

Analysis of Legal Protection of Graphic Design Works Based on Law Number 28 of 2014 concerning Copyright

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Date of Submission: 14-06-2023

Date of Acceptance: 24-06-2023

ABSTRACT: Intellectual Property Rights are exclusive rights that are only owned by the owner or holder of the rights, so if other parties want to utilize or use these rights to create or produce material objects in a similar form, they must obtain a license or permission from the owner or holder of the rights. Graphic design is included in the qualification of the scope protected by Copyright in Law No. 28 of 2014 on Copyright Article 40 letters F and S, namely the elements of images and elements of computer programs because the graphic design produced in two dimensions is a work produced by the Creator through a computer program. Legal protection to the Creator of graphic design works already has legal protection since it was first declared to the public or realized in a concrete form without registration. However, suppose a creator wants additional evidentiary power over the Work he created. In that case, the Creator must register with the Directorate General of Intellectual Property (DJKI) because the registration process carried out by the DJKI already includes overall proof that the Work was first created and recorded, but if the registration to be done is quite tricky with the number of works that must be created, doing registration is not mandatory to be done by copyright holders.

KEYWORDS: Copyright, Graphic Design, Declarative Principle, Legal Protection.

I. INTRODUCTION

Copyright registration needs to be done by the owner of the Work or someone who creates an innovation. However, unfortunately, this step is still rarely done by people because it is considered difficult to register their creations. Dharmawan (2017, p. 19) argues, "This reason is that

Intellectual Property Rights are exclusive rights that are only owned by the owner or right holder, so if other parties want to utilize or use these rights to create or produce material objects in a similar form, they must obtain a license or permission from the owner or right holder. Unlike the rights to movable objects such as land, vehicles, and so on, IPRs have an abstract nature." Berne Convention in 1886 in Paris is a convention that initiated the presence of Copyright; this convention regulates the principle of Copyright, including ownership, protection, term, and exceptions to Copyright. (Hidayah, 2017, p. 29)

Intellectual property rights (Indonesia, 2011)(IPR) are divided into Copyright and industrial property rights, Copyright is included in IPR, namely the rights obtained for property created from human intellectual products (Yulia, 2015, p. 2). However, based on the Presidential Regulation of the Republic of Indonesia Number 44 of 2015 concerning the Ministry of Law and Human Rights Article 25 point 7 (seven) replacing the term Intellectual Property Rights IPR to IP, the name of the Directorate is "Directorate General of Intellectual Property" (Dharmawan et al., 2018, p. 3). Establishing Law Number 28 of 2014 concerning Copyright, the protection of Copyright outlined in the Copyright Act is expected to make creators feel safer to create their works (Indriana, 2018, p. 246). According to Abdul Atsar (2018, p. 3), "IPR is a right that arises to protect the results of a person's thinking and creativity that produces a product or process that has utility for humans, the right to enjoy the results of an intellectual creativity economically." Clear legal protection is needed in business activities, both for sellers and consumers, because with the improvement of world trade, the

greater the effort to outsmart the fraud gap that can be penetrated.

The Copyright Law protects efficiently because, in the General Provisions of Article 1, paragraph 1, it is written, "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions following the provisions of laws and regulations." Purba (p. 48) wrote in his book, "The granting of exclusive rights to Intellectual Property to rights holders is an appropriate recognition of the compensation and achievement of creativity, thought, and effort produced by creators, inventors, or designers. Finally, intellectual property rights are the rights (authority/power) to do something over intellectual property further regulated in applicable legal norms".

The recovery of world trade, which is indicated by increased global business competition, especially in the fashion sector, reveals that Intellectual Property Rights are essential to protect trade business activities. According to Kholis(Kholis, 2015, p. 9), "IPR is an exclusive right within the scope of technological life, science, or art and literature; ownership is not of the goods but of the results of human intellectual abilities and creativity, which include ideas or ideas. The development of technology in the field of fashion business raises issues, including the lack of information about the things that are traded to consumers, thus providing a gap for fraud which is believed to disrupt the sustainability of fashion graphic designers themselves. The fraud that occurs is just a repetition of what has already happened, for example, piracy, plagiarism, and data/work theft, but with the development of the times making, opportunities for fraud with new and varied modes.

Parties running small and medium enterprises that have not registered ownership of their copyrighted works often refer to the Declarative principle, this action does directly give exclusive rights to the owner of the Work, but the absence of clear protection of the declarative principle is detrimental to the owner of the Work because it is directly related to the economic sector of the owner of the Work in question, how not if irresponsible people take the Work it will eliminate the opportunity for the owner of the original Work. If there is fraud in copyright cases, then what can be done by the Creator of the Work is to report or use the offense of complaint so that the case can be processed, but what needs to be remembered is that a creator must also be able to prove that a work is a

valid creation. Education about the importance of realizing the Work into a complete form is still rarely done, which is quite unfortunate because people are considered to understand the law even though, in practice, not all people understand and understand what is meant in the law; a situation like this that results in many business people who are just starting their careers often get problems with graphic design copyright. Maulana (Maulana, 2010, p. 5) explained, "Concerning this, the Industrial Design Rights do not appear immediately when the design was completed, and the principle is not the same as copyright that gives rights to the creator when a creation is realized or born, and the creator or copyright holder has the right to reproduce or publish his work that is distinctive and original." In today's digital era, many graphic design actors market and upload their services using the Instagram platform. However, the freedom to access Instagram every individual can do makes it difficult to supervise and limit their actions so that the perpetrators of image theft uploaded by the original Creator of the Work are easily stolen to be reproduced for personal gain; this situation always occurs, and it is difficult to supervise the original Creator of the Work.

With the problem described above, the problem formulation is as follows:

1. Can graphic design creations be qualified within the scope of copyright protection?
2. How can efforts be taken so that creators get legal protection?

II. RESULT AND DISCUSSION

A. Copyright and the Scope of Copyright

Scope of Copyright are regulated in Law Number 28 of 2014 concerning Copyright Article 1. Paragraph 1 explains, "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions following the provisions of laws and regulations." Copyright is one of the parts that protect the broadest objects in intellectual property, which also includes computer programs. With the rapid growth of the creative economy in Indonesia and various other countries and the development of information and communication technology, Law Number 28 of 2014 concerning Copyright must continue to follow the developments. Creation that is realized in a tangible form has exclusive rights for the Creator; in Law Number 28 of 2014 concerning Copyright 1, paragraph 2 explained that "A creator is a person or several people who individually or jointly produce a distinctive and personal creation," producing a creation is an expression of the Creator

in a tangible form. A creator must undoubtedly meet the qualifications under Law Number 28 of 2014 concerning Copyright so that the Work created can be protected by law. Individuals who produce works can already be categorized as copyright owners. The form of Creation in question is contained in Law Number 28 of 2014 concerning Copyright Article 1, paragraph 3 contains, "Creation is any creative work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in the real form." Creators who can obtain protection for their creations must comply with Law Number 28 of 2014 concerning Copyright Article 40:

Paragraph (1) "Protected creations include creations in the fields of science, art, and literature, consisting of:

- a. Books, pamphlets, illustrations of published works, and all other written works;
- b. lectures, lectures, speeches, and other similar creations;
- c. teaching aids made for the benefit of education and science;
- d. songs and 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, engraving, calligraphy, sculpture, statue, or collage;
- g. applied art;
- h. architectural works;
- i. map;
- j. photographic works;
- k. batik art or other motif art;
- l. Portrait;
- m. cinematographic works;
- n. translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, and other works of transformation;
- o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. a compilation of Creation or data, either in a format that a computer program or other media can read;
- q. compilation of traditional cultural expressions as long as the compilation is an original work;
- r. video games; and
- s. Computer Programs."

Paragraph (2) "The creation as referred to in paragraph (1) letter n is protected as a separate

creation without prejudice to the Copyright of the original creation."

Paragraph (3)

"Protection as referred to in paragraph (1) and paragraph (2), including protection of Creation that is not or has not been made Announcement but has been realized in a tangible form that allows the reproduction of the Creation." Based on Article 40, paragraph 1, letter f, the Work of graphic design is included in the works protected by Copyright.

However, there are some situations where works are not protected by Copyright described in Law No. 28 of 2014 on

Copyright Article 41

Works that are not protected by Copyright include:

- a. The result of Work that has not yet been realized in natural form;
- b. Any idea, procedure, system, method, concept, principle, finding, or data, even if it has been expressed, stated, described, explained, or incorporated in a Work; and
- c. A tool, object, or product created only to solve technical problems or whose form is only intended for functional needs.

The functional needs referred to in letter c above are human needs for a particular tool, object, or product that, based on its form, has certain uses and functions. Functional needs refer to needs that arise from the human desire to own or use a tool, object, or product that can fulfill a purpose or solve a particular problem. This need is related to the utility or functionality aspect of an object. When we talk about "functional needs," we refer to human needs related to the performance or purpose of a tool or product.

Copyright is an essential element in intellectual property that provides comprehensive protection to various protected objects, including science, art, literature, and computer programs. As an intangible form of intellectual property, Copyright has an inherent economic value and arises from human thinking and creativity. When a creator materializes his or her ideas into a tangible form, Copyright will automatically arise, providing legal protection without being registered. Thus, Copyright becomes a comprehensive part of protecting diverse and variegated intellectual works. Such protection is directly realized by granting exclusive rights and the application of the declarative principle.



Based on the case experienced by the owner of the Instagram account @sinnersaliststudios, who works as a two-dimensional Graphic Designer that @sinnersaliststudios is a legal subject that obtains copyright protection because it is the Creator as well as the copyright holder; in this case, the design concept "SINNER WORLD" which has been made by @sinnersaliststudios which are then uploaded on his personal Instagram social media is used by others with the account name @icgboys to be sold to @dimyrii. @iceboys also mass-produced the t-shirt and sold it on the Shopee E-Commerce platform. It also violates the regulations because the profits obtained are entirely for personal use, thus violating the economic rights that should be owned by @sinnersaliststudios.

Economic Rights and Moral Rights are two things related to exclusive rights based on the declarative principle that is automatically obtained by a creator of the Work after declaring his Work, following what is stipulated in Article 5 Paragraph 1 of Law Number 28 of 2014 concerning Copyright, namely "Moral rights as referred to in Article 4 are rights that are eternally attached to the Creator to:

- a. continue to include or not include his/her name on copies in connection with the public use of his/her Work;
- b. using his alias or cover name;
- c. change its Creation following the propriety of society;
- d. changing the title and subtitle of the Creation; and
- e. defend his/her rights in the event of distortion of the Creation, mutilation of the Creation, modification of the Creation, or anything detrimental to his/her honor or reputation."

While the Economic rights under Article 8 of the Copyright Act are "economic rights is the

exclusive right of copyright holders to obtain economic benefits from the results of creation." In duplicating or mass production of Work must go through procedures and permission from the copyright owner; the following provisions are outlined in Article 9 Paragraph 3 of the Copyright Act, which contains "any person who without the author's permission is prohibited from duplicating and/or commercial use of the work."

Reproduction of works made without the copyright owner's permission can be categorized as piracy as written in Article 1 Point 23 "Piracy is the unauthorized duplication of creations and / or related rights products and the distribution of goods resulting from such duplication widely to obtain economic gain." The perpetrators of piracy can be subject to legal sanctions based on the provisions stipulated in Article 113, Paragraphs 3 and 4 of the Copyright Law:

(3) "Any person who without the right and the permission of the creator or copyright holder infringes the rights of the copyright holder as referred to in Article 9 paragraph (1) letter a letter b, letter e, and letter g for commercial use shall be punished with imprisonment of 4 (four) years and/or a maximum penalty of Rp 1,000,000,000.00 (one billion rupiahs)."

(4) "Any person who fulfills the elements as referred to in paragraph (3) in the form of piracy shall be punished with imprisonment of 10 (ten) years and/or a maximum fine of Rp4,000,000,000.00 (four billion rupiahs)".

Although there is an infringement of the copyrighted work "SINNER WORLD" owned by @sinnersaliststudio, the filing of the cancellation of the sale and purchase of the graphic design does not occur, for @sinnersalist_studio such actions are detrimental. In this case, the graphic design

concept "SINNER WORLD" has rights based on the Copyright Law's declarative principle, namely moral and commercial rights that should receive legal protection. However, a fraud loophole makes a work that already has protection rights still experience infringement but is not protected.

Judging from the purpose of the legal protection of Copyright is to encourage the Creation of design works that are useful and beneficial to the industry's progress by paying attention to the protection elements. However, the protection of Graphic Design is based on the concept that the ability of creativity, taste, and creativity possessed by humans plays an essential role in creating Graphic Design itself. The purpose of encouraging the Creation of a law that prioritizes protection and justice has yet to be achieved, even though the graphic design created is an imitation and not a personal work that still receives legal protection. It causes a loss to the actual Creator because contributing to the industry's progress, in reality, causes a loss to the actual Creator. The fact in the field that applying the constitutive system will only lead to bad faith; it is entirely contrary to the purpose of the law to create order, balance, and orderly society. By creating order in society, human interests are hoped to be guaranteed and protected. Mertokusumo (2002) Mertokusumo (2002) explains that "In order to achieve this goal, the law has the task of dividing rights and obligations between individuals in society, dividing authority and making arrangements regarding how to solve legal problems and maintain legal certainty."

SatjiptoRahardjo(Rahardjo, 2012, p. 118) explains that "justice is one of the needs in human life that is generally recognized everywhere in the world.Law is a social institution whose purpose is to administer justice in society(Rahardjo, 2012, p. 121). Copyright protection aims to encourage individuals in society with intellectual abilities and creativity to be increasingly motivated to create works that are beneficial to the nation's progress without worrying about protection and legal certainty. Copyright is supposed to protect the Creator's right to distribute, sell, or make derivatives of the Copyright holder's Work; however, in the case of @sinnersaliststudio, the Copyright owned by the Creator is proven to be not effectively implemented.

This journal uses the theory of legal responsibility, which is a concept that discusses the obligations of legal subjects or perpetrators who commit unlawful acts or criminal acts that cause loss, disability, or death of others. Piracy is an act that violates economic rights and moral rights, so in seeking justice and truth, the theory of legal

responsibility must be used. In Dutch, this theory is known as "wettelijke aansprakelijkheid," In German, it is known as "die Theorie der Haftung." Sugeng Istanto (1994, p. 77) Sugeng Istanto (1994, p. 77) in his written book, argues that "liability means the obligation to provide an answer which is an account of all things that happen and the obligation to provide recovery for losses that may be caused." The theory of legal responsibility is a conceptual basis that explains the principles that include the types and elements that must be met to establish legal responsibility and how to determine the amount of compensation or sanctions that must be given to the perpetrator. Meanwhile, responsibility in the theory of legal responsibility refers to the obligation of the perpetrator to take responsibility for his or her actions that violate the law and cause loss or damage to the person or property of others. The perpetrator must provide compensation for the harm caused by his or her actions. The law is also an essential element in the theory of legal responsibility because it determines the rules and procedures that must be followed in establishing legal responsibility, as well as determining the sanctions or compensation that must be provided by the perpetrator to the injured party.The definition of responsibility is explained in detail by Algra and friends: "Responsibility orverantwoordelijkheid is the obligation to bear responsibility and losses incurred (if requested), especially in a legal context." Legal liability is a type of responsibility imposed on a legal subject or perpetrator who commits an unlawful act so that it can be demanded to pay compensation. Salim (2015, p. 208:209) Salim (2015, p. 208:209) in his book wrote: "Although the definition does not specifically mention the theory of legal responsibility, the theory examines and analyzes the willingness of the legal subject or perpetrator to bear the costs or losses arising from his actions." This definition distinguishes two types of responsibility: legal and administrative.

Legal responsibility is a type of responsibility given to legal subjects or perpetrators who commit unlawful acts or criminal offenses so that they can be required to pay compensation and serve a sentence. On the other hand, administrative responsibility is given to people who make administrative mistakes, such as doctors who violate administrative rules, so their practice license can be revoked.

B. The Declarative Principle

The Declarative Principal is a system that does not require registration or enrollment. In this system, rightsand claims are considered valid and

protected from the moment they are declared without any formal process, such as registration or registering the rights. The declarative principle grants rights and claims automatically at the same time as the Work is created; the advantage of this principle is that it provides immediate protection without any costs or administrative processes. Registration or registration can still be done voluntarily to provide more substantial evidence and protect rights more effectively in the event of a dispute. Law Number 28 of 2014 concerning Copyright in Article 1, paragraph 1 adheres to the declarative principle in which it explains, "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions following the provisions of laws and regulations."The history of word declarative first used as vocabulary in the law is found in the Trademark Act of 1961; many legal observers tend to see the Trademark Act of 1961 has many weaknesses, especially in the declarative registration system, because it will be challenging to prove who is the first user of the mark (Murjiyanto, 2017, p. 53). A declaration principle is a legal approach that does not require formal registration to obtain legal protection for certain rights or claims. Under this principle, Copyright is considered valid and protected from the moment it is declared without the need to go through the bureaucratic process for registration. In the context of intellectual property rights, such as Copyright, the declaration principle means that the right is considered valid since the copyrighted Work is realized in a concrete form or used in business activities. There is no mandatory requirement for formal registration at the intellectual property rights protection agency or what is currently called the Directorate General of Intellectual Property. The advantage of this approach is that it provides immediate protection without any fees or complicated administrative processes. However, in some jurisdictions, registration can still be done voluntarily to provide more substantial evidence and protect rights more effectively in future disputes. Based on this description, it can be analyzed that the declarative principle in Copyright Law has the consequence that the Creator of a graphic design work is deemed to obtain Copyright on his Work from the moment the Creator puts his Work in concrete form, not necessarily by registration, registration has a function to increase the strength of evidence.

III. CONCLUSIONS

Based on the research results and data above, it can be concluded as follows:

1. Graphic design is included in the qualifications of the scope protected by Copyright in Law No. 28 of 2014 on Copyright Article 40 letters F and S, namely the elements of images and elements of computer programs because the graphic design produced in two dimensions is a work produced by the Creator through a computer program.
2. Legal protection to the Creator of graphic design works already has legal protection since the first time a declaration is made to the public or has been realized in a concrete form without the need to register. However, suppose a creator wants additional evidentiary power over the Work he created. In that case, the Creator must register with the Directorate General of Intellectual Property because the registration process carried out in that institution has covered the absolute proof that the Work was first created and recorded, but if the registration to be done is quite complex with many works that must be created, doing registration is not mandatory for copyright holders. Unregistered copyrighted works will provide difficulties for the Creator of the Work when facing cases of plagiarism or theft of works.

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