminal and Criminal Penalty. Criminal Prison according to UUHC. 28 Year 2014 mentioned; Imprisonment for a maximum of 10 (ten) years. While in the old UUHC (UUHC No.19 of 2002) mentioned that the imprisonment is 7 (seven) years old. As for Criminal Penalties according to UUHC No. 28 of 2014 determined; At most Rp 4,000,000,000.00 (four billion rupiahs), while in the old UUHC (UUHC No.19 of 2002) the penal provision is at most 1,500,000,000.00 (one billion five hundred million rupiah).

If Dewi Soekarno case happen after the applicable Law No.28of 2014, Article 115 applies to Ratna Sari Dewi Soekarno against Warsito (What’s on Indonesia Magazine) it says that “*Any Person without the consent of the person portrayed or the heirs committing Commercial Use, Reproduction, Announcement, Distribution or Communication of the Portrait referred to in Article 12 for the purposes of advertising for Commercial Use either In electronic and nonelectronic media, shall be punished with a maximum fine of Rp500,000,000.00(five hundred million). “
What’s on Indonesia has fulfilled the element of article 115. That What’s on Indonesia put Ratna Sari Dewi Soekarno portrait without her permission. Then Whats on Magazine distribute and or sell its magazine (Commercial use) to gain profit. What’s on Indonesia which is represented by chief editor the one who responsible shall be punished with a maximum fine of Rp500,000,000.00(five hundred million).
CHAPTER V

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

Observing from the description above, then the writer can draws some conclusions as follows:

A. Creator automatically as a copyright holder. Copyright holder may transfer their right through agreement, inheritance and so on. In relation portrait, in activities that will be done by copyright holder must have permission from the object.

B. The form of legal protection for portrait works in magazines there are 2 protections, namely preventive and repressive protection. Preventive protection is intended to prevent copyright infringement by magazine of portraits. Repressive protection is aimed at resolving copyright infringement of portraits. Dispute settlement between the copyright holder and the person being photographed can be done through litigation or ADR.

5.2. Recommendation

A. Government should give strict sanctions to copyright infringers on portraits that use other people's portraits for publishing in magazine, because preventive copyright protection of portraits is rarely done by magazine in publishing their portraits. Implementation of preventive protection is done to prevent copyright infringement of portrait. If it has been implemented preventive protection, there is no need to file a lawsuit in the Commercial Court.
B. Magazine company and should not use or publicize other people's portraits for putting in magazine easily without obtaining his/her consent or his/her heirs. As a result of using another person's portrait for promotion without asking permission first, it can be subject to a maximum fine of Rp. 500,000,000, - (five hundred million rupiah).

C. The government should provide socialization to the public that their photographs or portraits when used by photographers for commercial performances have been covered by protection under Law no. 28 of 2014 on Copyright. The socialization is intended for public awareness that the use of portraits used by the photographer must obtain the consent of the person concerned. Public awareness of copyright over portraiture is lacking, so if photographers use or publish a person's portrait for commercial, people just let it in spite of the fact they do not agree with a portrait that is published
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