

The Analysis of Legal Protection for the Practice of Adding Watermarks in Graphic Design Products

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Abstract.

Intellectual Property Rights (IPR) is born from an individual's recognition of his intellectual abilities, so that each of his works is directly attached to the creator. A work of art can be created by anyone, especially activists in the art world such as singers, writers, designers, photographers and so on. In its development, creators always find the latest variations and innovations for work. These innovations can be of various kinds and can result in good or bad, can harm other parties or not harm other parties. In one's profession a Graphic Designer always produces graphic design work that develops every year and follows market demand. The protection of graphic design products is also carried out by several owners, those who understand the Copyright Law must register their products with the Directorate General of Intellectual Property Rights by following the existing procedures. But on the other hand, there are also some copyright owners who do not register, but instead provide watermarks or watermarks in their works. This study aims to provide an understanding for those who carry out watermarking actions by using juridical and normative methods by prioritizing library-based legal research whose sources come from secondary data which is then applied to the core problem of this research, namely Watermarking in Graphic Design which focuses on the legal protection of the parties. This research provides an understanding of how the act of affixing a watermark gets legal protection according to Act No. 28 of 2016 concerning Copyright

Keywords: Copyright; Design; Graphic; Watermarking.

1. Introduction

Indonesia is an archipelagic country consisting of various cultures, races, religions, languages and tribes. These differences make the sources of intellectual property in Indonesia very diverse. Therefore the government

regulates Intellectual Property Rights (IPR) in Laws and Regulations with the aim of protecting the rights of each owner of an intellectual work.¹

Intellectual Property Rights (IPR) are born from an individual's recognition of his intellectual abilities, so that each of his works is directly attached to the creator.²As regulated in Article 1 number 1 of Act No. 28 of 2014 concerning Copyright, it is explained that Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions.³

A work of art can be created by anyone, especially activists in the art world such as singers, writers, designers, photographers and so on. With the existence of Copyright, a person has received exclusive protection for the creator himself or for the recipient of the right to announce or reproduce his work or give permission for it without reducing the limitations according to statutory regulations.⁴The creation itself is the work of every creator showing its authenticity in the fields of science, art and literature. His creations that are protected must be concrete.⁵ Intellectual Property Rights itself means the rights to do something about the intellectual property, which is regulated in applicable norms or laws.⁶

With the existence of the Copyright Act, it provides legal protection in the fields of science, art and literature consisting of: books, pamphlets, written representations published from all other written works - lectures, lectures, speeches and other similar creations, props made for educational and scientific purposes, songs and/or music with or without text, drama, musical drama, dance, choreography, sculpture, or collage, works of applied art, works of architecture, maps, works of batik art or other motifs, works photography, portraits, architectural works, translations, interpretation, adaptations, anthology, bases, data, adaptations, arrangements, modifications and other

¹Situmeang. (2020). "Perlindungan Hukum Terhadap Ciptaan Fotografi dengan Tanda Air atau Watermark Berdasarkan Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta". *Jurnal Focus Hukum*, 1 (3): 139

²A.A Sagung Intan Pradnyaningrum Pradnyaningrum. (2021). "Perlindungan Hukum Terhadap Penggunaan Foto Pada Desain Baju Ditinjau Dari Kekayaan Intelektual" *Jurnal Kertha Wicara*, 11 (1):175

³Andrian Sutedi. (2009). *Hak Atas Kekayaan Intelektual*. Jakarta: Sinar Grafika, p. 115-116

⁴Riswandi. (2017). *Pembatasan dan Pengecualian Hak Cipta di Era Digital*. Bandung: Citra Aditya Bakti, p.32

⁵Suurdaryat, et.al. (2010). *Hak Kekayaan Intelektual*. Bandung: Oase Media. p. 21

⁶Mahadiana Risa Assyifa, Siti Ummu Adillah, "Perlindungan Hukum PT. Inter Sporst Marketing Sebagai Pemegang Hak Cipta Atas Penyiaran Piala Dunia Brazil 2014 Berdasarkan UU No.28 Tahun 2014 Tentang Hak Cipta", *Konfrensi Ilmiah Mahasiswa UNISSULA (KIMU)4*, Semarang, <http://jurnal.unissula.ac.id/index.php/kimuh/article/view/11875/4796>

works and transformation results; translations, adaptations, arrangements, modifications and other works resulting from the transformation; translation, adaptation, arrangement, transformation, or modification of international cultural expressions, compilations of works or data, either in readable formats with computer programs or other media; a compilation of traditional cultural expressions as long as the compilation is an original work, a video game, and a computer program.

Basically, copyright infringement occurs if the contents of copyright material are used without permission from the creator and there are similarities in existing works. In this case a creator must provide a claim that proves the originality of his work. Copyright is also violated if all or part of the substance of a work that has been protected by copyright has been copied, it is the court's job to assess and examine whether the part used is important, has different elements or easily recognizable parts.⁷

In its development, creators always find the latest variations and innovations for a work. These innovations can be of various kinds and can have good or bad results, can be detrimental to other parties or not to harm other parties. In the profession of a Graphic Designer, he always produces graphic design works that develop every year and follow market demand. Talking about the positive impact of the development of technology and information that is increasingly advanced from time to time, this is used for people to elevate their economy from simple to modern and fast-paced, of course it also has an impact on information behavior in all fields, one of which is in the field of creativity and the arts. . Discussing the creative economy can be explained as a product that comes from ideas, which emerge from human thinking and the existence of knowledge, as well as cultural and technological heritage.⁸

The problems that occur in IPR, especially regarding Graphic Design, have been regulated in detail in the Copyright Law, but due to the rapid development of digital, several other problems have arisen due to a lack of understanding of Intellectual Property Rights.

Graphic design copyrights are copyrights that are legally protected by law, especially in this digital age, graphic design products such as making logos, murals, sketches are done digitally and even marketed through digital media. With the high selling value of graphic design products, they are vulnerable to copyright imitation by someone who is not responsible, so graphic design products are given protection with the aim that no one can claim a work of their creation.

⁷Endang Purwaningsih. (2005). *Perkembangan Hukum Intellectual Property Rights*. Bogor Ghalia Indonesia. p. 6.

⁸Yudhi Tri Permono Sukarmi, (2019). *Perlindungan Hukum Konsumen Dalam Transaksi Secara Online*, *Jurnal Hukum UNISSULA*, 35 (1): 78

Many of their owners carry out the protection of graphic design products. Those who understand the Copyright Act must register their products with the Directorate General of Intellectual Property Rights by following the existing procedures. But on the other hand, there are still some copyright owners who do not register, but instead provide a watermark or watermark in their work.

Watermark is a symbol that is usually given by the owner of a work of art to mark the ownership of his photographic work. Depending on the purpose of affixing a watermark, the owners of photographic works also affix watermarks in various ways. There are those who put it with only a small mark, but there are also those who put it with a very clear mark. However, not all graphic designers mark their work with a watermark.

In this era of digitalization, where everything is digital, people are facilitated by the internet, as well as electronic transactions, one of which is the buying and selling of graphic design products. In 2022 alone, there have been many websites selling graphic designs with a watermarking system in Indonesia, such as Freepik.com, Pngtree.com, istock and so on.

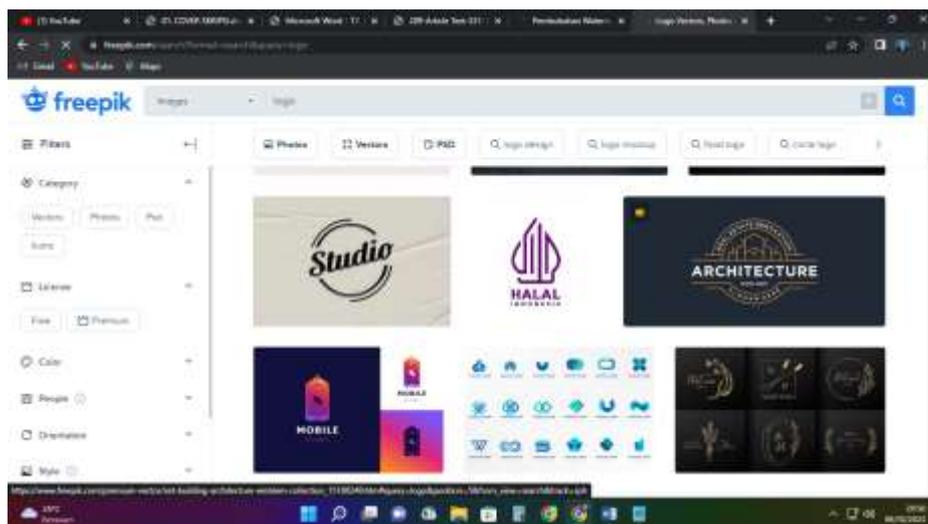


Figure 1. Freepik : Graphic Design Product Seller Website

On the website there are many products such as logos, icons, images that are protected by affixing a watermark or watermark. In the case of buying and selling, there will be a seller who is the maker of the work and a buyer who is the owner of the work if a transaction has been made. This means that there is a transfer of ownership rights here. However, this can lead to new problems, such as fears that the creators will duplicate their work and be traded on different platforms, and also fear that buyers will register the products they have purchased and then trade them at a lower price than before. Therefore, it is necessary to have a more in-depth discussion of this action. With the aim of providing an understanding for those who carry out watermarking actions.

2. Research Methods

In this research, the researcher uses normative juridical research methods. By prioritizing literature-based legal research whose sources come from secondary data which is then applied to the core problem of this research, namely the Adding of Watermarks in Graphic Design which focuses on the legal protection of the parties.⁹

Explanation and presentation of data in this research is presented in a descriptive manner which describes the research object in depth and describes the problems and solutions to these legal problems. The focus of this research is in accordance with the object of the legal issues listed above.

3. Result and Discussion

3.1. The Act of Providing Watermarking in Graphic Design Products according to Act No. 28 of 2014 concerning Copyright

The term watermarking appears in a branch of science known as steganography. Where in the branch of steganography study how to hide a secret information in other information. Steganography is hiding other data that will be overlaid without changing the overlaid data so that the overlaid data before and after the hiding process is almost the same.¹⁰

Watermarking is the provision of a permanent identification code in a digital work. The identification code can be text, image, image or video. Copy does not damage the digital data of the product to be protected, the code that is inserted must have robustness from various advanced processing such as conversion, geometry transformation, compression, encryption, and so on. So in general, watermarking can be said to be one of the efforts to protect copyright in digital form, the function of the watermark can be referred to as the fingerprint of the legal owner of the digital product. In watermarking, it is done in several ways with the aim of providing an identification code without having to damage the digital product.¹¹

So from some of the explanations above it can be said that watermarking or watermarking is a technique of hiding confidential data or information in the form of an identification code into other data to be embedded, but other people are not aware of the data being added.¹² And with the nature of robustness, it

⁹Lathifah Hanim. (2014). "Perlindungan Hukum Bagi Para Pihak Dalam E-commerce Sebagai Akibat Dari Globalisasi Ekonomi". *Jurnal Pembaruan Hukum*, 1 (2). : 192

¹⁰Widiyanto Tri Handoko. (2002). "Perlindungan Keaslian Citra Dengan Teknik Watermarking". *Jurnal Media Neliti*". 7 (1). : 165

¹¹R. Munir. (2004). *Pengolahan Citra Digital dengan Pendekatan Algoritmik*. Bandung: Informatika. p. 15

¹²Handoko, Widiyanto Tri. (2002). *Op.cit*, p. 166

provides resistance to digital works, does not damage and reduce the image of the work.¹³

The application of a watermark can be applied to a digital work. There are various kinds of digital works, such as in photography and graphic design products. In this study the researchers focused on graphic design products.

Graphic design itself has opinions from experts as according to Encarta (2008) Graphic design is the art of depicting in 2 dimensional form and is an illustration that shows a 2 dimensional image form which states satire words for the reader so that the meaning in the image can be known. Then according to Ricard Holis (1986) "Graphic Design is the business of making or choosing and arranging, them on a surface to convey an idea". Furthermore, according to Toto Mujia Mukmin (1988) Graphic Design is a medium for conveying information through visual communication language in the form of two-dimensional and three-dimensional forms. So the definition of graphic design is the human way of thinking interpreting information presented in simple to complex forms, so that it is easy to understand, remember and know its meaning.¹⁴

The basic component of a graphic design work is a point of line. From these points and lines, when etched continuously will form an image. If you look deeper, the line is a set of dots lined up lengthwise. In fact the line does not exist, the line is a visual image of the eye that is formed from differences in color, light or distance differences. Each line creates a psychological impression or perception of its own. For example, the letter "S" can be felt as something soft, while the letter "Z" seems stiff and firm. This feeling occurs because the brain assumes a sexy curve or waves in the ocean.

Copyright is a set of rights called Intellectual Property Rights (IPR) whose provisions exist in the science of law and are called IPR law, because it covers the legal field of juridical rights over copyrighted works resulting from human thought related to moral and economic interests. Based on the provisions of Laws and Regulations Number 28 of 2014 Article 1 number (1) reads "copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without reducing restrictions in accordance with statutory provisions" and Article 2 paragraph (1) reads "Author is a person or several persons who individually or jointly produce a work that is unique and personal in nature".¹⁵

The copyright holder is the creator as the owner of the rights, or the party receiving the rights from the creator or other party receiving the rights. From the understanding of creators and copyright holders, the rights possessed can be stated, among others:

¹³R. Munir. Op.cit

¹⁴Yudhi Permana. (2011). *"Biro Desain Grafis"*. Skripsi. : 38, p. 38

¹⁵Situmeang, Loc.cit

- a. The right to publish works.
- b. The right to reproduce creation.
- c. The right to give permission or prohibit other people who, without their consent, publish or reproduce their creations.

Copyright cannot protect creations that are still in the form of ideas. Therefore, in order for a work to be protected, it must first be manifested in a unique and personal form. The creator has a moral right to enjoy the results of his work, including the benefits that the creator gets for his intellect.

The use of creations used by parties for the benefit of writing scientific papers, research, preparing reports, education, writing criticisms or reviews for a problem without harming the interests of the creation provided that the source must be mentioned or included, said rights are not considered as a copyright infringement. A creator or heir has the right and can legally sue the copyright holder if the name of the creator is not included in his work.¹⁶

In the provisions of Article 5 paragraph (2) of Act No. 28 of 2014 concerning Copyright which basically states that moral rights cannot be transferred as long as the creator is still alive, but the exercise of these rights can be transferred by will or other reasons in accordance with the provisions of laws and regulations after the creator died.

In the provisions of Article 8 of Act No. 28 of 2014 concerning Copyright which basically explains that Economic Rights are the exclusive rights of creators and copyright holders to obtain economic benefits from creations.

3.2. Legal Protection against Watermarking in Graphic Design Products

A legal subject basically must get legal protection both for himself and for a legal object. Legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. Legal protection is a real form of the function of the existence of law, with this protection it can provide justice, order, certainty, benefits and peace for those who get its protection.

The existence of law in the social environment is very important, moreover Indonesia is a law state which has the aim of providing legal protection for its people based on the principles of preventive protection and repressive protection. Both principles are rooted in the recognition and protection of human rights.

Copyright is part of Intellectual Property Rights, the scope of copyright is very broad, so it is vulnerable to copyright infringement. This is due to the rapid development of the world of technology at this time. So that Act No. 28 of 2014 concerning Copyright is a form of legal regulation carried out by the government.

¹⁶Ibid, p. 140

The formation of these regulations is intended so that each individual gets exclusive protection for creators or copyright holders to publish or reproduce their creations that appear automatically after the birth of a work without reducing the restrictions according to applicable regulations.

Copyrights made for a commercial need must be contained in a written agreement, with the aim of guaranteeing the interests of the creator of the source of creation and the economic rights contained therein.

Article 112 of Act No. 28 of 2014 concerning Copyright states that "Anyone who without rights commits an act as stipulated in Article 7 number (3) and/or article 52 for commercial use, shall be punished with a maximum 2 (two) years in prison or a maximum fine of IDR 300,000,000.- (three hundred million rupiah).

From the explanation above, it is clear that Act No. 28 of 2014 provides protection for a creation that is registered in writing and follows the applicable procedures and provides punishment for anyone who violates a creation.

In the case of affixing a watermark, there are two models of action, namely:

a. The creator does the registration.

If the creator registers, he will get full protection for his work. So that the legal consequences that arise with the registration of the creator can take commercial action against a creation, it can be reproduced and traded. So that in this case the creator gets exclusive rights, economic rights and legal protection.

b. The creator does not register.

In this case the creator does not register his work, the creator only creates the work and then affixes a watermark and then performs commercial actions. In this case, as long as the copyrighted work is not a form of plagiarism, it does not cause legal problems and does not damage the rights of others. However, if the work is plagiarism, it can be detrimental to other people and the person who buys the work also does not get legal protection. So in this case only get economic rights only.

4. Conclusion

The act of affixing a watermark in a graphic design work is not a violation of Act No. 28 of 2014 concerning Copyright, this can be done as long as it does not take an exclusive right belonging to another person. Therefore Act No. 28 of 2014 requires a creator to register a work of his creation by following the applicable procedures. A legal protection will be created for subject creators who only register their work. This is aimed at creating legal protection and fulfilling exclusive, economic and legal protection rights for all legal subjects. Because in the creation of a work of graphic design that is used commercially, it does not only involve the creator, but the buyer of the work must also receive legal protection.

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