


Copyright Infringement on Twitter: The Unauthorized Use of K-Pop Fan Photography by Fanfiction Author Azzamine

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Abstract

Photographic works shared publicly on social media platforms, particularly Twitter, are not exempt from legal disputes, especially concerning copyright infringement. This research focuses on two central issues: first, the extent of copyright protection granted to photographs taken and uploaded by K-Pop fans on Twitter; and second, the legal remedies available to the rightful owners when their photographic works are used without permission. Using a normative legal research methodology, the study adopts a statutory approach, analyzing relevant legal rules and norms that apply to copyright protection. The research relies primarily on secondary legal sources, including laws, legal doctrines, journal articles, and relevant case studies. The findings indicate that photographic works shared via Twitter are protected under copyright law, which includes both moral rights – such as the right of attribution and integrity – and economic rights, including the right to reproduce and distribute the work. When such works are used without authorization, the original creators or rights holders have the option to pursue both litigation and non-litigation paths. Litigation may involve filing a civil or criminal case in the Commercial Court. Meanwhile, non-litigation solutions include various forms of alternative dispute resolution (ADR), such as mediation, arbitration, negotiation, conciliation, and consultation. This study highlights the legal vulnerabilities surrounding fan-created content in online spaces and underscores the importance of respecting copyright protections, even within fan communities. It also emphasizes the available legal pathways to protect the rights of content creators in digital environments.

Keywords: Photography, Copyright, Twitter.



INTRODUCTION

The term *photography* is derived from the Greek words *photos* (light) and *graphos* (to draw or record), reflecting its fundamental nature as the practice of capturing images through the reflection of light.¹ Essentially, photography is an artistic expression that emerges from human creativity in producing visual representations of objects using a camera. As a form of creative work, photographic images are recognized as intellectual property and are protected under copyright law.

Intellectual Property Rights (IPR) protect works arising from human intellectual capabilities across various fields such as art, literature, science, aesthetics, and technology.² David Bainbridge concisely articulates the justification for IPR protection: essentially, everyone should be recognized and entitled to own what they have produced, and if that right is taken from them, they are no more than an enslaved person.

The World Intellectual Property Organization (WIPO) characterizes IPR as a "creation of the mind," or, normatively, a "product of the mind."³ This implies a human creation born from the expenditure of effort, will, ingenuity, time, and cost. The sacrifice of effort, price, and time in producing intellectual works such as scientific knowledge, art, literature, and technology endows these creations with value, including inherent economic value.⁴ IPR is divided into two main categories: Copyright and Industrial Property Rights.⁵ The scope of copyright includes works created in the fields of science, art, and literature. Industrial Property Rights, conversely, comprise Trademarks, Industrial Designs, Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Trade Secrets.⁶

¹ Nurul Aulia, 'Gedung Fotografi Khatulistiwa', *Jmars: Jurnal Mosaik Arsitektur* 4, no. 1 (March 2016): 67, <https://doi.org/10.26418/jmars.v4i1.16295>.

² Juwita, *Hak Kekayaan Intelektual Sebagai Bentuk Perlindungan Hukum* (Stilletto Book, 2022), 9.

³ Suhaimi et al., 'Perlindungan Hukum Terhadap Hak Kekayaan Intelektual (HKI) Di Indonesia', *Ius Civile: Refleksi Pengakuan Hukum Dan Keadilan* 5, no. 1 (17 June 2021): 77, <https://doi.org/10.35308/jic.v5i1.3276>.

⁴ Maria Alfons, 'Implementasi Hak Kekayaan Intelektual dalam Perspektif Negara Hukum', *Jurnal Legislasi Indonesia* 14, no. 3 (September 2017): 304.

⁵ Abdul Atsar, *Mengenal Lebih Dekat Hukum Hak Kekayaan Intelektual*, 1st ed. (Yogyakarta: Deepublish, 2018), 10.

⁶ Debby Marthalia et al., *Perlindungan Hukum Terhadap HKI*, 1st ed. (Batam: Yayasan Cendikia Mulia Mandiri, 2022), 6–9.

In its constitution and elucidation, Indonesia affirms itself as a rule of law state (*rechstaat*).⁷ This signifies that all aspects of state life and governmental power must be based on applicable laws, forming the primary foundation for regulating citizens' rights and obligations and governing fairly, transparently, and accountably. One regulated aspect is copyright. In Indonesia, copyright is governed by Law No. 28 of 2014 on Copyright. Copyright is considered one of the fundamental human rights enshrined in the Universal Declaration of Human Rights and the United Nations International Covenants.⁸ Generally, copyright is defined as the creator's exclusive right that arises automatically based on a declarative principle once a creation is materialized, without prejudice to limitations stipulated by statutory regulations.⁹

Portraits or photographs, as part of copyright, are defined as photographic works with human subjects.¹⁰ Photography, as a copyrighted work, comprises the creator and the creation. The creator is an individual or group of individuals who, independently or jointly, produce a distinctive and personal creation.¹¹ Meanwhile, a creation, in accordance with Article 1, Paragraph 3, Law No. 28 of 2014 on Copyright, is any work of creation in the fields of science, art, and literature resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form. As a creation, a photographic work can be understood as any photograph produced using a camera.¹²

The camera itself is a tangible manifestation of technological advancement. Before the advent of photography, images were captured through paintings. Technological development shifted image capture from paintings to film cameras. Furthermore,

⁷ Nuria Siswi Enggarani, 'Independensi Peradilan Dan Negara Hukum', *Law and Justice* 3, no. 2 (27 January 2019): 83, <https://doi.org/10.23917/laj.v3i2.7426>.

⁸ Tamotsu Hozumi, *Asian Copyright Handbook: Buku Panduan Hak Cipta*, 1st ed. (Jakarta: Ikapi, 2006), 2.

⁹ 'Law No. 28 of 2014 on Copyright' (n.d.) Art.1, Para.1.

¹⁰ Law No. 28 of 2014 on Copyright Art.1, No. 10.

¹¹ Law No. 28 of 2014 on Copyright Art.1, No. 2.

¹² Law No. 28 of 2014 on Copyright Art. 40 (k).

camera technology has continuously evolved, integrating cameras into devices like smartphones, making image capture more practical and usable anytime.¹³

In this digital era, technology is a communication tool and offers numerous applications for uploading photos and videos. Social media, a popular online platform, serves as a medium for online socialization or communication through the internet, transcending spatial and temporal boundaries.¹⁴

Twitter, chosen as a social media communication platform, is categorized as a microblog. A microblog is a type of social media that allows users to write, communicate, and share their daily activities.¹⁵ Twitter has become one of the most widely used social media applications globally due to its ease of use and numerous features, such as providing spaces for sharing activities, uploading photos or videos, reading the latest news, communicating with many people, and more. This technological advancement, over time, has led to a broader use of multimedia, resulting in an abundance of photos uploaded on social media and other internet pages.¹⁶ The ease of accessing photographic works on social media in the digital era has unfortunately led to a lack of copyright knowledge.

Society in this digital era should know that a creation, especially a photographic artwork, does not require prior copyright registration. Automatically, once a photographic work has been materialized and/or exhibited to the public, whether online or offline, it acquires copyright recognition and protection.¹⁷ This is in accordance with Article 40 Paragraph (1) letters f and k of Law No. 28 of 2014 on Copyright, which protects artistic images and photographic works, and Article 40

¹³ Muhammad Rusdi Tanjung, 'Fotografi Ponsel (Smartphone) Sebagai Sarana Media Dalam Perkembangan Masyarakat Modern', *Proporsi: Jurnal Desain, Multimedia Dan Industri Kreatif* 1, no. 2 (10 May 2016): 227, <https://doi.org/10.22303/proporsi.1.2.2016.224-234>.

¹⁴ Ezra Yora Turnip and Chontina Siahaan, 'Etika Berkomunikasi Dalam Era Media Digital', *Intelektiva: Jurnal Ekonomi, Sosial Dan Humaniora* 3, no. 4 (7 December 2021): 40.

¹⁵ Turnip and Siahaan, 'Etika Berkomunikasi Dalam Era Media Digital'.

¹⁶ Ida Bagus Kade Fajar Bukit Purnama, Si Ngurah Ardy, and Ni Ketut sari Adnyani, 'Perlindungan Hukum Atas Karya Cipta Fotografi Berdasarkan Pasal 40 Ayat 1 Huruf K Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta', *Jurnal Komunitas Yustisia* 4, no. 2 (20 August 2021): 605, <https://doi.org/10.23887/jatayu.v4i2.38155>.

¹⁷ Solehodin, 'Perlindungan Hukum Bagi Karya Fotografi Yang Diunggah Di Media Sosial Atau Jejaring Internet', *Jatistwara* 35, no. 2 (31 July 2020): 186, <https://doi.org/10.29303/jtsw.v35i2.243>.

Paragraph (3) of Law No. 28 of 2014, which clarifies that copyright protection includes creations that have not yet been announced but are already in a tangible form.

Understanding this automatic protection is crucial as a foundation for respecting creative works. In Islam, honouring intellectual works and disseminating knowledge are part of maintaining harmonious human relationships. Islam, as *Rahmatan Lil-'Alamin* (a mercy to all worlds), regulates human relationships with God and among fellow human beings¹⁸, including in disseminating knowledge and written works. Therefore, legal copyright protection is essential to ensure respect for intellectual works. Copyright protects against misuse or unauthorized reproduction, thereby honouring the creator's moral and economic rights by applicable legal provisions.

Similarly, as the creator of a photographic work, a photographer possesses exclusive rights, including moral and economic rights. Additionally, the creator has the right not to register their creation. Nevertheless, once a photographic work has been materialized and/or exhibited to the public, whether online or offline, it automatically gains copyright recognition and protection.¹⁹ As stipulated in the Indonesian Copyright Law, the creator's protected rights are moral and economic rights.

Droit moral, a French term, refers to the creator's personality, indicating that the work is inseparable from its creator. Thus, whether the creator is alive or deceased, their work remains inherently linked to them.²⁰ Conversely, economic rights in copyright refer to the exclusive right of the creator or copyright holder to derive economic benefits from the creation they have made.²¹ The content of economic rights includes the creator's right to publish and reproduce their creations.²² However, moral and economic rights are often overlooked in this digital era.

The limited understanding of copyright for photographic works in the digital era has caused many creators of photographic works (photographers) to suffer losses.

¹⁸ Syaifuddin Zuhdi et al., 'Divorce in Kangean Islands: The Study on Judge's Legal Reasoning of Kangean Religious Court, 2020-2022', *Jurnal Jurisprudence* 12, no. 2 (9 February 2023): 168, <https://doi.org/10.23917/jurisprudence.v12i2.1229>.

¹⁹ Zuhdi et al.

²⁰ R. Diah Imaningrum Susanti, *Hak Cipta: Kajian Filosofis Dan Historis* (Malang: Setara Press, 2017), 39.

²¹ Law No. 28 of 2014 on Copyright Art.8.

²² Lutfi Ulinnuha, 'Penggunaan Hak Cipta Sebagai Objek Jaminan Fidusia', *Journal of Private and Commercial Law* 1, no. 1 (19 February 2018): 92, <https://doi.org/10.15294/jpcl.v1i1.12357>.

Copyright infringement, defined as an unlawful act resulting in damages for the creator or copyright holder, is a significant and frequent issue in this digital era.²³ A common form of copyright infringement against photographic works is their use for commercial purposes without the creator's permission. Such unauthorized commercial use of photographic works was experienced by a K-Pop fan on Twitter, with the account @HDOL_jm, perpetrated by the fanfiction author Azzamine.²⁴

It is known that one page of the novel "Azzamine" contains an illustration drawn by the author, which is an illustration derived from a photograph uploaded by @HDOL_jm via Twitter. This illustration was used for commercial purposes without the consent or permission of the copyright holder of the photograph. Although it appears as an illustration, it is a form of tracing or plagiarism because the position and details in the illustration are highly similar to the photo owned and uploaded by @HDOL_jm on Twitter. Therefore, the author, publisher, and illustrator of the novel "Azzamine" have violated Law No. 28 of 2014 on Copyright and the creator's exclusive rights, specifically their moral and economic rights. Based on the description mentioned earlier, this study aims to ascertain the copyright protection for K-Pop fans' photographs uploaded on Twitter and to identify the legal recourse available to photo owners against the unauthorized use of their works.

METHODOLOGY

This study employs a normative legal research approach (doctrinal), which examines and analyses the internal aspects of positive law. This method allows for a transparent, systematic, tangible, and precise exposition of legal rules and principles within specific codifications or statutory regulations.²⁵

²³ Eko Rial Nugroho and Wahyu Priyanka NP, 'Perbuatan Melawan Hukum Berupa Pelanggaran Hak Cipta Terhadap Pemegang Lisensi Hak Cipta (Studi Putusan Nomor 02/PDT.SUS-HKI/2015/PN/NIAGA.Smg Jo. Putusan Nomor 518 K/Pdt.Sus-HKI/2015 Jo. Putusan Nomor 43 PK/Pdt.Sus-HKI/2017)', *Jipro: Journal of Intellectual Property* 3, no. 2 (21 October 2021): 75, <https://doi.org/10.20885/jipro.vol3.iss2.art4>.

²⁴ chevalier [@rabbitfoxie], 'https://t.co/RvixWs136t', Tweet, *Twitter*, 27 June 2022, <https://x.com/rabbitfoxie/status/1541367715683651589>.

²⁵ Khudzaifah Dimiyati and Kelik Wardiono, *Metode Penelitian Hukum (Buku Pegangan Kuliah)* (Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta, 2004).

The research primarily utilizes secondary data from library resources, legal texts, and legislation pertinent to photography copyright. Our focus is specifically on the legal norms and regulations governing Photography Copyright and the liabilities incurred by those who infringe upon these rights.

RESULTS AND DISCUSSION

Copyright Protection for K-Pop Fan Photographs on Twitter

Copyright is a fundamental component of Intellectual Property Rights (IPR) that has long been recognized and regulated under Indonesian positive law, even predating independence with the enforcement of the *Auteurswet 1912*.²⁶ Copyright signifies the creator's exclusive right that automatically arises based on a declarative principle once a creation is materialized, without prejudice to limitations stipulated by statutory regulations.²⁷ Protection for copyright is governed by Law No. 28 of 2014 on Copyright. Photography or portraits are among the artistic works whose copyrights are protected. Based on Article 1, paragraph 10 of Law No. 28 of 2014, a portrait or photograph is defined as a photographic work with a human subject. Copyright protection encompasses both the creator and their creation.

Law No. 28 of 2014 specifies the existence of a creator and a creation within copyright. A creator is defined as an individual or a group of individuals who, independently or jointly, produce a distinctive and personal creation.²⁸ In this context, a creation refers to any work of art, science, or literature resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form.²⁹ In accordance with the copyright law, a photographic work as a creation can be defined as any photograph produced using a camera.

²⁶ Ari Wibowo, 'Justifikasi Hukum Pidana Terhadap Kebijakan Kriminalisasi Pelanggaran Hak Cipta, Serta Perumusan Kualifikasi Yuridis Dan Jenis Deliknya', *Jurnal Hukum Ius Quia Iustum* 22, no. 1 (11 May 2016): 56, <https://doi.org/10.20885/iustum.vol22.iss1.art3>.

²⁷ Law No. 28 of 2014 on Copyright Art.1, Para. 1.

²⁸ Law No. 28 of 2014 on Copyright Art.1, No. 2.

²⁹ Law No. 28 of 2014 on Copyright Art.1, No. 3.

In the realm of photography, the creator is known as a photographer. As the copyright holder, a photographer possesses exclusive moral and economic rights. However, in the digital era, particularly with the advent of social media, these exclusive rights of creators often seem to be overlooked, leading to frequent copyright infringements. One such infringement on social media involved a K-Pop fan on Twitter, specifically the account @HDOL_jm. "K-Pop fan" is a term for enthusiasts of Korean Pop music. The owner of the @HDOL_jm account, also known as "How Deep Is Our Love," is a well-known South Korean fansite among K-Pop fans, especially NCTzens (fans of the K-Pop group NCT). A fan site is a fan who maintains their website, social media accounts, and content dedicated to their beloved idol.³⁰

The copyright infringement perpetrated by the author of the fanfiction novel "Azzamine" became a widely discussed topic among Indonesian K-Pop fans on Twitter. This controversy arose because the author and publisher of "Azzamine" commercially used one of @HDOL_jm's photographic works without permission. Copyright infringement, in this context, can be defined as an unlawful act of taking, quoting, recording, reproducing, and disseminating part or all of another person's copyrighted work, without the knowledge or permission of the creator or copyright holder.³¹

It was found that the Indonesian author of "Azzamine" created an illustration using a tracing technique based on a photo uploaded by @HDOL_jm on their Twitter account.³² This illustration was then incorporated into a page of the novel and commercialized. The tracing technique employed by the author resulted in an approximately 95% similarity to the original work. The only visible alteration was removing the idol's face, presumably to avoid copyright issues related to the idol's character visualization. However, the illustration's pose, body orientation, hairstyle,

³⁰ Niken Nurani, 'Budaya Fansite: Gambar, Bisnis, dan Dedikasi Fans K-Pop', kumparanK-POP, 14 March 2019, <https://kumparan.com/kumparank-pop/budaya-fansite-gambar-bisnis-dan-dedikasi-fans-k-pop>.

³¹ Solehodin, 'Perlindungan Hukum Bagi Karya Fotografi Yang Diunggah Di Media Sosial Atau Jejaring Internet', 182.

³² 'Twitter Post', Twitter, 27 June 2022, <https://x.com/aerishjae/status/1541456050741604352?s=08>.

and attire still strongly resemble @HDOL_jm's photographic work. Consequently, the author of the novel "Azzamine" is deemed to have infringed copyright.

As the creator and copyright holder, @HDOL_jm is not required to undergo a prior copyright registration process to obtain copyright recognition. Automatically, once a photographic work has been materialized and/or exhibited to the public, whether online or offline, it acquires copyright recognition and protection.³³ Additionally, as the creator, @HDOL_jm automatically possesses exclusive rights. Therefore, the author of "Azzamine" has infringed upon the moral and economic rights held by @HDOL_jm.

Moral rights are natural rights inherent to human beings, signifying the right to be recognized as the creator, including the right to have one's name attributed to the work.³⁴ The first aspect of moral rights, the right to attribution, as described by Margaret Wilkinson and Natasha Gerolami, ensures the public's need for accurate information is met.³⁵ Laura Gasaway also states that social recognition and respect through moral rights for a creator's work can explain and justify copyright.³⁶ Moral rights protection aligns with "authors' rights" or the creator's rights.³⁷ Moral rights in copyright include the right to be recognized as a creator even if the copyright has been transferred, and the right for the work not to be altered.³⁸

Furthermore, the Berne Convention outlines two types of protection for moral rights:

- a) Right of Paternity: This is the creator's right to be identified or known as the creator of their work;

³³ Solehoddin, 'Perlindungan Hukum Bagi Karya Fotografi Yang Diunggah Di Media Sosial Atau Jejaring Internet', 186.

³⁴ Cokorda Istri Ilma Sisilia Sari, I Made Sarjana, and A.A Istri Ari Atu Dewi, 'Perlindungan Karya Cipta Fotografi Dalam Perspektif Internasional Dan Nasional', *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 4 (December 2021): 748, <https://doi.org/10.24843/JMHU.2021.v10.i04.p06>.

³⁵ Susanti, *Hak Cipta: Kajian Filosofis Dan Historis*, 42.

³⁶ Susanti, 43.

³⁷ M. Hawin and Budi Agus Riswandi, *Isu-Isu Penting Hak Kekayaan Intelektual Di Indonesia*, 1st ed. (Yogyakarta: Gadjah Mada University Press, 2017), 9.

³⁸ Susanti, *Hak Cipta: Kajian Filosofis Dan Historis*, 40.

b) Right of Integrity: This is the creator's right to the integrity of their work. Article 6 of the Berne Convention states that creators have the right to object to certain modifications and/or other derogatory actions that would prejudice their work.³⁹

Beyond these two types of rights, Canadian legislation includes a right of association, which allows creators to object to the use of their work to promote a product or service.⁴⁰

Law No. 28 of 2014 represents an advancement in protecting creators and creations compared to previous Indonesian Copyright Laws. This progress is evident in the detailed inclusion and categorization of the exclusive rights granted to creators into moral and economic rights.⁴¹ This aligns with Article 15 (c) of the International Covenant on Economic, Social, and Cultural Rights, which obliges participating states to develop copyright mechanisms to protect creators' moral and economic interests.

The 2014 Copyright Law explicitly regulates the creator's exclusive rights in Article 4. It clarifies that moral rights are perpetual rights inherent to the creator. Therefore, @HDOL_jm, as the creator of their work, should, following the law, be able to:

- a) Have their name attributed or not attributed on copies in connection with the public use of their creation;
- b) Use an alias or pseudonym;
- c) Maintain their rights in cases of distortion, mutilation, modification of the creation, or any action detrimental to the creator's honour or reputation.⁴²

Furthermore, Article 5, paragraph (2) of Law No. 28 of 2014 on Copyright explains that a creator's moral rights cannot be transferred during their lifetime but can be transferred after their death through a will.

Regarding infringements of moral rights in copyright, there are two forms:

1. Failure to attribute the creator's name or alias when using their creation;

³⁹ Susanti, 41,46.

⁴⁰ Susanti, 48.

⁴¹ Susanti, 119.

⁴² Law No. 28 of 2014 on Copyright Art. 5, Para. 1.

2. Altering the title and subtitle of the creation, and modifying the creation to suit public needs through distortion, mutilation, modification, or any detrimental action damages the creator's reputation.⁴³

The phenomenon observed on Twitter suggests that the author and illustrator of the fanfiction novel "Azzamine" have infringed upon @HDOL_jm's moral rights by transforming the photographic work into an illustration without permission. Consequently, the author of "Azzamine" should provide compensation, as stipulated in Article 1365 of the Indonesian Civil Code (*KUH Perdata*): "Every unlawful act that causes damage to another person obliges the person who caused the damage through their fault to compensate for such damage."

Besides moral rights, economic rights constitute another crucial aspect of copyright. Economic rights represent the commercial value derived by the creator from a copyrighted work.⁴⁴ Copyright protection offers a highly beneficial and effective means of exploiting a work economically.

In Indonesia, economic rights are regulated in Article 8 of Law No. 28 of 2014, defined as the creator's or copyright holder's exclusive right to derive economic benefits from their creation. Article 9, paragraph (1) of the Law No.28 of 2014 on Copyright elaborates on the types of activities that constitute economic rights, including:

- a) Publishing their creation;
- b) Reproducing a creation;
- c) Adapting, arranging, or transforming their creation;
- d) Performing or presenting a creation;
- e) Announcing a creation;
- f) Communicating a creation; and
- g) Leasing a creation.

⁴³ Mariska, 'Ini Jenis Pelanggaran Hak Cipta yang Wajib Kamu Hindari', *kontrakhukum.com*, 2 July 2023, <https://kontrakhukum.com/article/jenis-pelanggaran-hak-cipta/>.

⁴⁴ Susanti, *Hak Cipta: Kajian Filosofis Dan Historis*, 57.

In addition to the creator performing activities related to their economic rights, the creator may transfer the economic rights of their creation to others. Economic rights can be transferred to the creator's heirs or other individuals. However, it is imperative to obtain permission from the creator to use their creation in accordance with their economic rights before engaging in activities such as reproducing, broadcasting, or selling the creator's work.⁴⁵ This is further clarified in Article 9 paragraphs (2) and (3) of Law No. 28 of 2014, which state: "(2) It is mandatory to obtain permission from the Creator or Copyright Holder when intending to use a creation for economic rights. (3) It is prohibited to reproduce and/or commercially use a creation without the Creator's or Copyright Holder's permission."

As the copyright owner, @HDOL_jm can control the exploitation or utilization of their work by selling copies of their creation to the public or granting permission to others to reproduce their creation, provided that @HDOL_jm, as the creator, receives a sum of money under the agreement. Therefore, the economic rights of a creation can be transferred.⁴⁶

When commercially using photographic works, it is crucial to ensure a written agreement stipulating a fair price commensurate with their value. However, only the photographer can determine an appropriate price, as they alone understand the value of their work. Suppose a photographic work is used commercially without permission, as done by the author of "Azzamine" on @HDOL_jm's photographic work. In that case, it will incur compensatory fines and/or legal sanctions such as imprisonment.

Besides securing a written agreement to prevent copyright infringement when granting economic rights, a creator can also prevent infringement by formally registering their copyright. Although, as is known, copyright does not require registration to gain recognition. Copyright registration is managed directly by the Directorate General of Intellectual Property (DGIP), an institution under the Ministry of Law and Human Rights. According to the Minister of Justice's Circular Letter No.

⁴⁵ Law No. 28 of 2014 on Copyright Art. 9, Para. 2.

⁴⁶ Susanti, *Hak Cipta: Kajian Filosofis Dan Historis*, 57.

01.HC.03.01 of 1987⁴⁷, applications for copyright registration are submitted to the Minister of Justice of the Republic of Indonesia through the Directorate of Copyright, requiring, among others:

1. The creator must complete two copies of the registration form, with the first sheet stamped with Rp 6,000.00 duty stamp.
2. Submitted on duplicated folio paper.
3. Written in Indonesian.
4. Signed by the applicant (creator) or their proxy.
5. The application letter must be accompanied by:
 - a) A sample of the creation or its substitute (e.g., from an heir);
 - b) Proof of the creator's citizenship in the form of a photocopy of the creator's, copyright holder's, or proxy's ID card or passport;
 - c) A photocopy of the Taxpayer Identification Number (NPWP), based on Circular Letter of the Minister of Justice of the Republic of Indonesia No. 02-HC.03.01 of 1971;
 - d) A power of attorney, if the application is submitted through a proxy, along with proof of the proxy's citizenship;
 - e) An official/certified copy of the deed of establishment of the legal entity, legalized by a notary;
 - f) Payment of a registration fee of Rp 75,000.00 (seventy-five thousand rupiah) for creations, and Rp 150,000.00 (one hundred fifty thousand rupiah) for computer programs.⁴⁸

Given the significant importance of moral and economic rights to both the creator and the copyright holder, legal protection is in place to safeguard these rights. Legal protection, in terminology, comprises two phrases: "protection" and "law." ⁴⁹ "Protection," according to *Kamus Besar Bahasa Indonesia* (Great Dictionary of the

⁴⁷ 'Ministry of Law and Human Rights Circular Letter No. 01.HC.03.01 of 1987' (n.d.).

⁴⁸ Eddy Pelupessy, *Hak Kekayaan Intelektual: Intellectual Property Rights* (Malang: Inteligensia Media, 2017), 15.

⁴⁹ Hilda Hilmiyah Dimiyati, 'Perlindungan Hukum Bagi Investor Dalam Pasar Modal', *Jurnal Cita Hukum* 2, no. 2 (1 December 2014): 342, <https://doi.org/10.15408/jch.v1i2.1473>.

Indonesian Language), is defined as the act of protecting.⁵⁰ "Law" can be described as a set of rules established and affirmed by the government or authority, which are binding.⁵¹ From these definitions, it can be concluded that legal protection is a collection of regulations protecting legal subjects in written and oral forms.

According to Phillips M. Hadjon's theory of legal protection, it is classified into two forms:

1. Preventive Legal Protection: This type of legal protection provides an opportunity for the public to submit their opinions to the government before a definitive decision is made, aiming to prevent disputes;
2. Repressive Legal Protection: This form of legal protection aims to resolve a dispute after it has occurred.⁵²

Law No. 28 of 2014 serves as evidence of preventive legal protection. Moral rights and economic rights have different protection durations. Moral rights have no time limit for protection, while economic rights are valid for the creator's lifetime and continue for seventy years after the creator's death. However, copyright protection for photographic works is valid for fifty years from the initial publication date.⁵³

Recourse Available to Photo Owners for Unauthorized Use of Their Works

In accordance with Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945, Indonesia is a state of the rule of law, signifying that every aspect is legally protected or subject to legal protection. The theory of legal protection arises from legal provisions and regulations, fundamentally representing a societal agreement to govern inter-societal conduct and individual interactions with the government, which is deemed to represent public interests.⁵⁴ Repressive legal protection offers legal remedies to resolve such violations in infringement cases.

⁵⁰ 'Arti Kata Perlindungan - Kamus Besar Bahasa Indonesia (KBBI) Online', n.d., <https://kbbi.web.id/perlindungan>.

⁵¹ Tim Hukumonline, 'Perlindungan Hukum: Pengertian, Unsur, Dan Contohnya', hukumonline.com, 12 August 2023, <https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062/>.

⁵² Tim Hukumonline, 'Teori-Teori Perlindungan Hukum menurut Para Ahli', hukumonline.com, 30 September 2022, <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc/>.

⁵³ Law No. 28 of 2014 on Copyright Art. 59.

⁵⁴ Fitriani Nur Damayanti et al., *Perlindungan Hukum Profesi Bidan*, 1st ed. (Semarang: Unimus Press, 2019), 59.

According to Komar Kantaatmaja, the resolution of copyright infringement disputes can be categorized into three types: dispute resolution through direct negotiation (simple negotiation) or with third-party intervention (mediation and conciliation); national or international litigation dispute resolution; and dispute resolution through *ad hoc* or institutional arbitration.⁵⁵

Regarding the resolution of disputes concerning unauthorized use of photographic works, even the smallest resolution is believed to have a positive impact and benefit for the creator or copyright holder, particularly in addressing moral rights infringements.⁵⁶ Endang Purwaningsih argues that infringements of creators' or copyright holders' moral rights can be resolved through civil lawsuits. In contrast, economic rights violations are categorized as criminal offenses and can thus be pursued through criminal law.⁵⁷ Consequently, the Commercial Court can resolve disputes involving infringements of economic rights.

It can be asserted that the photographic copyright infringement committed by the author of "Azzamine" against @HDOL_jm can be resolved through litigation or non-litigation legal avenues. Litigation refers to dispute resolution through the courts, whereas non-litigation refers to out-of-court dispute resolution.⁵⁸

Dispute resolution through litigation can involve suing the author of "Azzamine" and the novel's publisher, *Bukune*, in either a civil or criminal court. In accordance with Article 113 of Law No. 28 of 2014 on Copyright, it can be concluded that the publisher of the "Azzamine" novel (*Bukune*) falls under the category of a primary perpetrator. Due to the publisher's limited knowledge of copyright regulations, their

⁵⁵ Yuniar Kurniawaty, 'Efektivitas Alternatif Penyelesaian Sengketa dalam Sengketa Kekayaan Intelektual (Alternative Dispute Resolution on Intellectual Property Dispute)', *Jurnal Legislasi Indonesia* 14, no. 2 (June 2017): 573.

⁵⁶ I Kadek Candra Wisesa, Desak Gde Dwi Arini, and Luh Putu Suryani, 'Perlindungan Hukum Terhadap Karya Cipta Fotografi', *Jurnal Preferensi Hukum* 1, no. 1 (27 July 2020): 36, <https://doi.org/10.22225/jph.1.1.2162.33-38>.

⁵⁷ Solehodin, 'Perlindungan Hukum Bagi Karya Fotografi Yang Diunggah Di Media Sosial Atau Jejaring Internet', 185.

⁵⁸ Natangsa Surbakti, *Peradilan Restoratif Dalam Bingkai Empiri, Teori Dan Kebijakan* (Genta Publishing, 2021), 272.

actions can be considered a deliberate infringement of established statutory copyright.⁵⁹

If copyright infringement is pursued through a civil lawsuit, it will be based on the unlawful act stipulated in Article 1365 of the Indonesian Civil Code (KUH Perdata). However, prior to this, @HDOL_jm must prove that the unlawful act committed by the author of "Azzamine" (the Defendant) caused damages to the Plaintiff (@HDOL_jm). After collecting evidence, the Plaintiff can report the Defendant to the Commercial Court.⁶⁰

As the Plaintiff, one may request an interim injunction from the Commercial Court to cease the announcement, distribution, communication, and/or reproduction of the creation that constitutes copyright infringement.⁶¹ This aims to prevent suspected copyright-infringing goods from entering commercial channels⁶², to withdraw them from circulation, to seize and store evidence, and to secure and prevent the loss of evidence.⁶³

Law No. 28 of 2014 on Copyright regulates criminal lawsuits. However, as stipulated in Article 95 paragraph (4) of Law No. 28 of 2014 on Copyright, mediation must first be pursued as the initial attempt at copyright dispute resolution before filing a criminal complaint. This signifies that criminal prosecution is considered the last resort (*ultimum remedium*) in copyright dispute resolution.⁶⁴

Article 120 of the Copyright Law stipulates that copyright offenses are categorized as complaint offenses (*delik aduan*). This means that prosecution can only proceed if a

⁵⁹ Satria Perdana et al., 'Perlindungan Hukum Bagi Karya Fotografi Ditinjau Dari Undang-Undang Hak Cipta (Studi Kasus Putusan Pengadilan Negeri Surabaya Nomor: 10/HKI/Hak Cipta/2014/PN. Niaga Sby)', *Iuris Studia: Jurnal Kajian Hukum* 2, no. 3 (30 September 2021): 572, <https://doi.org/10.55357/is.v2i3.176>.

⁶⁰ Perdana et al., 573.

⁶¹ Law No. 28 of 2014 on Copyright Art. 99, Para. 4.

⁶² Alif Muhammad Gultom and Dodik Setiawan Nur Heriyanto, 'The Power of Legal Certainty in the Trademark Exhaustion Principle Governing Parallel Imports', *Aclj: Audito Comparative Law Journal* 4, no. 2 (15 May 2023): 76–86, <https://doi.org/10.22219/aclj.v4i2.25232>.

⁶³ Law No. 28 of 2014 on Copyright Art. 106.

⁶⁴ Paramita Cahyaning Dewanti and Rahmadi Indra Tektona, 'Perlindungan Hukum Bagi Artis Atas Penggunaan Potret Dalam Cover Novel Fanfiksi', *Batulis Civil Law Review* 2, no. 1 (31 May 2021): 37, <https://doi.org/10.47268/ballrev.v2i1.467>.

formal report requesting prosecution against an individual or specific individuals is filed. Such a prosecution can be submitted to the Head of the Commercial Court.⁶⁵

Once the case is registered, and the panel of judges assigned to the case is formed, the parties involved in the dispute, namely the plaintiff (@HDOL_jm) and the defendants (the author and publisher of "Azzamine"), will be summoned by the Court to appear before the judges. Judges generally advise parties to undertake a mediation stage during this initial court meeting before proceeding to the examination phase.⁶⁶

If the dispute resolution cannot be achieved quickly, the Plaintiff may request a provisional order. Then, under Article 106 of Law No. 28 of 2014 on Copyright, the judge will issue a provisional order, which may include:

1. Prohibiting the entry of goods suspected of being a creation resulting from copyright infringement into commercial channels;
2. Seizing and withdrawing goods resulting from copyright infringement from circulation and storing them as evidence;
3. Securing and protecting evidence to prevent its loss by the infringer;
4. Halting the infringement to avoid greater losses.

Law No. 28 of 2014 contains eight articles regulating criminal imprisonment and fines. The criminal penalties (imprisonment and fines) applicable to the phenomenon experienced by @HDOL_jm, a K-Pop fan, are regulated in Article 113 of the Law No.28 of 2014 on Copyright, which includes:

1. Anyone who rents out a creation without authorization for commercial purposes may be subject to imprisonment for a maximum of one year and/or a fine of up to Rp 100,000,000.00 (one hundred million Rupiah);
2. Anyone who translates, arranges, and/or transforms a creation, or performs and/or communicates a creation without authorization or permission from

⁶⁵ Intan Faradiba Aydin, 'Ini Dia! Macam-Macam Penyelesaian Sengketa Hak Cipta', SmartLegal.id, 22 November 2021, <https://smartlegal.id/hki/hak-cipta/2021/11/22/ini-dia-macam-macam-penyelesaian-sengketa-hak-cipta/>.

⁶⁶ Dewanti and Tektona, 'Perlindungan Hukum Bagi Artis Atas Penggunaan Potret Dalam Cover Novel Fanfiksi', 37.

the creator or copyright holder for commercial purposes, may be subject to imprisonment for a maximum of three years and/or a fine of up to Rp 500,000,000.00 (five hundred million Rupiah);

3. Anyone who publishes a creation, reproduces a creation, distributes a creation, and/or announces a creation for commercial purposes without the permission of the creator or copyright holder may be subject to imprisonment for a maximum of four years and/or a fine of up to Rp 1,000,000,000.00 (one billion Rupiah).

Alternatively, dispute resolution through non-litigation legal avenues can be pursued via procedures agreed upon by the parties. These out-of-court methods include mediation, arbitration, consultation, negotiation, and conciliation.⁶⁷ Mediation can be defined as a copyright dispute resolution effort rooted in Indonesian societal culture, prioritizing consensus-building to resolve issues. From a Civil Law perspective, mediation emphasizes the presence of a third party, commonly referred to as a mediator, who acts as a bridge between the disputing parties to facilitate reconciliation.⁶⁸

Next, Arbitration. Dispute resolution through arbitration is employed to anticipate potential or ongoing disputes and to avoid resolving disputes through the judicial system, which is often perceived as time-consuming. The outcome of arbitration is an arbitral award. Suppose the parties have chosen to resolve a dispute through arbitration, and there is a binding agreement. In that case, the court must declare itself without jurisdiction to hear the dispute should a legal issue arise between the parties.⁶⁹ Generally, arbitration institutions offer advantages over judicial bodies, including:

1. Guaranteed confidentiality of the dispute among the disputing parties;

⁶⁷ Ayrin, 'Ini Dia! Macam-Macam Penyelesaian Sengketa Hak Cipta'.

⁶⁸ Chrisna Bagus Edhita Praja, Budi Agus Riswandi, and Khudzaifah Dimiyati, 'Urgensi Mediasi Sebagai Alternatif Penyelesaian Sengketa Hak Cipta', *Kertha Patrika* 43, no. 3 (27 December 2021): 275–95, <https://doi.org/10.24843/KP.2021.v43.i03.p04>.

⁶⁹ Dewanti and Tektona, 'Perlindungan Hukum Bagi Artis Atas Penggunaan Potret Dalam Cover Novel Fanfiksi', 39.

2. Avoidance of delays caused by formal and administrative procedures in court proceedings;
3. Parties can directly select arbitrators based on mutual agreement, believing them to possess sufficient knowledge, experience, and background concerning the disputed matter, as well as being honest and fair;
4. Disputing parties can determine the applicable law for resolving the case, as well as the process and venue for conducting the arbitration; and
5. An arbitral award is binding on the parties and can be directly enforced through simple procedures.⁷⁰

Furthermore, consultation can be understood as a personal interaction between a client and a consultant, where the consultant provides legal opinions per the client's request. Negotiation is a dispute resolution method involving direct discussions between the disputing parties to reach a mutually acceptable outcome. Lastly, conciliation is fundamentally similar to mediation, given the involvement of a neutral third party (the conciliator) who is expected to assist the parties in resolving the dispute. The conciliator is generally more active than a mediator.⁷¹

Structurally, Indonesia already possesses a body for resolving copyright and IPR disputes, namely the Indonesian Intellectual Property Arbitration and Mediation Board (BAM HKI), which was established in 2011. The emergence of BAM HKI aims to⁷²:

1. Conduct fair and swift resolution of adjudicative cases in the field of IPR;
2. Conduct training, education, and socialization in the field of IPR relevant to the purpose and objectives of BAM HKI;
3. Conduct other activities related to arbitration and mediation that do not conflict with its primary activities.

Sembiring argues that both litigation and non-litigation dispute resolution methods have their respective strengths and weaknesses:

⁷⁰ Dewanti and Tektona, 39.

⁷¹ Ayrin, 'Ini Dia! Macam-Macam Penyelesaian Sengketa Hak Cipta'.

⁷² Grace Henni Tampongangoy, 'Arbitrase Merupakan Upaya Hukum Dalam Penyelesaian Sengketa Dagang Internasional', *Lex et Societatis* 3, no. 1 (January 2015): 160–69, <https://doi.org/10.35796/les.v3i1.7081>.

1. Litigation is characterized as a coercive method of dispute resolution, compelling one party to resolve the dispute through the courts. In contrast, non-litigation dispute resolution relies on the desire, willingness, and good faith of the parties to resolve the dispute amicably;
2. Litigation, possessing an executive nature, means that the competent authority can compel the enforcement of a judgment by the Commercial Court. Conversely, with non-litigation dispute resolution, enforcement cannot be compelled as it depends on the will and good faith of the parties;
3. Litigation generally involves the engagement of legal services, such as advocates/lawyers, incurring relatively high costs;
4. As is known, litigation requires adherence to formal requirements and procedures stipulated by the court, consequently extending the time needed to resolve a dispute. Non-litigation dispute resolution has no formal procedures or requirements, as the form and manner of dispute resolution are entirely left to the disputing parties.⁷³

CONCLUSION

Photographic works, as a form of artistic and intellectual creation, are fully protected under Law No. 28 of 2014 on Copyright, regardless of whether they are displayed publicly or distributed through social media platforms such as Twitter. This legal protection encompasses both preventive and repressive measures. Preventive legal protection aims to safeguard the moral and economic rights of the creator, thereby minimizing the risk of infringement through the clear recognition of authorship and the exclusive rights to reproduce, distribute, and communicate the work to the public.

When infringements do occur, repressive legal protection becomes relevant, offering both litigation and non-litigation avenues for dispute resolution. Litigation includes civil and criminal proceedings brought before the Commercial Court, with criminal sanctions specifically regulated in Article 113 of the Copyright Law. This provision

⁷³ Dewanti and Tektona, 'Perlindungan Hukum Bagi Artis Atas Penggunaan Potret Dalam Cover Novel Fanfiksi', 35.

outlines penalties for violations of economic rights as stipulated in Article 9, including fines ranging from Rp 100 million to Rp 4 billion and imprisonment from one to ten years, depending on the severity of the infringement.

In contrast, non-litigation remedies offer more flexible and less adversarial pathways, such as mediation, arbitration, negotiation, consultation, and conciliation. These alternative dispute resolution mechanisms provide an opportunity for the parties to reach amicable settlements without resorting to formal court proceedings.

In conclusion, the legal framework under Indonesian copyright law provides a comprehensive mechanism for the protection and enforcement of photographic works, reinforcing the importance of respecting creative rights in both traditional and digital spaces.

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