



## Copyright Law Protection Against Unauthorized Use Of Artwork In Commercial Products

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**Abstract:** Copyright is an essential instrument within the Intellectual Property Rights (IPR) system, providing legal protection for works of art, literature, and science, including the economic and moral rights of the creator. In Indonesia, copyright regulation has evolved from Law No. 6 of 1982 to Law No. 28 of 2014, which affirms that copyright arises automatically based on the declarative principle and grants creators exclusive rights to exploit, use, and derive economic benefits from their works. This study employs a normative legal method by examining primary, secondary, and tertiary legal materials, including relevant legislation and court decisions. Copyright protection plays a crucial role in ensuring that creators receive recognition, control, and economic benefits from their works. The use of artistic works for commercial products without permission, such as the silhouette sketch of the “Tugu Selamat Datang” by PT Martina Berto Tbk, constitutes a violation of the creator’s economic and moral rights. Law No. 28 of 2014 emphasizes that copyright arises automatically once a work is realized, so any adaptation or use of a work still requires permission from the rights holder. The analysis indicates that copyright protection is vital for preventing unilateral exploitation of artistic works, ensuring legal certainty for creators, and promoting compliance within the creative industry.

**Keyword:** Copyright, Protection, Artistic Works, Commercial Products.

### INTRODUCTION

Copyright as part of the intellectual property rights (IPR) system is a legal instrument that recognizes and protects works of art, literature, and science as human creations. Historically, the regulation of Copyright in Indonesia began with the passage of Law No. 6 of

1982 concerning Copyright which was enacted by the government to update the Auteurswet 1912 Dutch colonial heritage.<sup>1</sup>

After that, amendments were made successively with Law No. 7 of 1987 concerning Copyright which was later amended to Law No. 12 of 1997 concerning Amendments to Law No. 7 of 1987. This law was ratified by the government through a ratification process as a consequence of Indonesia's participation in the World Trade Organization (WTO) which is briefly known as the WTO, which Indonesia has ratified the agreement in Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing The World Organization. This implies that all sets of laws and regulations on Intellectual Property Rights must be adjusted to TRIPS (TradeRelated Aspect of Intellectual Property Rights) agreed in the WTO convention forum. The government has made new arrangements related to Copyright by passing Law No. 19 of 2002 concerning Copyright because it responds to the development of science and technology that has become more advanced.<sup>2</sup>

In 2014, the Government issued a Law related to Copyright as a consequence of the development and progress of the times so that the previous Law No. 19 of 2002 which was no longer in accordance with the development of the times was replaced with the ratification of Law No. 28 of 2014 concerning Copyright. The birth of this Law is to answer the need for legal reform related to Copyright and to provide legal protection and certainty for Copyright holders, owners

Law Number 28 of 2014 concerning Copyright stipulates that copyright arises automatically based on the declarative principle when the work is realized in real form, giving creators the exclusive right to exploit, use, and obtain economic benefits from their work. In the theory of IPR law, the protection of moral rights and the economic rights of creators are two essential pillars.<sup>3</sup> However, in practice in Indonesia, violations of the economic rights of creators are still very serious, especially in the context of the use of artworks for commercial products ranging from product packaging, advertising, to merchandise without permission from copyright holders.<sup>4</sup> The low awareness of business actors and the public on the importance of permits/licenses, along with law enforcement constraints, is a major factor.<sup>5</sup> The context of the creative industry as a strategic sector also shows that works of art are not only aesthetic aspects but also economic commodities that are vulnerable to abuse.<sup>6</sup>

One of the copyright dispute cases that occurred between the heirs of artist Henk Ngantung and PT Martina Berto Tbk (a cosmetics manufacturer) through the Supreme Court's decision, namely Decision Number 68/Pdt.Sus-Copyright/2023/PN Niaga Central Jakarta, provides a concrete picture of this problem. In this case, the silhouette of the sketch "Welcome Monument" by Henk Ngantung was used by the defendant on the packaging of commercial products without permission from the copyright holder. This creates a conflict between the

<sup>1</sup> R. Diah. Imaningrum, *Copyright: Kajian Filosofis Dan Historis* (Malang: Setara Press, 2017), 5.

<sup>2</sup> Yusran Isnaini, *Hak Cipta Dan Tantangannya Di Era Cyber Spance* (Bogor: Ghalia Indonesia, 2019), 9.

<sup>3</sup> Hetty Hassanah and Niken Widiinayah, "Sosialisasi Aspek Hukum Kekayaan Intelektual Dalam Usaha Kecil Menengah" 1, no. 1 (2022): 14.

<sup>4</sup> Ilhamdi Ilhamdi, Legal Protection for Copyright Holders in Digital Transactions in Indonesia: Perlindungan Hukum Terhadap Pemegang Hak Cipta Dalam Transaksi Digital di Indonesia, Lex Researchia, Vol. 1 No. 1 (2024): 12-15. <https://doi.org/10.56466/lex/Vol1.Iss1.1990>.

<sup>5</sup> Noviriska Noviriska, "Perlindungan Hak Kekayaan Intelektual Terhadap Pelaku Ekonomi Kreatif Berdasarkan Undang-Undang Hak Cipta," *Scientific Journal of Publika* 10, no. 2 (2022), <https://doi.org/10.46774/sjpub.v10i2.251>.

<sup>6</sup> Lidya Shery Muis, Ari Purwadi, and Dwi Tatak Subagyo, "Perlindungan Hukum Hak Cipta Fesyen Terhadap Ekonomi Kreatif Dalam Masyarakat Ekonomi ASEAN, Perspektif: Kajian Masalah Hukum Dan Pembangunan," *Perspektif: Kajian Masalah Hukum Dan Perubahan* 22, no. 2 (2022), <https://doi.org/10.30742/perspektif.v22i2.531>.

commercial interests of industry players and the exclusive rights of creators in the context of using artworks.

The panel of judges in the ruling affirmed that the creator was Henk Ngantung in the capacity of an artist (not as a state official) and therefore the copyright of the work rested with the creator and his heirs. This decision reinforces that the use of the artwork as a "public icon" does not exempt business actors from the obligation to obtain permits or licenses. Within the legal framework, the ruling underscores the practice that the protection of the economic rights of creators is not only normative, but also has financial and reputational consequences for violators.

## METHOD

This research is a normative legal research. This method places the law as a norm or rule that applies in society and becomes a guideline for the behavior of each individual. Normative legal research is carried out by examining legal materials and laws and regulations, so that the focus of the study includes a positive legal inventory, legal principles and doctrines, legal discoveries in concrete cases, legal systematization, norm synchronization level, legal comparison, to historical aspects of a rule.<sup>7</sup> This study uses secondary data obtained through literature materials. The data sources in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include, Law Number 28 of 2014 concerning Copyright, and Decision Number 68/Pdt.Sus-Copyright/2023/PN Niaga Central Jakarta.

## RESULTS AND DISCUSSION

Legal protection of copyright is one of the fundamental elements in the intellectual property system, because it protects creators to obtain awards and economic benefits for the works they have produced. In the context of the use of artwork in commercial products without permission, this issue is increasingly crucial because it relates to the use of works for business purposes that generate profits for other parties without providing compensation or obtaining approval from copyright holders. Therefore, copyright law serves to ensure justice and prevention of the unilateral exploitation of artworks.<sup>8</sup>

Copyright protection in Indonesia is regulated in Law Number 28 of 2014 concerning Copyright (UUHC). This law affirms that copyright arises automatically based on declarative principles after a work is realized in real form. This means that registration is not required to obtain protection, although the registration of the work still provides an additional aspect of proof.<sup>9</sup> This provision is especially important in the context of works of art such as sketches, paintings, illustrations, or silhouettes, which are often part of commercial products, such as cosmetics, fashion, or merchandise packaging.

Economic rights are one of the main components that are violated when another party uses unauthorized artwork in commercial products. Article 9 of the UUHC gives the creator or copyright holder the exclusive right to reproduce, distribute, advertise, and use the work in any form. When a company uses artwork in product packaging or marketing materials, it is a form of announcement and distribution directly to the public.<sup>10</sup> Unauthorized use is clearly a violation of economic rights and has the potential to cause material losses to rights holders.

In addition to economic rights, there are also moral rights that remain forever attached to the creator. Moral rights include the right to keep the name of the creator listed as well as

<sup>7</sup> Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, 1st ed. (Bandung: PT. Citra Aditya Bakti, 2004).

<sup>8</sup> Budi Agus Iswandi and M. Syamsudin, *Hak Kekayaan Intelektual Dan Tantangannya* (Yogyakarta: FH UII Press, 2019), 42.

<sup>9</sup> Suyud Margono, *Hukum Hak Cipta* (Jakarta: Kencana, 2018), 9.

<sup>10</sup> Rachmadi Usman, *Hukum Hak Cipta* (Jakarta: Sinar Grafika, 2017), 89–90.

the right to maintain the integrity of the creation. A violation of moral rights occurs when a work of art is used without listing its creator or even modified without permission, for example transformed into a silhouette or combined with other visual elements on a commercial product.<sup>11</sup> In many cases, violations of moral rights are often ignored by business actors who focus solely on commercial aspects.

The relevant copyright infringement case to be analyzed is the case of the Plaintiff (Henk Ngantung's heir) against PT Martina Berto Tbk (Sariayu) in Decision Number 68/Pdt.Sus-Copyright/2023/PN Niaga Jkt Pst. In this case, the Defendant used the sketch silhouette "Welcome Monument" which was Henk Ngantung's creation on the packaging of the Trend Color Sari Ayu 2018 cosmetic product without permission from the copyright holder. The use of the silhouette is carried out commercially through the distribution of products to national and international markets. The panel of judges considered that the act was a violation of economic rights because it was used for profit purposes without a license from the right owner.

This case shows that the artwork, even if it is only in the form of sketches or silhouettes, still receives legal protection. This is in line with the view of academics that works of art are copyright objects that are very vulnerable to abuse, especially in the digital era when the reproduction process can be carried out easily and quickly.<sup>12</sup> Legal protection is becoming increasingly important to ensure that creators continue to benefit from their creations even though they have been used in various visual and commercial media.

In the context of proof, the registration of the creation at the Directorate General of Intellectual Property is strong evidence in the litigation process. In this case, Henk Ngantung's heirs already have proof of registration that includes creation numbers 46189, 46190, and 46191. The existence of the recording strengthens the plaintiff's legal standing as a legitimate copyright holder. The legal literature states that the registration of creations, although not mandatory, provides the advantage of proof and reduces disputes related to ownership.

The panel of judges in this decision also rejected the defendant's defense stating that the silhouette used was the result of a license purchase from Shutterstock. On the other hand, the judge considered that Shutterstock could not license works that are derivatives or reproductions of Henk Ngantung's creations if they did not have permission from the copyright holder. This principle is in accordance with the principle that only the copyright holder or the party who obtained an official license is authorized to grant permission to use the work.

This ruling reinforces that companies are obliged to verify the origin of the work before it is used commercially. The use of visual assets from digital platforms such as Shutterstock or Pinterest does not necessarily exempt business actors from legal liability. In the international literature, the principle of "due diligence on copyright clearance" is known, which states that every user must verify the copyright of a work before using it. Carelessness can lead to companies being sued and incurring huge losses.

From a civil law perspective, copyright infringement includes unlawful acts because they violate the creator's subjective rights. The losses incurred must be reimbursed by the defendant in the form of both material and immaterial compensation. In this case, the plaintiff seeks material damages of Rp1,000,000,000 and immaterial damages of Rp500,000,000. This remedy is in accordance with the doctrine that compensation for copyright infringement must reflect both actual and immaterial losses such as reputational damage.<sup>11</sup> The judge's action to order the withdrawal of products circulating on the market shows that the legal protection of copyright law is preventive and repressive. Product recall is a form of remedy so that violations

<sup>11</sup> OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual* (Jakarta: Rajawali Press, 2016), 112.

<sup>12</sup> Fitri Murfanti, "Hak Cipta Dan Karya Seni Di Era Digital," *Acintya Jurnal Penelitian Seni Budaya* 12, no. 1 (August 3, 2020): 44–58, <https://doi.org/10.33153/acy.v12i1.3147>.

do not continue. This instrument also provides a deterrent effect for business actors who tend to ignore copyright in the product marketing process.

One of the important aspects of copyright protection against the use of artwork in commercial products is an understanding of the scope of exclusivity provided by the law. The economic rights inherent in copyright holders are not only related to the prohibition of duplication of works, but also include adaptation, announcement, and distribution as contained in Article 9 of the Copyright Law.<sup>13</sup> Thus, any use of artwork in the form of derivative work such as silhouettes, digital modifications, or graphic simplification still requires the permission of the rights holder. This thinking is in line with the doctrine of international law which emphasizes that visual adaptations remain within the protection of the original creation.<sup>14</sup>

In addition, the principle of "no use without permission" is very central in copyright law. The use of works on product packaging or marketing materials is a form of direct exploitation that aims to increase economic value for those who use the creation. In this context, the use of works of art cannot be considered as fair use, because it does not have an educational, critical, or non-commercial character.<sup>15</sup> Therefore, the use of works in commercial products is automatically under the licensing requirement.

The development of the creative industry has made many companies use visual elements instantly from the internet without doing copyright verification. This phenomenon is highlighted by various academic studies that show the low awareness of business actors towards the concept of copyright clearance, especially when taking pictures from stock photo platforms or social media.<sup>16</sup> In fact, digital platforms do not always have the right to sell or license images that contain the creation of other parties, unless the uploader is really the copyright holder. In the case of the "Welcome Monument" sketch, the defendant's defense that the image was obtained from Shutterstock failed to prove the legality of use, as Shutterstock could not sell a work sourced from a protected work without the author's authorization.<sup>17</sup>

This legal position emphasizes the principle of chain of title, which is that any licensing must come from a party that has legal rights. A broken chain of title violation causes a license to be invalid and does not provide legal protection for the party who obtains the license.<sup>18</sup> This is what causes user companies to remain responsible even though they have purchased visual assets from digital platforms. The court in this judgment considered that the defendant did not have a strong legal basis to avoid liability for copyright infringement.

The panel of judges also emphasized the importance of distinguishing between copyright objects (sketches) and related rights objects (physical building objects). The defendant argued that the Welcome Monument is a public icon and therefore does not have copyright. However, the judge considered that what was protected was the sketch of the artwork, not the physical object. This view is in accordance with the legal doctrine that artistic representation of an object remains a protected creation, regardless of the status of the object depicted (public landmark).<sup>19</sup>

In the copyright literature, there is a clear separation between "ideas" and "expressions". Monuments or monuments can be thought of as ideas, while sketches or visualizations are protected expressions of them.<sup>20</sup> Therefore, the reuse of the sketch of the Welcome Monument

<sup>13</sup> Usman, *Hukum Hak Cipta*, 95.

<sup>14</sup> Daniel Gervais, *Intellectual Property: The Law of Copyright* (Cambridge: Cambridge University Press, 2019), 244.

<sup>15</sup> Brian Fitzgerald, "Fair Use in Commercial Context," *Journal of IP Law* 14, no. 2 (2018): 178.

<sup>16</sup> Murfianti, "Hak Cipta Dan Karya Seni Di Era Digital," 47.

<sup>17</sup> Gunaldi Ahmad, "Sirkulasi Royalti Hak Cipta Dan Permasalahannya," *Alasma Jurnal Media Informasi Dan Komunikasi Ilmiah* 07, no. 02 (2025): 28, <https://jurnalstitmaa.org/index.php/alasma/article/view/126/108>.

<sup>18</sup> Graham Dutfield, *Intellectual Property Rights and the Chain of Title* (Routledge, 2018), 66.

<sup>19</sup> Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, 123.

<sup>20</sup> WIPO, *Copyright and the Distinction Between Idea and Expression* (Ganeva: WIPO, 2017), 10.

in silhouette form remains a use of the expression of creation, not just the use of ideas. This concept is the basis for the defendant to be in a position to infringe copyright even though the shape used is only a silhouette.

Furthermore, the aspect of proving damages in copyright disputes is a crucial issue. Much of the literature emphasizes that economic losses in copyright infringement do not always have to be calculated from actual losses, but can also be calculated from the profits obtained by the infringer (unjust enrichment).<sup>21</sup> This doctrine is commonly applied in international jurisdictions and is recognized as a fairer approach for rights holders. In the context of this case, the plaintiff filed a claim for material loss based on the commercial value of the use of sketches on product packaging, not on the actual sales amount.

Intangible damages also have an important position in copyright because they relate to the moral rights of the creator. Moral rights include the right to be respected and the right not to be altered or manipulated without permission. Many academics emphasize that violations of moral rights can degrade the dignity or reputation of creators and their families.<sup>22</sup> The court in this case considered that the use of the creation without listing the creator and changing the shape to a silhouette had harmed the honor of the creator, so it deserved immaterial compensation.

From the perspective of justice theory, copyright protection is not only oriented to the interests of creators, but also maintains a balance in the creative industry ecosystem. If the company is free to use the artwork without permission, then the creator loses the incentive to continue creating new works. Charles Fried in his theory of moral rights states that works of art are an extension of the creator's personality, so that the violation of the work is the same as demeaning the identity of the creator. This view reinforces the need for strict enforcement against copyright infringement on commercial products.

Legal instruments such as product recall, destruction of goods, and the provision of forced money (dwangsom) are mechanisms that aim to ensure a deterrent effect. According to research, the application of dwangsom in intellectual property disputes is very effective in suppressing the possibility of repeated infringements.<sup>23</sup> The verdict in the "Welcome Monument" case follows this strict enforcement pattern by affirming the defendant's obligation to recall the product and destroy the packaging that uses the silhouette. This ruling also has an important impact on companies in the cosmetics industry and the creative industry in general. Many companies now realize that every visual element used on packaging must be copyright-verified. This shows the development of compliance culture in the industry after court rulings that provide strict sanctions for copyright infringement.

## CONCLUSION

Copyright protection is a fundamental instrument in the intellectual property legal system because it ensures that creators gain recognition, control, and economic benefits for the work they create. In the context of the use of artworks in commercial products without permission, as seen in the case of the use of the sketch silhouette "Welcome Monument" by PT Martina Berto Tbk, violations of economic rights and moral rights of creators are becoming increasingly clear and significant. Law Number 28 of 2014 concerning Copyright emphasizes that every work receives protection automatically from the moment it is realized, so the use of artworks in any form, including adaptations such as silhouettes, still requires permission from the rights holder. The court decision imposing the obligation of compensation and ordering the withdrawal of the product shows that copyright infringement is an unlawful act that has strict

<sup>21</sup> Paul Goldstein, *International Copyright: Principles & Practice* (New York: Oxford University Press, 2019), 301.

<sup>22</sup> Sudargo Gautama, *Hak Cipta Dan Perkembangannya* (Bandung: Alumni, 2015), 88.

<sup>23</sup> Charles Fried, "Personality and Moral Rights," *Harvard Law Review* 99, no. 2 (2018): 324.

juridical consequences. This overall analysis confirms that copyright law enforcement is indispensable to prevent the unilateral exploitation of works, ensure legal certainty for creators, and encourage stronger compliance in creative industry practices.

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