



## LEGAL ASPECTS OF MORAL LIMITATION ON COPYRIGHTED WORKS OF PHOTOGRAPHIC ART

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### ABSTRACT

One of the copyrighted works recognized in Law No. 28 of 2014 on Copyright is the copyrighted work of photographic art. So, everyone who creates photographic art is protected by legal rights based on this legal norm. However, there are restrictions in the law on everyone to create a copyrighted work, including photographic art that is considered violating or contrary to morals. There needs to be more clarity to the definite and firm explanation of the forms of moral restrictions that raise issues. So that everyone can have a different perspective on art that each person considers does not violate moral limitation. Therefore, it is necessary to have a reference that can declare a particular work of photographic art to violate morals and the legal consequences applied to violations of these moral restrictions. The research method employed was normative juridical, and it involved analyzing secondary data from primary, secondary, and tertiary legal sources. Document study data collection techniques using qualitative analysis. Based on the research results, it is known that the legal basis for moral restrictions in copyrighted works of photographic art is constitutionally recognized in Article 28j paragraph (2) of the 1945 Constitution. The principle is continued in the laws below, including Article 50 of Law Number 28 of 2014 concerning Copyright. The form of moral restriction is categorized if it contains nudity or gives the impression of nudity (excluded for the sake of art and culture, customs, and religious rituals of the Indonesian people), contrary to religious values, contrary to the norms of decency, contrary to public order and violates security.

**Keywords:** Legal Aspects; Moral limitation; Copyright; Photography.

### I. INTRODUCTION

Copyright is intellectual property in science, art, and literature that has a strategic role in supporting national development and promoting public welfare as mandated by the 1945 Constitution of the Republic of Indonesia (Republic of Indonesia (2014). According to Article 1 number 1 of Law Number 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 work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations".



Copyright was first regulated in the auteurswet 1912, then changed with the issuance of Law Number 6 of 1982, Law Number 7 of 1987, Law Number 12 of 1997, and Law Number 19 of 2002. The improvement of this law is inseparable from Indonesia's existence as a member of the WTO. Furthermore, on September 23, 2014, the House of Representatives approved the Copyright Bill into law. Law Number 28 Year 2014 on Copyright is an improvement to Law Number 19 the Year 2002 (Saliman, 2017).

Copyright is a private right. It is a civil right attached to the creator. The creator may be a person, a group, or a public or private legal entity. Copyright is born on the creator's creation. Creations that arise from the mind and heart. Copyright should be born of human creativity, not that it has existed outside the activity or the results of human creativity (Perdana, 2021).

The pervasive flow of globalization in the social, economic, cultural, and other spheres of life is one of the phenomena that has drawn attention in the last 10 years and is a trend that will continue in the future. Trade-related activities have increased quickly as a result of the development of communication and transportation technologies, which has even led to the creation of a single global market (Perdana, 2021).

As mentioned above, copyright is one part of intellectual property with the broadest scope of protected objects because it includes science, art, and literature (art and literary), including computer programs. The pervasive flow of globalization in the social, economic, cultural, and other spheres of life is one of the phenomena that has drawn attention in the last 10 years and is a pattern that will continue in the future (Republic of Indonesia (2014). A single global market has been created as a result of the fast rise in trade-related activities brought on by the development of communication and transportation technologies (Ze et al., 2023).

One of the copyrights protected under Law No. 28 of 2014 is a photographic copyright work. According to Article 1 number 10 of the Copyright Act, one part of photographic copyrighted works is such as Portraits, which are photographic works with human objects. According to the explanation of Article 40, paragraph (1) letter K of the Copyright Act stated: "What is meant by "photographic works" includes all photographs produced by using a camera." Photographic copyrighted works are protected by law based on existing norms. However, in its development, it turns out

that in the same rules, this photographic copyright is also bounded by factors outside of positive law; one of the factors in question is the moral factor.

A person is prohibited from creating a copyrighted work contrary to morals. This is stipulated in Article 50 of Law Number 28 the Year 2014: "People are prohibited from announcing, distributing, or communicating creations that are contrary to morals, religion, decency, public order, or national defense and security". The limitation of norm rules in these provisions shows that not all copyrighted works are legally justified, one of which is copyrighted works in the form of photographic art.

The main problem arising from moral restrictions is the need for a more detailed explanation in the Copyright Law that outlines the categories of forms and implementing regulations for violations of moral restrictions. So, to declare someone has created a copyrighted work (photography) that violates moral restrictions does not have a definite benchmark. In other words, whether or not moral restrictions have been violated against a copyrighted work of photography becomes the judgment of each perspective of the subject of law. Any person who potentially violates the moral restrictions of the copyrighted work in question can argue that the copyrighted photographic work created is part of the art that is legally justified.

The unclear moral limitation in the prohibition of Law No. 28 of 2014 also come from the adoption of normative values taken by Indonesia in forming the first Copyright Law No. 6 of 1982, which, in fact, the Western world does not emphasize moral limitation.

One of the weaknesses of the literature on morals or ethics, especially those sourced from Western literature, is the lack of moral classification. Ethics, in general, does not clearly distinguish between morality and decency. The two opposing views are actually acceptable in the sense that there are objectivistic-universal ethical or moral principles, and there are also relativistic-contextual ethical or moral principles. Objectivistic-universal moral principles mean that moral principles are objectively acceptable to anyone, anywhere, and anytime. An example is the nature or attitude of honesty, humanity, independence, responsibility, sincerity, brotherhood, justice and others. Whereas moral principles that are relativistic-contextual are "dependent" or "according to the context", for example, depending on the cultural context or culture, so they are cultural. Thus, the relativistic-contextual nature can mean national, communal, traditional, situational, conditional, or even individual. Examples are

national attitudes, "eastern" manners, Javanese or Minangkabau ethics or manners, and various applied ethics.

As known in the study of various kinds of norms, there are four kinds of norms, namely religious norms, moral norms, norms of decency, and legal norms. The norm of decency is based on objectivistic-universal ethical and moral principles. Meanwhile, the norm of decency is based on ethical and moral principles that are relativistic-contextual. In line with this, it is argued that moral issues related to ethics talk about morals and manners. Manners encourage doing good because the heart says good, which in this case comes from the conscience, regardless of the relationship and influence of others. Good manners encourage doing good, especially outwardly, not from conscience, just to respect others in social interactions. Thus, good manners are more related to the context of the social environment, culture, customs and other aspects (Widjaja, 1985).

However, universally or globally, there are unclear definitions of moral limitation, as there are different (subjective) perceptions regarding the values of these moral limitation. Including the case of a copyrighted work of photographic art that is limited to "prohibition of moral infringements," which is not further explained about the elements that include moral infringements. The law should provide certainty about the norms formed. Thus, when there is a prohibition, there is no ambiguity of interpretation in each community.

This is also considering that Indonesia is a State of law as stipulated in Article 1 paragraph (3) of the 1945 Indonesian Constitution. Therefore, the laws that are formed must provide legal certainty about the benchmarks of the prohibitions (moral infringements) that are formed. In this idea, it is crucial to comprehend that the law is seen as superior over all other power instruments by those who uphold the rule of law. In other words, the State bases its authority on the law, and all uses of that authority must adhere to the rule of law (Sihombing, 2018).

On the basis of this argument, the legal rules should provide legal certainty for everyone, including the creators of photographic artworks. This legal certainty will be in line with the creation of legal protection for the perpetrators/creators of photographic artworks, which have the potential to be trapped in the narrative of moral infringement referred to in Article 50 of Law Number 28 Year 2014. Since Indonesia is a State of law, the legal aspect must ensure and affirm the moral limitations of a copyrighted work

thus the copyrighted work of photographic art cannot be arbitrarily pinned as a photographic copyrighted work that violates morals, and vice versa, not just anyone can argue that photographic copyrighted works containing moral infringements are a form of art that does not violate the law.

Based on the whole series background above, it is known that there is an identification of problems or issues to be studied in this research, which is related to the legal basis for stating the existence of moral restrictions in the creation of a photographic copyright work, especially from the point of view of art. After understanding and knowing the legal norms that underlie the existence of moral limitation in creating a copyrighted work of photographic art, it is also necessary to see the forms of moral limitation in terms of aspects of legislation. It becomes a key issue because the narrative of the word "art" in each person has a different perspective from one another, so to say a work of photographic art has violated moral restrictions requires a definite foundation so that it does not match the perspective of each legal subject. Finally, it is necessary to see the legal consequences that arise due to the existence of a copyrighted work of photographic art that turns out to be categorized as a violation of moral limitation. In other words, this research aims to answer these issues so that the researcher finally raised the research title: "Legal Aspects of Moral limitation on Copyrighted Works of Photographic Art".

## 2. RESEARCH METHOD

The research strategy is based on the rule of law of legislation and employs the kind of normative legal research in accordance with how the problem has been formulated and the goal of the study. Additionally, this research is prescriptive in character. Legal resources in the form of primary legal materials, secondary legal materials, and tertiary legal materials were employed as the data source for this normative juridical research. Analyzing current data, rules, and regulations, as well as doing a document and literature review, is how the data for this study were collected. Various documents, including those linked to law and existing papers, are examined in a document analysis (Salim & Nnurbaimni, 2019).

The research process includes analyzing and constructing the compiled data and then processing the data. The most crucial and crucial part of this writing is data analysis (Soekamto, 2014). Data analysis is also an activity that provides a study that

can add, criticize, comment, support, and then make a conclusion on the results of the research with the help of theories that have been studied and the results of thought processing (Fajar & Achmad, 2010). This research applied qualitative analysis, It emphasizes the quality of the data and conducts data analysis without the use of statistics, instead providing explanations in words of the pertinent results ((Salim & Nnurbaimni, 2019).

### 3. RESULTS AND DISCUSSION

#### A. Legal Basis and Form of Moral limitation in Photographic Art Copyright Works

By examining the legal basis in moral restrictions on copyrighted works of photographic art, it certainly cannot be separated from the legal aspects or must be based on the study of legal arrangements that are emphasized in the legislation. It is known that it is human nature that individuals are not capable of living by themselves; they must live together in an organized society to achieve a common goal. In order for their goals to be achieved properly and in their efforts to not interfere with interests, a norm is needed to regulate (Asyhadie, 2014).

The norms referred to above are legal norms. For this reason, in every human activity, there must be norms or legal provisions that are formed so that there is protection and legal certainty for every community. The legal provisions referred to here include legal rules that apply in Indonesia in particular. Legal rules / legal provisions have the following characteristics (Asyhadie , 2014).

1. The rule of law is targeted at a concrete offender, namely, the offender who actually acts not for human perfection but for the benefit of society,
2. The content of the rule of law is addressed to the outward attitude of man. So, the rule of law prioritizes outward actions / attitudes, not inner attitudes,
3. The community is officially given the power to sanction or impose punishment through the court as its representative,
4. The rule of law imposes obligations on humans and also gives them rights.

The origin of law, in essence, the source of law is a sense of justice. However, the word source of law is also widely used in the sense of places where we can find out what applies and where we can take legal rules that must be applied. It can be

formulated that the source of law is everything that can give rise to the rule of law, namely rules that have compelling legal powers and maintain with sanctions (legal consequences).

CST Kansil also states that what the source of law means is everything that gives rise to rules that have a compelling force, namely rules that, if violated, result in strict and real sanctions. According to Muhammad Sadi Isa, the source of law is a source where the form of legal manifestation can be seen. In other words, the source of law is everything that can cause or give birth to law so that it has binding force. In short, the source of law can also be called the origin of law. All things influence the emergence of law, where the law is found or where the content of legal norms comes from (Imaniyati et al, 2017).

Through the above premise, the values contained in a norm (moral value), in this case, the norm of copyright is inseparable from the history of the birth of the legislation in question. Legal regulation of copyright in Indonesia is inseparable from Indonesia's participation as a member of the agreement establishing the World Trade Organization (Agreement on the Establishment of the World Trade Organization), This was established by Act No. 7 of 1994 and incorporates Trade Related Aspects of Intellectual Property Rights (agreement on Trade Aspects of Intellectual Property Rights, henceforth referred to as TRIPs). Additionally, Indonesia has ratified the World Intellectual Property Organization Performances and Phonograms Treaty (WIPO PPT), the World Intellectual Property Organization Copyright Treaty (WIPO WCT), and the Berne Convention for the Protection of Literary and Artistic Works (Bern Convention on the Protection of Literary and Artistic Works) through Presidential Decree No. 18 of 1997 (Republic of Indonesia, 2014).

In terms of copyright regulation, Law No. 28 of 2014 on Copyright, which replaced Law No. 19 of 2002 on Copyright, is implemented by giving priority to national interests, balancing the interests of the Creator, Copyright Holder, or owner of Related Rights with the community, and taking into account the provisions in international agreements in the area of Copyright and Related Rights (Republic of Indonesia, 2014).

In the rules of Law Number 28 Year 2014, one of the protected copyrighted works is photographic copyrighted works. This is stipulated in Article 40, paragraph (1) letter k of the Copyright Act. Referring to these provisions, photographic work is a protected creation in art. Furthermore, Article 59 paragraph (1) letter a explains:

"Copyright protection for the creation of photographic works is valid for 50 (fifty) years from the first announcement".

This clearly shows that photographic works are part of legally protected copyrighted works of art with a protection period of up to 50 (fifty) years since they were first declared. However, it should be noted that not all photographic works of art get protection. There are limitations made by the norm in Article 50 of Law Number 28 Year 2014, which prohibits the existence of copyrighted works, one of which violates morals.

Etymologically, the word morals came from the Latin word *mos*, the plural form of *mores*, which means procedures or customs. The Big Indonesian Dictionary defines morals as *akhlak*, *budi pekerti*, or *susila*. Terminologically, there are various formulations of moral understanding, which, in terms of substantive material, there is no difference, but the formal form is different. Widjaja states that morals are good and bad teachings about actions and behavior (morals) (Widjaja, 1985).

The legal aspects of Law No. 28 of 2014 do not explain the moral restrictions referred to in the provision, including the non-explanation of categories that can be declared to have violated the moral restrictions on a copyrighted work (especially photographic copyrighted works). Therefore, this moral limitation is inseparable from the value rules interrelated with other norms or laws.

One of the norms concerning this moral limitation can be seen in Law Number 44/2008 on Pornography. In its consideration, it states: "That through defending moral principles, ethical principles, high morals, and the nation's high character, believing in and fearing God Almighty, recognizing diversity in society, nation, and state, and safeguarding the dignity of every citizen, Indonesia is a state of law founded on Pancasila". Furthermore, Article 3 letter c of Law Number 44 of 2008 explains that the purpose of the law is to: "Provide guidance and education for the morals and morals of society".

Arrangements in the Pornography Act are inseparable from the photography copyright discussion, which may be considered to have violated moral restrictions. The general rules in the Pornography Act are interrelated with the prohibition of moral infringements as Article 50 of Law Number 28 Year 2014. It is said that this is because the formation of the Pornography Law itself has the main purpose of respecting morals,



meaning that everyone in Indonesia does not violate the moral boundaries that have been stipulated.

It is acknowledged that the Republic of Indonesia is a state of law founded on Pancasila and the Republic of Indonesia Constitution of 1945, upholding the moral values, ethics, noble character, and noble personality of the nation, believing in and fearing God Almighty, respecting diversity in the life of society, nation, and state, and guarding the dignity of every citizen.

Globalization and the development of science and technology, especially information and communication technology, have contributed to the increase in the creation, dissemination, and use of pornography, which has a negative influence on the morals and noble personality of the Indonesian nation, thus threatening the life and social order of Indonesian society. The proliferation of pornography in society has also increased immoral acts and sexual abuse (Republic of Indonesia, 2008).

So, the moral limitations in Article 50 of Law Number 28 Year 2014 cannot be ruled out with other legal norms. So, a legal basis is required to describe the moral limitations of photographic copyrighted works, linking one norm with another. The arrival of this concept is also based on universal values that exist in the Indonesian constitution, namely in Article 28J of the 1945 Constitution, which states: In securing rights and freedoms, every person shall be subject to restrictions prescribed by law to ensure recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society.

This moral limitation has indeed been stated in the constitutional values of the 1945 Constitution, which explains that everyone has the freedom to do something as long as it follows existing morals or must consider morals. Therefore, the moral rules in Law Number 28 of 2014 and Law Number 44 of 2008 were not established abruptly, but a constitutional basis already determines it. Describing the form of moral limitation itself, we can examine the provisions of Article 4, paragraph (1) of Law Number 44 of 2008, which states:

It is against the law for anybody to create, create, reproduce, duplicate, disseminate, broadcast, import, export, distribute, trade, rent, or provide pornography that specifically contains:

- a. sexual intercourse, including deviant sexual intercourse;

- b. sexual violence;
- c. masturbation or masturbation;
- d. nudity or the appearance of nudity;
- e. genitals; or
- f. child pornography.

Based on the prohibition of pornography above, it is closely related to photographic works that commonly take human objects as their portrait objects. Photographic creations that cause nudity or the appearance of nudity are often considered art that is not categorized as a moral violation.

Because the Copyright Act alone does not ensure sufficient protection of the creator's rights, copyright concerns pertaining to photography in Indonesia are also expanding along with its adoption. Due to a lack of knowledge of intellectual property laws, particularly copyright law, and a general lack of awareness of the rights protected by copyright law, particularly the protection of copyright in the field of photographic works, there are still numerous instances of copyrighted works being violated (Salmi, 2020).

The issue of moral infringement of copyrighted works of photographic art not only comes from the legal unawareness of the community (photographers) but also from the substance of existing laws that do not emphasize and do not explain the benchmarks of violation of existing moral boundaries. So that every photographer can claim (state) the results of his photographic work even though it shows nudity is an art with no elements of violation. At the same time, it is clear that moral limitations do have a legal basis in Indonesia.

The moral foundation recognized by Indonesian laws and regulations is not complemented by the criteria that constitute a violation of moral limitations. Referring to this, seeing the forms of moral limitation of a photographic art, associated with the development of today's times, many photographic works have been uploaded and distributed through information technology such as social media: Facebook, Instagram, Twitter and many others. In reality, through the principle of moral limitation in the Copyright Act, Indonesia has regulated the control and protection of copyrighted works in the scope of information technology (such as Facebook, Instagram, and Twitter). This is stated in Article 54 of Law Number 28 Year 2014, which describes as follows:

The government is permitted to take action to prevent copyright and related rights infringement using information technology:

- a. Monitoring the production and distribution of information that violates copyright and related rights;
- b. collaboration and coordination with several organizations, both local and international, to stop the production and distribution of content that violates copyright and related rights;
- c. monitoring any recording at the performance venue that violates Creation and Related Rights items using any medium.

Therefore, it is obvious that copyright infringement in the scope of information technology has also been regulated in Law No. 28 of 2014. In line with that, connected with the forms of moral restrictions on a copyrighted work of photographic art, specifically the ITE Law has regulated the prohibition of a work that violates the morals of which the principles can be seen in Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which mentions one of the prohibited acts, namely: "Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have content that violates decency".

In this context, it is understood that both offline and online media (social media) photographic works that violate this norm are prohibited. This is harmonized with Article 5 of Law Number 44 of 2008 concerning Pornography, which states: "It is against the law for anybody to lend or download pornographic material as described in Article 4 paragraph (1)". This means that everyone is also prohibited from downloading (through social media) a thing (work) that contains pornography, in this case, showing nudity or a display that gives the impression of nudity.

Based on the entire series above, the basis for violating moral limitations, especially in copyrighted works of photographic art, has existed from the beginning in the Indonesian constitution, explicitly stated in Article 28J paragraph (2) of the 1945 Constitution. The principle of moral limitation is then adopted in forming legislation norms under it, including in Law Number 28 Year 2014, which is reflected in the rules of Article 50. In the rules of the Copyright Act, moral limitations are portrayed in the form of religious norms, decency, public order or defense and security of the State.

Likewise, regarding Article 28J of the 1945 Constitution, this moral limitation is juxtaposed with religious values, security, and public order.

Associated with copyrighted works of photographic art, the foundation of this moral limitation is also contained in the values of the relevant laws that materialize in different forms. As in Law No. 44 of 2008 on Pornography, the form of moral restriction in question is born in the form of a prohibition to make things that explicitly contain nudity or display that gives the impression of nudity, but this form of moral restriction is excluded from the value of art, culture, customs, and religious rituals of the people recognized in Indonesia, as the principles and values listed in Article 3 letter b of the Pornography Law. In line with that, a little concerning the moral restrictions of photographic copyright works distributed and/or disseminated through social/electronic media is pinned on the side of decency.

## **B. Legal Consequences of Violation of Moral Limitations in Photographic Art Copyright Works**

Of course, reviewing the legal consequences of an act such as violating moral limitations in copyrighted works of photographic art must certainly be considered and based on the point of view of legal studies enacted in Indonesia. Of course, all actions that will cause legal consequences in Indonesia must be studied based on applicable legal aspects. The legal aspect has a basis for study based on legal sources recognized in a country, in this case, Indonesia.

Anything that creates enforceable, legally binding regulations that will result in severe penalties for those who disobey them is the source of law. Everything that is meant by "factors that affect the emergence of law" or "factors that are the source of the force of the enactment of law" is formally defined as "the place where the law can be found," "the place where the law originated," or "the place where the judge finds the law," so that the judge's decision-making process can be supported by knowledge of whether a particular regulation is applicable or has legal force, for example. Consequently, in accordance with Sudikno, the origin of law itself has a variety of interpretations, including:

1. As a legal principle, as something that is the beginning of law.
2. Indicates the previous law that gives materials to the current law.
3. As a source of enactment, which gives power, it applies formally to legal regulations (authorities, society).

4. As a source from which to recognize the law.
5. As a source of legal occurrence, a source that gives rise to law (Soeroso, 2009).

The legal aspect qualifies certain selected connections. With this qualification by the law, the connections become legal connections. In this instance, we run into the same issue as in the earlier explanation of the connection between the real world and the legal world (Das Sollen and Das Sein). When there is a legal relationship, the persons involved are referred to as the subject of the law and the object of the relationship, respectively. Legal categories, often known as fundamental concepts of law, refer to these three things: the subject of law, legal relations, and objects. It is so named because a legal order cannot exist without a legal subject.

Giving legal definitions to social ties between people changes their nature from genuine connections to legal connections while also establishing a specific link between the people who carry out the connection. As a result of the ongoing existence of the legal relationship, this link takes the shape of authority that is granted to the subjects of law (Rahardjo, 2012).

Since this right is violated (the rights of the private community and the rights of the State), it will have implications for the legal consequences of civil, administrative and criminal law. The legal consequences are also formed from legal norms that an act violates. One is if it violates moral restrictions in making a photographic copyright work, as determined by the prohibition in the legislation described earlier.

The results of this photographic copyright work are legally protected by Law No. 28 of 2014, although there are limitations given to create the photographic copyright work. With the adoption of Act No. 28 Year 2014 on Copyright, wherein the state offers exclusive protection through the Act, it is also developing in relation to the protection of works of art, including photography in Indonesia. Protection against sanctions in the form of legal instruments, both preventative and repressive, both written and unwritten, is provided to legal subjects through the appropriate laws and regulations and in their execution. In other words, the role of law is what is described by legal protection: the law may bring about justice, order, certainty, advantage, and peace (Salmi, 2021).

Independent photography works are employed to carry out a particular purpose. One of the conditions for a piece to qualify as expression photography is that it be created using a predefined concept and contain things that have been chosen and

shared to reflect the artist's aesthetic expression. Original works of art include photographs. This is because the appearance style leans more on the expressive creative worth of the work of art. Because they can serve as middlemen and contribute value to specific tasks that signify the recognition of a person's identity in society, photographic works can have social worth (Wisesa, 2020).

As described above, indeed the legal protection of photographic copyright works created by the creator although in principle recognized and protected both moral rights and commercial rights, there is a condition that these rights are nullified and become unenforceable if they violate the things that are limited by the legal norms of the Copyright Act. This aspect can be observed based on the provisions of Article 74 paragraph (1) of Law Number 28 Year 2014, which describes as follows:

Recording Creation and Related Rights Products lose their legal standing because:

- a. the request of the individual or organization listed as the Creator, Copyright Holder, or proprietor of Related Rights;
- b. the passing of time as described in Articles 58, 59, 60 paragraphs (2) and (3), and Article 61;
- c. a court ruling on the cancellation of the recording of a Creation or Related Rights work that has been given permanent legal effect,
- d. transgresses laws and regulations the Minister has the authority to repeal, public order, national defense, or moral standards.

Based on the above norms and associated with moral boundaries in creating photographic works of art, it is possible to interpret any photographic piece of art that transgresses moral limits by going against laws and regulations, moral standards, public order, or religious beliefs, then the copyrighted work of photographic art results in its legal force being erased. In other words, it is no longer protected by the State.

Considering the legal consequences of violations of laws and regulations for photographic copyrighted works that violate moral limitations is categorized as an unlawful act compensating the creator in question to any party who feels harmed (including disturbing public order). This provision is in line with Article 1365 of the Civil Code, which states: "Every act that is unlawful and brings harm to another person, obliges the person who causes the harm through his fault to compensate for the loss". Article 1365 of the Civil Code stipulates that every unlawful act that causes damage to

another person obliges the person who committed the act to compensate for the damage (Prayogo, 2016).

Human action, whether in action or omission, is based on human awareness to choose between doing or not doing certain actions. Such human awareness in law gives rise to the notion of fault. Then, to what extent is a person's guilt for his actions considered in settling legal disputes? The view has developed that a person is considered to have fault if they are capable of being held responsible. These notions of responsibility and fault are fundamental in law. There is no guilt except for a person who can be held responsible (Marzuki, 2018).

The violation of moral restrictions on a photographic copyright work certainly has no exception for the perpetrator to not be charged with legal consequences or legal liability for his actions included in the realm of unlawful acts. However, particular norms, namely Act No. 28 Year 2014, only regulate the destruction of the legal force of the photographic copyright work without any other legal consequences, civil or criminal. Even so, as described above, this photographic copyright work is inseparable from other laws and regulations that govern it. In other words, the legal consequences of the civil side can be referenced from Article 1365 of the Civil Code, and if you want to see the legal consequences of the criminal side, The Criminal Code, Law Number 44 of 2008 on Pornography, and Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions are all references that you might use.

In terms of general criminal law consequences, namely referring to the provisions of Article 282 paragraph (1) of the Criminal Code, which describes the results of writings, images, and objects that demonstrate violations of decency (moral violations), can be punished. The description in question also includes photographic works that can be categorized as images. Article 282, paragraph (1) of the Criminal Code states:

Any person who disseminates, openly demonstrates or puts up a writing, portrait or object of which he knows that the contents offend against decency, or who with intent to disseminate, openly demonstrates or puts up such a writing, portrait or object, imports it into the country, forwards it, takes it out of the country or keeps it in stock, or who openly or by circulation of an unsolicited letter offers

it or shows it to be available, shall be punished by a maximum imprisonment of one year and six months or a maximum fine of three hundred rupiahs.

Furthermore, the legal consequences of violating the moral limitations of photographic works categorized as violating the norms of decency can be seen because they contain nudity or the impression of nudity (excluded for the sake of art and culture, customs, and religious rituals of the Indonesian people), can be subject to punishment as Article 29 of Law Number 44 of 2008, explained as follows:

A minimum of 6 (six) months and a maximum of 12 years in prison and/or a fine of at least Rp250,000,000.00 and at most Rp6,000,000,000.00 are the penalties for anyone who creates, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides porn.

In terms of legal consequences for moral infringement of photographic copyright works containing nudity described in the rules of the Pornography Act, if the photographer in question is based in a company (corporation), then the corporation that allows its photographers to create portraits containing nudity can be subject to additional criminal sanctions, as Article 41 of Law No. 44 of 2008, sanctions or legal consequences to the corporation in question, namely:

- a. suspension of business license;
- b. revocation of business license;
- c. confiscation of assets resulting from criminal acts;
- d. revocation of legal entity status.

Finally, still in the aspect of criminal legal consequences, against moral infringement of photographic copyrighted works, but distributed through electronic media or social media can also be subject to criminalization, which is considered to have violated moral boundaries in the form of a violation of decency as Article 27 paragraph (1) of the ITE Law. The legal consequences can be seen in the provisions of Article 45 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, which states:

A maximum sentence of 6 years in prison and/or a maximum fine of IDR 1,000,000,000.00 may be imposed on anyone who intentionally distributes, transmits, makes accessible, or otherwise makes electronic information or



electronic documents with content that violates decency as described in Article 27 paragraph (II).

Based on the entire set of legal norms above, it is understood that the legal consequences for parties who violate moral restrictions in creating photographic works of art can be imposed in the form of administrative, civil and criminal legal consequences. From the administrative side, the photographic copyright work can be canceled registration and considered null and void. In other words, it can not be protected anymore as a viable photographic copyright work. Regarding civil legal consequences, it can be subject to compensation sanctions to the party who feels harmed by the photographic copyright works that violate the morals of public order. Finally, the criminal legal consequences that can be imposed arise in the aspect of violating decency and distributing a work that contains nudity, which can result in imprisonment and fines. An additional penalty can also be imposed on the corporation if the photographer who made the portrait copyright work containing nudity is involved in a company (corporation). The company, in addition to the leadership, can be imprisoned, but also the company can be subject to license suspension, revocation of business license, confiscation of property from the results of the photographic copyright work in question, and revocation of legal entity status.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

The legal basis and form of moral limitation in the copyrighted work of photographic art have existed from the beginning in the Indonesian constitution, which is explicitly stated in Article 28J paragraph (2) of the 1945 Constitution. The principle of moral limitation is then adopted in the formation of statutory norms that exist under it, including in Law Number 28 Year 2014, which is reflected in the rules of Article 50. The form of moral limitation in this copyrighted work of photographic art, can not only be based on one rule of law, the Copyright Act, but also on a number of interconnected laws and regulations, such as Law Number 44 of 2008 Concerning Pornography and Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Electronic Information and Transactions, then the form of moral limitation that should not be violated in creating or disseminating photographic copyrighted works is the benchmark from the side:

1. Contains nudity or the appearance of nudity (excluded for art and culture, customs, and religious rituals of the Indonesian people);
2. Contrary to religious values,
3. Contrary to the norms of decency,
4. Contrary to public order,
5. Violates security.

It is expressly not mentioned, and there is no further explanation of the forms of moral limitation even though it is recognized in the legislation. However, based on existing legal interpretations, the forms of moral infringements in the copyrighted works of photographic art will be fulfilled as long as they violate the forms described above. In other words, if the photographic copyright work contains violations as mentioned above, then automatically, the photographic copyright work is also categorized as having violated moral limitation.

Legal consequences of violating moral limitation in copyrighted works of photographic art can be seen as administrative, civil and criminal legal consequences. From the administrative side, the photographic copyright work can be canceled registration and considered null and void. In other words, it can no longer be protected as a viable photographic copyright work. Regarding civil legal consequences, it can be subject to compensation sanctions to the party who feels harmed by the photographic copyright works that violate the morals of public order. Finally, the criminal legal consequences that can be imposed arise in the aspect of violating decency and distributing a work that contains nudity, which can result in imprisonment and fines. There are also additional penalties that can be imposed on the corporation. Suppose the photographer who made the portrait copyright work containing nudity is incorporated in a company (corporation). In that case, the company, in addition to the leadership, can be imprisoned. However, also the company can be subject to license suspension, revocation of business license, confiscation of property from the results of the photographic copyright work, and revocation of legal entity status.

Based on these conclusions, a recommendation formula can be used to create a harmony of benchmarks to declare that a copyrighted work of photographic art has violated moral limitation. Then, there needs to be a legal source that underlies firmly and definitely about the moral limitation. The source in question is either in the form of written legislation or can be in the scope of doctrine. Therefore, the violation of moral

limitation of a copyrighted photographic art work is not only seen in each person's perception, but there are already definite provisions of existing legal sources. For the creation of legal certainty that ensures moral limitation from the point of view of art, it is systematically offered that doctrines need to be formed by legal experts to determine the types of violations of moral limitation until finally later it can be adopted by legislators in order to be outlined in a written law, which in value is binding and if there is a violation will have strict legal implications for the perpetrators.

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