

**LEGAL PROTECTION OF COPYRIGHTS OF ILLUSTRATION IMAGES
CIRCULATED ON SOCIAL MEDIA VIEWING FROM LEGAL CULTURAL
ASPECTS
THESIS**



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**FACULTY OF LAW
INTERNATIONAL PROGRAM
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA
2023**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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THESIS

**Submitted To Fulfill Requirements to Obtain a Bachelor Degree (Strata-1) at
the Faculty of Law
Universitas Islam Indonesia
Yogyakarta**

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UNDERGRADUATE STUDY PROGRAM

**FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2023

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ASPECTS**

Has been examined and approved by the Thesis Supervisor to be submitted to the
Board of Examiner at the Thesis Examination
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ASPECTS

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**PERLINDUNGAN HUKUM HAK CIPTA ATAS GAMBARILUSTRASI
YANG BEREDAR DI MEDIA SOSIAL DILIHAT DARI ASPEK BUDAYA
HUKUM**

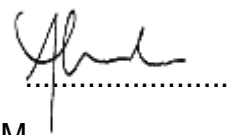
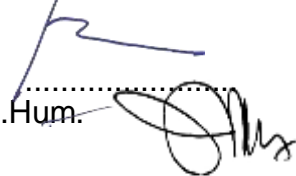
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Yogyakarta, August 24, 2023

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ORIGINALITY STATEMENT

ORIGINALITY OF SCIENTIFIC PAPER IN THE FORM OF THESIS/FINAL PAPER OF STUDENTS OF THE FACULTY OF LAW, UNIVERSITAS ISLAM INDONESIA

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In this regard, I hereby declare:

1. That this scientific paper is a genuine result of my own work which in its preparation is subject to and obeys the ethical rules and norms of writing a scientific paper in accordance with applicable regulations;
2. That I guarantee that the results that can be categorized as carrying out scientific work are truly original, free from elements of plagiarism;
3. That although in principle the ownership rights to this scientific work are with me, but for the sake of academic interests and its development I authorize the library of the Faculty of Law of Universitas Islam Indonesia to use this work.

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Thus, I made this statement letter in truth, in a healthy condition physically and spiritually. Consciously and without pressure of any kind and by anyone.

Yogyakarta, May 22nd, 2023



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MOTTO

"Jangan kamu merasa lemah dan jangan bersedih, sebab kamu paling tinggi derajatnya jika kamu beriman." (Q.S Ali Imran: 139)

"Mereka yang melakukan hal baik, akan mendapatkan yang terbaik juga." -

Monkey D Luffy

"No matter how difficult or impossible it may be, never lose sight of your goal." -

Monkey D Luffy

"Effort and courage are not enough without a purpose and planning direction." –

John F. Kennedy

"One of the ways to do great work is to love what you do." – Steve Jobs

“Courage is not the absence of fear, but rather the judgment that something else is more important than fear. The brave may not live forever, but the cautious do not live at all. From now on you’ll be traveling the road between who you think you are and who you can be. The key is to allow yourself to make the journey.” -Prince

Phillipe, Princess Diaries

DEDICATION

This thesis is wholeheartedly dedicated to:

Allah Subhanallah wa ta'ala

For giving me strength, health and the ability to receive huge amounts of knowledges

which made it possible for me to finish this thesis;

To my unwavering pillar of support from day one, my mother,

My steadfast champion who consistently dedicates herself wholeheartedly to my

well-being and fervently desires for me nothing but the utmost splendors of the

world.

To my Alma Mater,

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To Mr. Prof. Dr. Budi Agus Riswandi, S.H., M.Hum.

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To all of the lecturers of Faculty of Law, Universitas Islam Indonesia

Who has diligently imparted upon me the essential wisdom for the road ahead and

skillfully steered me towards unlocking the fullest extent of my capabilities.

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This thesis is written and prepared to fulfill the academic requirements for obtaining a Bachelor’s degree (S1) in Law from the Faculty of Law, Universitas Islam Indonesia. The author is well aware that there are many shortcomings in this writing and it is so far from perfect. Therefore, the author is open to and welcomes any constructive criticism and suggestions for the improvement of the learning process in the future.

Throughout the process of writing and preparing this thesis, the author also realizes that it is impossible to do it without the encouragement, guidance, and assistance from various parties.

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You are the most resilient individual I have ever encountered, introducing me to a myriad of experiences in the world. You embody the essence of a true trailblazer, persistently forging ahead despite encountering countless challenges. My affection for you knows no bounds, and please continue being the unwavering cornerstone of my life.

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In conclusion, the Author humbly apologizes for any shortcomings and limitations found in this thesis, and it is sincerely hoped that this thesis will be beneficial to many and utilized accordingly for its intended purpose.

Wasslammualaikum Wr. Wb

Yogyakarta, May 28th, 2023

Author



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ABSTRACT

One form of art that requires copyright protection is illustration image. This is important because legal cultural of copyright infringement is still common in illustration image works in Indonesia, which is not only detrimental to the economy but also to the morale of the creator. This article discusses issues related the role of legal culture in protecting the copyright of illustrated images circulating on social media and the strategy to create a better legal culture among the community or creators. The research is based on empirical juridical methods, which analyze problems from a point of view according to current legal and regulatory provisions. Based on the results of the study, it was concluded that creating quality human resources, increasing law enforcement with integrity and high moral standards, continuous education to foster public understanding of the law and implementation of good governance are some of the ways to increase legal awareness among the community itself. Therefore, high legal awareness in society will create a positive legal culture. One of the strategies in building and creating a legal culture in society is through general legal education which is aimed at the whole community in the form of socialization and legal counseling.

Keywords: *Legal Protection, Copyright, Illustration Image, Legal Cultural.*

CHAPTER I

INTRODUCTION

A. Background of Study

Copyright in Indonesia also recognizes the concepts of "economic rights" and "moral rights". Economic rights are rights to obtain economic benefits from works, while moral rights are rights inherent to the creator or actor (art, recording, broadcast) which cannot be removed for any reason, even though the copyright or related rights have been transferred.¹ Copyright is a privilege that not everyone has. Only humans who are able to produce works by utilizing their talents by combining the sharpness of intuition, artistic talent and science have copyrights. Copyright is part of a broader category of intellectual property rights, now called Intellectual Property Rights (IPR), and includes industrial property rights, while copyright in a narrow sense includes arts and culture, literature and science. On the other hand, broader meanings include:

- 1) Also called utility model (pattern and design) or simple patent;
- 2) Industrial design;
- 3) Trade Secrets;

¹https://id.wikipedia.org/wiki/Hak_cipta_di_Indonesia accessed on 8/10/2022, at 15:06 WIB.

- 4) Trademarks;
- 5) Service Marks;
- 6) Trade Names;
- 7) Designation of Origin;
- 8) View Sources;
- 9) Protection Against Unfair Competition;

Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law) Article 1 paragraph 1 explains the meaning of copyright as follows: In concrete form without reducing limitations. CIVIL RIGHTS TO CREATORS. The creator can be an individual, a group, a legal entity under public law, or a legal entity under private law. Copyright arises when the creator is created. Creation is born of "mind" and "heart". Or, in anthropological terms, rights that arise from human creativity, taste, and initiative. Therefore, copyright must arise from human creativity and does not already exist outside the activities or results of human creativity. Human creativity is the key word in the birth or emergence of copyright. Therefore, copyright is also called an exclusive right². Furthermore, Article 4 of the Copyright Law states the

² OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Rajawali Pers, Jakarta, 2015, page. 191.

definition of exclusive rights in the elucidation of Article 4 of the Copyright

Law is:

"A right intended solely by the creator so that other people cannot use it without the consent of the creator. Copyright owner who is not the creator. rights in the form of economic rights."

This exclusive right allows the creator to have moral rights as an inherent right, and that such rights are granted by anyone other than the copyright holder. Retains economic rights when used. meaning. In this case, the copyright owner receives only economic rights. Copyright is one part of intellectual property which has the broadest scope of protected objects. This is because objects protected by copyright include science, art and literature (art and literary), which includes computer programs³. In copyright, there is an exclusive right owned by the creator and only for himself, so that no other party may use this right without the permission of the creator.⁴ Article 1 of Law Number 28 of 2014 concerning Copyright Law defines as:

*"Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations."*⁵

³Direktorat Jenderal Kekayaan Intelektual, https://dgip.go.id/menu_utama/hak-cipta/pengenalan accessed on 8/10/2022, at 10.33 WIB.

⁴ Eddy Damian, *Hukum Hak Cipta*, edition 2, PT Alumni, Bandung, 2019, page. 33.

⁵ Article 1 Law No. 28 of 2014 concerning Copyrights.

Exclusive rights as mentioned above are divided into moral rights and economic rights. Moral rights arise solely from the personal and intellectual relationship of the creator with his creation, so that it is eternally attached to the creator. Then, a creation (which includes copyright which is the right to an intangible object) has value, giving rise to an economic concept. This makes the creator have the right to obtain economic benefits for his creation, hereinafter referred to as economic rights. Works protected by Copyright Law are regulated in Article 40 paragraph (1). The article states that protected works include works in the fields of science, art, and literature, consisting of:

- a) Books, pamphlets, representations 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/or music with or without subtitles;
- e) Drama, musical drama, dance, choreography, wayang, and mime;
- f) Works of art in all forms such as paintings, drawings, carvings, calligraphy, sculptures, sculptures, or collages;
- g) Works of applied art;
- h) Architectural works;
- i) Map;
- j) Batik art or other motif art;

- k) Photographic works;
- l) Portrait;
- m) Cinematographic works;
- n) Translation, interpretation, adaptation, anthology, database, adaptation, arrangement, modification and other works resulting from the transformation;
- o) Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p) Compilation of Works or data, either in a format that can be read with a Computer Program or other media;
- q) A compilation of traditional cultural expressions as long as the compilation is an original work;
- r) Video games; and
- s) Computer Programs.⁶

With the rapid development of science and technology, the world is now entering the digital era.⁷ Many copyrighted products become easily accessible to many people through computers, software, and the Internet. In this digital era, creators can choose technology that supports their work and creativity. The

⁶ Article 40 Law No. 28 of 2014 concerning Copyrights.

⁷ Evelyn Manurung, *Perlindungan Hukum Terhadap Hak Cipta Atas Karya Cipta Digital di Indonesia*, *Premise Law Journal*, Fakultas Hukum USU, Vol.1, 2013, page. 7.

creator or copyright owner of the work can also choose the technology to publish their copyrighted work. There are many spiritual works that are born in digital form, such as music, films, writings, and illustrations. Many works, such as digital illustrations, are uploaded to social media by creators for public consumption. Advances in technology have made access easier so that many people can easily download, reproduce, copy and distribute them. The moral and economic rights of authors or copyright owners are increasingly likely to be violated. Based on Article 40 paragraph (1) letter f, a work of art is one of the creations protected by Copyright Law. Fine art can be defined as aesthetic-expression through the media of point, line, shape, color, texture, volume, and space. The visual arts media are standard media that produce works of art, drawings, paintings, prints, crafts, and so on.⁸ But nowadays, the media used for work is not limited to paper or painting canvas, but can also be done digitally through Adobe Photoshop and Illustrator, CorelDRAW, Clip Studio Paint, and other applications. This process of depiction through digital media gives birth to a work which is then called digital art. However, apart from this, this unrestricted access to digital works can actually make it easier for someone to misuse an illustrated image against their rights for the benefit of the creator.

⁸ Sofyan Salam, Sukarman, Hasnawati & Muh. Muhaimin, *Pengetahuan Dasar Seni Rupa*, Badan Penerbit UNM, Makassar, 2020, page. 7.

This then makes illustration images one of the most frequently violated copyright objects because the distribution of a work that has been uploaded on social media cannot be continuously monitored closely. Moreover, the spread of images on social media takes place very quickly and freely, making it very difficult to track who has accessed the images. The existence of digital images in Indonesia at this time can be said to be relatively developed, this can be observed based on illustrators who have published their works as comics, picture stories, book covers, and magazines to illustrators who publish their works through social media such as Facebook, Instagram, Pinterest, pixie, & other sites. Digital illustrators based on Indonesia have also been recognized by foreign countries, especially the United States, where America has been known to be one of the countries using the most advanced visual arts in the world. The statement was shown using many digital animation studios such as Pixar, & Disney. All forms of digital work, generally based on this work, are data or archives, where the distribution can not only be done through manual duplicating of data via flash drives or compact discs, but can also be duplicated based on the site used by the creator to upload the image. So even though there are people who download, know the flow of digital images in archive form and are distributed using internet media, this certainly makes digital images easier and easier to apply, but this makes digital illustrations vulnerable to copyright infringement, whether used without being acknowledged by the other person other.

Illustrations on social media are common nowadays. Many people knowingly or unknowingly download illustrations that do not belong to them and upload them back to social media sites for personal use without acknowledging the source or name of the author of the work. Of course, this behavior cannot be justified. Re-uploading without citing the source or naming the author violates moral rights. The move will also affect the productivity of new jobs as illustrators will not be given credit directly for their illustration work, eroding job opportunities and demand for drawings, which are illustrators' main source of income. Indirectly, this action does not respect the economic rights of the illustrator.

Regulations related to copyright as contained in Copyright Law, should have provided legal certainty regarding copyright protection for illustrated images that are used against rights for interests that are detrimental to the creator. However, it needs to be reviewed that copyright infringement can also be influenced by several factors outside the law, namely the values and attitudes of the community when dealing with the law both positively and negatively which is then called legal culture. Legal protection for creators of works of art cannot be separated from several factors, such as the attitude of the public who do not appreciate the work of art, the attitude and desire to seek commercial profits in a quick and easy way. Building Commonality Lack of understanding, attitudes and joint actions by the authors to protect rights and common

understanding, attitudes and actions of law enforcement officers in responding to piracy. Legal protection for intellectual property rights cannot be separated from the existence of an integrated IPR information system that is easily accessible to the wider community. Unified law enforcement, copyright infringement, or redrawing of images of exclusive intellectual works are reduced. The synergy between the two, an integrated information system and an integrated law enforcement agency, will ultimately lead the Indonesian people to a better life that respects the intellectual works of others. However, active community involvement and support remains the key to success in mainstreaming intellectual property enforcement.

Digital painting techniques in the technique of craftsmanship are relatively new among artists. This technique has several advantages, such as digital painting techniques that do not require many tools or materials, and can easily support a variety of colors and effects that are already available in the coloring process.⁹ Therefore, many users of this digital painting technique create their images digitally using software or applications such as Adobe Studio, Clip Studio Paint and Manga Studio. Copyright is one type of intellectual property rights that must be respected. Intellectual property rights are exclusive (special) rights owned by creators/inventors as a result of original

⁹ Miko, 2020.

and new intellectual creation activities¹⁰. Although digital illustrations are copyrighted works and are protected by copyright, they can still infringe copyright, both infringing on economic rights such as commercial works, using the work to enhance the aesthetic value of goods, as well as copyright infringement. Moral rights such as modification without permission and acknowledging the work it as yours. This piracy does not just happen, there are factors that encourage, among others, customs/traditions (cultural aspects). pursuing profit (economic aspect); lack of understanding of copyright; lack of application of sanctions (legal aspects). and lack of routine raids.¹¹

Lawrence M. Friedman argues that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (structure of law), legal substance (substance of law), and legal culture (legal culture). Regarding legal culture, Friedman argues:

*“Legal culture refers, then, to those parts of general culture—customs, opinions, ways of doing and thinking—that bend social forces toward or away from the law and in particular ways.”*¹²

Departing from Friedman's opinion, it can be seen that legal culture can also affect the effectiveness of Copyright Law enforcement. Even if the

¹⁰ Iswi Hariyani, *Prosedur Mengurus HAKI yang Benar*, ed. I, Pustaka Yustisia, Yogyakarta, 2010.

¹¹ Nurhasan, 2013.

¹² Lawrence M. Friedman, *The Legal System, A Social Science Perspective*, Russel Sage Foundation, New York, 1975, page. 15.

regulation regarding copyright is good and protects the rights of Copyright Holders, if the legal culture of society does not want or give an apathetic response to a legal system, then this will only become a utopia. One of the cases related to copyright infringement on illustration images in Indonesia occurred when Marilyn Monroe's Wedha's Pop Art Portrait (WPAP) illustration created by a digital artist named Ahmad Nusyirwan was redrawn into a painting and traded on Instagram via the @75gallery account under the name Aprilisfiya Handayani with tens of millions. This action gives the impression that the WPAP Marilyn Monroe painting in question is not the result of Ahmad Nusyirwan's intellectual property but from someone else. This of course violates moral rights and economic rights because the act was carried out without the knowledge and approval of the creator for commercial purposes. For this action, Aprilisfiya Handayani apologized to the person concerned and closed the painting. However, @75gallery as the exhibition gallery that sells the painting does not show good faith and considers that it is not an act of plagiarism because it is not exactly the same.

The example above shows how legal culture has a major influence on copyright protection of illustrated images circulating on social media. Even though it is clear that he violates a copyright, the lack of understanding of the concept of copyright and the desire to obtain commercial benefits, make copyright infringement continue to occur. The reality of illustration images in

society such as the reality of garbage in the ocean, attractive visual graphics in the form of infographics are intended to make people aware of the bad effects of plastic waste in the sea, causing various marine plants or animals to die. The reality of books and cellphones with humans, which illustrates that nowadays humans are more likely to open cellphones than open books. Image means imitation of goods (people, animals, plants, objects and so on) made with pencil strokes and other drawing tools on a medium (can be paper, etc.). So here it is clear that an image is something that is written using a tool onto a media so that it forms a visual. While illustrations are pictures (photos, paintings) to help clarify the contents of books, essays, and so on; 2 pictures, designs or diagrams for decoration (cover page and so on); 3 additional (explanations) in the form of examples, comparisons, and so on to further clarify the explanation (writing and so on). From this understanding it states that illustrations can be of various kinds, from the picture itself, photographs and even paintings. The illustration clarifies something, while drawing is visualizing something. These different goals are clearly a differentiator. Pictures can be illustrations, but illustrations are not necessarily pictures. People like to mix illustrations and pictures because usually illustrations are in the form of pictures, even though photography can also be used as illustrations. Intellectual property is "the result of the human brain's thinking in the form of technology, science, art and

literature".¹³ The ownership of intellectual property itself is the result of the real intellectual capacity of an individual. Intellectual property uses ideas, values, ideas and information that have a commercial or economic value. Someone who uses thoughts in the form of ideas, ideas, or information to realize something requires the ability and effort to make it happen. Called property rights because the rights arise from their own intellectual property, based on their own struggle. Intellectual property rights are governed by the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works (Paris Union Convention for the Protection of Literary Works and Art Bern) for the Protection of Art and Literary Works. Close to the two types of agreement that intellectual property rights consist of two parts: industrial property rights and copyrights.¹⁴

Based on the description above, the author is interested in conducting research in the form of a thesis with the title "**LEGAL PROTECTION OF COPYRIGHTS OF ILLUSTRATION IMAGES CIRCULATED ON SOCIAL MEDIA VIEWING FROM LEGAL CULTURAL ASPECTS**". This research, which considers the legal culture factor for the protection of

¹³ Sudarmanto, *KI & HKI Serta Implementasinya Bagi Indonesia*, PT Elex Media Komputindo, Jakarta, 2012, page. 2-3.

¹⁴ Duwi Handoko, *Hukum Positif mengenai Hak Kekayaan Intelektual di Indonesia*, volume II, Hawa dan Ahwa, Pekanbaru, 2015, page. 1.

illustrated images circulating on social media, is very important to do because the public's awareness of Copyright Law is still very low.

B. Problem Formulations

Based on the previous background, here I as the author raised the problem as:

1. How is the role of legal culture in protecting the copyright of illustrated images circulating on social media?
2. How is the strategy to create a better legal culture among the community or creators?

C. Research Objectives

Based on the problem formulation, here I as the author raised my writing goals as follows:

1. The purpose of this study was to determine the influence of legal culture in the protection of copyright for illustrated images circulating on social media.
2. The purpose of this study was to determine legal efforts to create a good legal culture for creators or community in the application of Copyright Law in the field of illustration images.

D. Originality of The Research

To guarantee originality that the research to be carried out by the author is the result of his own work, the author will include previous research on illustration images that were reviewed from the element of copyright, namely:

Bramantyo Anindyka's final project, Legal Protection of Copyright of Illustrated Images Used Without Rights for Commercial Purposes, in 2018. This final project examines copyright protection for illustration images that focuses on normative legal research and examines settlement efforts that can be carried out by Copyright Holders, both litigation and non-litigation. The legal material used is Law Number 28 of 2014 concerning Copyright Law. Unlike the research above, the research that will be carried out by the author will focus on empirical research, namely based on empirical facts that will be taken from the behavior of creative workers. This study will consider the legal culture factor as the effect of copyright protection on illustrated images circulating on social media. **COPYRIGHT PROTECTION OF DIGITAL ILLUSTRATION ART ON THE INTERNET BASED ON LAW NUMBER 28 OF 2014 CONCERNING COPYRIGHT AZALIA DELICIA DUMANAUW.** This study aims to determine the legal position of illustrators based on Law Number 28 of 2014 concerning Copyright and find out how content is uploaded by certain individuals can have commercial value which violates the creator's economic rights. 1) In the Copyright Act, the illustrator is a legal subject. Copyright Law recognizes two legal subjects, namely the Author and the Copyright Holder. Then the Illustrator is the Creator and Copyright Holder for the illustrations created unless otherwise agreed. It is said unless otherwise agreed, that is if in the contract between the illustrator and the ordering party it is agreed that the other party will become the Copyright Holder for the work in

question; and 2) Re-uploading someone else's creation without permission and without including the source has the potential to violate economic rights if it is carried out by certain individuals who have influencer status because every content uploaded has commercial value. Uploading by individuals who have influence on the internet (influencers) has commercial value because both directly and indirectly each upload can generate royalties, so re-uploading other people's creations can violate economic rights if done by people with influencer status.

GRAPHIC DESIGN COPYRIGHT PROTECTION IN PRINT ON DEMAND BUSINESS **Adam Mulyawan**, the purpose of this study is to examine the legal protection of design copyrights for graphic designers who carry out their services in the Print on Demand business. Copyright protects designers or copyright holders of Print on Demand designs, from publication or reproduction of their creations by other parties without the permission of the designer or copyright holder of the design. It doesn't include copyright infringement when competitors or other parties are only inspired by creations created by themselves in the form of a new design work. It is regulated in Law Number 28 of 2014 concerning Copyright Law Article 113 Number (4) that Everyone who commits piracy, is punished with a maximum imprisonment of ten years or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiahs). The protection of a work begins when the work exists, not because it is recorded. To obtain copyright protection, it is not necessary to record the creation first. Legal Protection for Digital Illustrations Based on Law Number

28 of 2014 Concerning Copyrights **Jati Restuningsih**, one form of art that requires copyright protection is digital illustration. This is important because there are still frequent copyright infringements on digital illustration works in Indonesia, which are not only detrimental economically but also morally to creators. This article discusses issues related to digital illustrations including protected objects, and the digital illustration copyright protection system in the Copyright Act. The research method used is normative juridical in which research refers to the norms contained in laws and regulations. Based on the results of the study, it was concluded that in order to get digital illustration copyright protection, it must be Original, Creative, Fixation or have a real form and and because Indonesia uses a declarative system, the creator must announce the results of his work. The digital illustration copyright protection system contained in Law Number 28 of 2014 concerning Copyright in addition to regulating what rights are obtained by creators, how to transfer them also provides threats to copyright infringers, as well as ways that creators can take to get compensation.

COPYRIGHT AND ARTWORK IN THE DIGITAL AGE FITRI MURFIANTI, S. Sos., M. Med. Kom

In the last two decades, art and technology have become increasingly inseparable. Technology, in this case the internet, has given birth to a new era known as the digital era, followed by the emergence of many problems, one of which is in the field of copyright. There are many cases of copyright infringement committed by art creators and the general public, both consciously and unconsciously due to a lack of

knowledge about copyright, especially now that all the information needed is readily available on the Internet. This condition provides a huge opportunity to plagiarize a work of art. Through literature study, this study focuses on the perspective of limitations and exceptions to copyrights for works of art in the digital era and describes the concepts of regulation and protection. The results of this research will be very useful in developing the content of the course on Professional Ethics and Intellectual Property Rights in the Visual Communication Design Study Program, Faculty of Arts and Design.

COPYRIGHT PROTECTION ON THE USE OF IMAGES ON THE INTERNET WHICH ARE DESIGNED IN INSTAGRAM APPLICATION'S STORIES FILTER FEATURES WITHOUT RIGHTS FOR COMMERCIAL PURPOSES, **Kartika Andini** Image on the internet is an object of copyright protection and is a work that arises from someone's idea. This study aims to examine the protection of image on the internet that is used illegally for commercial purposes by the designer of a filter of Instagram Stories. To solve the problem, this research uses a normative juridical method, especially the descriptive analytical method, by analyzing the Copyright Law Number 28 of 2014 and the Information, Electronic Transactions Law Number 11 of 2008. The results of this research show that image on the internet is protected by copyright. In Indonesia, the protection of image on the internet is regulated by the Copyright Law Number 28 of 2014 and the Information, Electronic Transactions Law Number 11 of 2008. Copyright protection on the over-the-

top media like Instagram is also regulated by the Government Regulation Number 71 of 2019 about Implementation System of Electronic Transactions. Based on the laws and regulation, protection is given to the author of image on the internet, including the designer of the filter of Instagram Stories, so the work cannot be used illegally in a manner that harmful to the author.

E. Definition of Terms

1. Legal protection: efforts to protect the government or authorities with a number of existing regulations. In terms of terminology, legal protection can be interpreted from a combination of two definitions, namely "protection" and "law". Protection as a thing or act that protects. Then, the law can be interpreted as regulations or customs that are officially considered binding, which are confirmed by the authorities or the government. Referring to this definition, legal protection can be interpreted as an effort to protect what is done by the government or authorities with a number of existing regulations. In short, legal protection is a function of the law itself; provide protection.
2. Legal culture: interpreted as a whole system of values and attitudes that affect the law. The division of the legal system into these three components is to analyze the operation of a legal system or a legal system that is currently operating in the study of law and society. That legal culture or legal culture can be interpreted as a pattern of knowledge, attitudes and

behavior of a group of people towards a legal system. From these patterns, it can be seen the level of integration of the community with the relevant legal system.

3. Illustration image: illustration is the result of visualization of a piece of writing using drawing, painting, photography, or other art techniques that emphasize the relationship between the subject and the writing in question rather than form. Now, illustration is growing and starting to shift to the digital realm through Adobe Photoshop and Illustrator, CorelDraw, Clip Paint Studio. Illustrated image here refers to a digital illustration, which is the process of making using a drawing tablet or computer.¹⁵
4. Social media: social media is an online media that supports social interaction and social media using web-based technology that turns communication into interactive dialogue. The word social media here refers more to online media where users can easily share, participate, and create illustration images including DeviantArt, Instagram, Twitter, Facebook, Art station, and Pinterest.¹⁶
5. Digital art: works created with digital technology or presented in digital technology including illustrated images created using software programs.

¹⁵ <https://id.wikipedia.org/wiki/Illustrasi> accessed on 8/10/2022, at 10:30 WIB.

¹⁶ Anang Sugeng Cahyono, *Pengaruh Media Sosial Terhadap Perubahan Sosial Masyarakat di Indonesia*, Publiciana Journal, Volume 9, No. 1, 2016, page. 142.

Illustrated images are two-dimensional works of art that aim to clarify the meaning of stories, news and messages.¹⁷

F. Theoretical Review

1. Copyright Concept

Copyright is a part of intellectual property which has the broadest scope of protected objects, because it includes science, art and literature (art and literary) which also includes computer programs. The development of the creative economy, which is one of the mainstays of Indonesia and various countries and the rapid development of information and communication technology, requires the renewal of the Copyright Law, considering that Copyright is the most important basis of the national creative economy. With the Copyright Law that fulfills the elements of protection and development of the creative economy, it is hoped that the contribution of the Copyright and Related Rights sector to the country's economy can be more optimal.¹⁸ Copyright in Indonesia also recognizes the concepts of "economic rights" and "moral rights". Economic rights are rights to obtain economic benefits from creations, while moral rights are rights attached to

¹⁷ Fidelis Dhayu Nareswari, *Menggambar Ilustrasi: Pengertian dan Sejarah*, kompas.com, <https://www.kompas.com/skola/read/2020/10/27/190000569/menggambar-ilustrasi--pengertian-dan-sejarah-ilustrasi> accessed on 31 March, at 00.02 WIB.

¹⁸ <https://www.dgip.go.id/menu-utama/hak-cipta/pengenalan> accessed on 8/10/2022, at 12:30 WIB.

the creator or actor (art, recording, broadcast) which cannot be removed for any reason, even though the copyright or related rights have been transferred. Scope of IPR: Copyrights, Patents, Trademarks, Industrial Designs, Layout Designs of Integrated Circuits, Trade Secrets, Geographical Indications. Copyright protection has two different scopes, the first Economic Right in the Scope of Intellectual Property Right is a right that has a direct relationship and influence with the company's economy, such as procurement rights, distribution rights, broadcasting rights, performance rights, and community borrowing rights. Copyright, the second in the Scope of Intellectual Property Rights, are rights that are directly related to the subject matter of the creation, such as computer programs, books, photography, databases, etc. The definition given by Law Number 28 of 2014 concerning Copyright Law, which provides a definition:

*"Copyright is an exclusive right of the creator where this right arises in a declarative principle after a work is realized in tangible form without reducing restrictions in accordance with statutory provisions."*¹⁹

Copyright is a type of IPR and is in line with various types of objects, including immovable or movable objects,²⁰ which means that copyright is a transferable right. In practice, copyright can be used as an object of

¹⁹ Article 1 Paragraph (1) Law Number 28 of 2014 concerning Copyright.

²⁰ Gatot Supramono, *Hak Cipta dan Aspek-aspek Hukumnya*, (Jakarta: PT Rineka Cipta,2010), page. 29.

fiduciary guarantee. Copyright contains the notion of the idea and conception of property rights in the sense that these rights can be defended against anyone who disturbs them and in other countries copyright is seen as property.²¹ With this copyright is the right to objects that are owned by someone with the power to defend the rights of the object against other people who have bad intentions. With this arrangement, people no longer need to doubt the status of copyright property in the law of objects.²² The formulation that material rights are absolute rights which also means absolute rights which can be contested or confronted with relative rights, relative rights or also known as *Persoonlijk* or individual rights. This latter right can only be defended against certain people, not against all people who are like material rights. Copyright is part of IPR which is different from other intellectual property rights. This happens because copyright is not a monopoly right to do something like a patent which gives a monopoly right to an invention. Copyright is a right that is intended to prevent other people from doing it. Copyright attached to the creator. The rights in copyright are divided into two, namely rights that can be transferred or transferred and rights that cannot be submitted. Here the need for an element of authenticity

²¹ Shopar Maru Hutagalung, *Hak Cipta Kedudukan dan Peranannya di Dalam Pembangunan*, (Jakarta: Akademika Pressindo, 1994), page. 17.

²² Gatot Supramono, *Loc.Cit.*

from a copyrighted work to get copyright protection. A work of art must have a distinctive form and show authenticity as someone's creation on the basis of personal ability and creativity in a distinctive form, meaning that the work must have been completed so that it can be seen or heard or read.²³

Then in Article 42 of Law Number 28 of 2014 concerning Copyright Law:

*"Whereas there is no copyright on works in the form of results of open meetings of state institutions, laws and regulations, state speeches or speeches by government officials, court decisions or judges' decisions and books sacred or religious symbol."*²⁴

In discussing Copyright Law, it is not enough just to give an understanding of copyright, but it is also necessary to provide an understanding of creation, creators and copyright holders because each is closely related to one another.²⁵

2. Legal Protection Concept

The presence of law in society, among others, is to integrate and coordinate interests that may conflict with one another. The coordination of these interests is carried out by limiting and protecting these interests.²⁶

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given

²³ Noegroho Amien Soetiharto, *Informasi Umum Perlindungan Hak atas Kekayaan Intelektual*, (Yogyakarta: Lembaga Penelitian Universitas Gadjah Mada, 2001), page. 6.

²⁴ Article 41 and 42 Law No. 28 of 2014 concerning Copyright.

²⁵ Gatot Supramono, *Op.Cit*, page. 7.

²⁶ Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2014, page. 53.

to the public so that they can enjoy all the rights granted by law.²⁷ This protection for human rights is carried out in a measurable breadth and depth. Then, Lili Rasjidi and I.B Wya Putra suggested that the law can be functioned to realize legal protection that is not only adaptive and flexible, but also predictive and anticipatory.²⁸ Predictive means here is how a legal protection can predict what will be protected in the future. Then anticipatory means that a legal protection must be able to anticipate what it is protecting, if there is a legal problem that has never been regulated before. This legal protection serves to assist legal subjects in recognizing and understanding their rights and obligations, then also to obtain infrastructure and advice on the acquisition of their rights. The implementation of legal protection means that legal objectives have been realized, which include justice, expediency, and legal certainty. According to Fitzgerald, as quoted by Satjipto Raharjo, the origin of this theory of legal protection stems from the theory of natural law or the school of natural law. This flow was pioneered by Plato, Aristotle (a student of Plato), and Zeno (founder of the Stoic school). According to the flow of natural law states that the law originates from God who is universal and eternal, and between law and morals cannot be separated. The

²⁷ *Ibid*, page. 54.

²⁸ Lili Rasjidi and I.B Wya Putra, *Hukum Sebagai Suatu Sistem*, Remaja Rusdakarya, Bandung, 1993, page. 118.

adherents of this school view that law and morals are a reflection and regulation internally and externally of human life which is manifested through law and morals.²⁹ Fitzgerald explained Salmonds theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations given by the community which are basically an agreement by the community to regulate behavioral relations between members of the community and between individuals and the government World Health Organization are considered to represent the interests of the community.³⁰ With the presence of law in social life, it is useful to integrate and coordinate interests that are usually in conflict with one another. Therefore, the law must be able to integrate them so that conflicts of interest can be minimized. The definition of sah terminology in Indonesian according to KBBI is regulations or customs that are officially considered binding, which are confirmed by the authorities or

²⁹ Satjipto Raharjo, *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti, 2000, page. 53.

³⁰ Ibid page. 54.

the government, laws, regulations, and so on to regulate community life, standards or rules regarding certain alamiah events, decisions or considerations determined by the judge in court, or the verdict.³¹ In the Big Indonesian Dictionary, protection comes from the word protect which means protecting, preventing, defending and fortifying. While Protection means conservation, maintenance, guard, asylum, and bunker. In general, protection means protecting something from things that are dangerous, something that can be in the form of interests or objects or goods. In addition, protection also contains the meaning of protection given by someone to someone who is weaker. Thus, legal protection can be interpreted as protection by law or protection by using legal institutions and means. However, in law, the definition of legal protection is all efforts made consciously by everyone as well as government and private institutions aimed at securing, controlling and fulfilling the welfare of life in accordance with existing human rights as stipulated in Law Number 39 of 1999 concerning Human Rights.³² According to Satjito Rahardjo legal protection is an effort to protect a person's interests by allocating a human right to him to act in the context of his interests. According to Setiono, legal protection

³¹ Tim penyusun Kamus Pusat Pembinaan dan pengembangan Bahasa, Kamus Besar Bahasa Indonesia, Edisi kedua, cet. 1, (Jakarta: Balai Pustaka, 1991), page. 595.

³² <http://tesishukum.com/pengertian-perlindungan-hukum/> accessed on 18 December 2016, at 13:30 WIB.

is an action or effort to protect the public from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings. According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life between fellow human beings. Basically, legal protection does not differentiate between men and women. Indonesia as a constitutional state based on Pancasila must provide legal protection to its citizens, therefore this legal protection will give birth to recognition and protection of human rights in its form as individual beings and social beings within the framework of a unitary state that upholds the spirit of kinship in order to achieve common prosperity.

3. Legal Culture Concept

Lexically, 'culture' is defined as thoughts, minds, customs, or something that has become a habit that is difficult to change. Meanwhile, there is the word 'culture' which is interpreted as the result of activities and the creation of the human mind (mind) such as beliefs, arts, and customs. It can also be interpreted as the whole of human knowledge as a social being which is used to understand the environment and its experiences and which guides

its behavior.³³ The concept of legal culture is a relatively new concept in legal studies in general and was first introduced by Lawrence M. Friedman in 1969 through legal system theory. According to Friedman the legal system is built by three elements, namely legal structure, legal substance, and legal culture or legal culture. Lawrence M. Friedman explains that the concept of legal culture is as follows:

- a) Legal culture refers to parts of culture in general (habits, opinions, ways of acting, thinking) which in a certain way can move social forces closer to or away from the law.
- b) It is the legal culture that determines when, why, and how society treats the law. Legal institutions or judicial processes and why they use other institutions or do not use them at all. In other words, it is cultural factors that turn static legal structures and regulations into life.
- c) Legal culture is the attitudes, values and opinions of society in dealing with law and the legal system, legal culture is the source of law.
- d) Legal culture are attitudes related to law, which determine when, why, and how people obey or reject the law, determine what legal

³³ *Kamus Besar Bahasa Indonesia*, 2005, page. 169-170.

structures are used and for what reasons and what legal regulations are chosen to be applied and set aside and for what reasons.

- e) Legal culture is the ideas, attitudes, expectations and opinions about law that are defended by members of the public.³⁴

That the foundation of the cultural system is the moral order, which contains values as the fruit of commitment and mutual agreement. Virtue morality (morality righteousness) is in this domain. This also stated that the virtue subdomain of morality is ethics, whose position is side by side with ideological views (ideology world-view) and solidarity allegiance. In the domain of moral order, people question morally right and wrong, ideological good and bad, and social solidarity opponents. All of the things mentioned above are the orientation of social awareness. This orientation is formed from social situations. In other words, there will be no social orientation without a social basis that refers to a certain time and space. By using this basis of thinking, legal culture at the most basic level departs from this natural basis situation. This base is very energizing. There are human resources (demography), environment (ecology), and materials (geophysics). Where a person or group of people were born, when, and from which family, will frame their natural base situation. The next situation is

³⁴ Derita Prapti Rahayu, *Budaya Hukum Pancasila*, (Yogyakarta: Penerbit Thafa Media, 2014), page. 52-53.

the social order, which includes the situation in the state power structure, capital/social class structure, and job structure. The situation in this social order forms social status because it will reflect in it who is in power in all of these structures. At the next level there is the cultural system. Because positive law is also an offer of values that come directly from public power holders, it can be presumed that the formation of a healthy legal culture will face serious problems at this level if these offers are continuously rejected on the grounds of distrust of the messages positive messages from the positive legal system. The formation of legal culture is essentially the formation of the orientation of values (for example regarding sacred/profane, right/wrong, beautiful/ugly) that inhabit the subconscious of society.

Whereas the law can only be understood by examining the historical and cultural framework in which the law arose, the law is a manifestation of the legal awareness of society and all of these laws originate from customs and beliefs. From this it is confirmed that culture or what is better known as customary law is the forerunner of law, because indeed this law arises by adjusting the conditions of the local community, what the people's behavior is like, what their habits are like and in the end the law adjusts it, so that the law formed is in accordance with and not inconsistent with the culture and customs of the local community. Positive law that exists in Indonesia at this time does recognize the existence of customary law, where

customary law is a continuation or can be interpreted as arising because of a culture, the culture contained in society is involved in the formation of law. In Indonesia, there are a large number of customary law communities. The development of culture and law created a legal subject called Customary Law. The idea of a system in science is widespread, because it almost controls the context of thinking of scientists in all fields.³⁵ Applicable law contains a holistic set of systems and sub-systems in people's lives.³⁶ Law as a system consists of several components or sub-systems which are interrelated with each other. The concept of legal culture as a component of the legal system.

According to Friedman, there are three components in the legal system, namely:

- 1) Structural components
- 2) Substance components
- 3) Components of legal culture

These three components were explained by Satjipto Rahardjo³⁷ that the structural components are institutions that have been determined by the substance of legal provisions to implement, enforce, maintain and apply

³⁵ Otje Salman dan Anthon F. Susanto, *Teori Hukum: Mengingat, Mengumpulkan dan Membuka Kembali*. Op. Cit, page. 83.

³⁶ Beni Ahmad Saebani, *Sosiologi Hukum*. Op. Cit, page. 161.

³⁷ Satjipto Rahardjo, *Keluasan Reformasi Hukum*. Op. Cit, page. 6.

the provisions of said legal provisions. With this structural component it is possible to see how the system provides services for the regular processing of legal materials. The substance component is the output aspect of the legal system, in this case the legal norms themselves in the form of regulations, doctrines, decisions, the extent to which all of them are used, both for those who regulate and those who are regulated. The legal culture component is a component consisting of values and attitudes that bind the system and determine the place of the legal system in the midst of the nation's culture as a whole. Satjipto Rahardjo³⁸ has tried to make an analysis of how the legal culture actually applies in Indonesian society in general. Its foundation departs from the notion that in the operation of law, what cannot be ignored is the role of people or community members who are the target of legal regulation but also those who carry out positive law, whether in the end it becomes law that is carried out in society, is largely determined by attitude, views, and values shared by members of society. According to Friedman³⁹, legal culture refers to parts of culture in general in the form of habits, opinions, ways of behaving and thinking that support or avoid the law and also legal culture refers to public knowledge, attitudes

³⁸ Satjipto Rahardjo, *Budaya Hukum Dalam Permasalahan Hukum Di Indonesia*, Ceramah Disampaikan Pada Seminar Hukum Nasional Ke-IV, Badan Pembinaan Hukum Nasional Departemen Kehakiman, 26-30 Maret 1979.

³⁹ Budi Agus Riswandi & M. Syamsudin. *Ibid*, page. 153.

and behavior patterns of society towards the legal system. So, the legal culture is one of the components of the legal system in addition to the components of the structure and substance of the law. The legal culture component is an important variable in the legal system because it can determine how the legal system operates.

According to Soerjono Soekanto⁴⁰, the concept of legal culture is broader than teachings about legal awareness because the concept of legal culture also includes legal awareness. Thus, legal culture is none other than the overall factors that determine how the legal system obtains its logical place within the cultural framework of the general public. Legal culture also concerns people's attitudes towards law and the legal system such as beliefs, values, ideas and expectations or is also often interpreted as a situation of social thinking and social forces that can determine how the law is obeyed, violated. The focus of this legal culture is on values related to legal process law.⁴¹ Legal culture⁴² is a non-material or spiritual culture. The core of legal culture as non-material or spiritual culture are values which are abstract conceptions of what is good (so it must be adhered to)

⁴⁰ Soerjono Soekanto, *Kesadaran Hukum dan Kepatuhan Hukum*, Rajawali, Jakarta, 1982, page. 153-154.

⁴¹ Soerjono Soekanto, *Budaya Hukum Dalam Permasalahan Hukum di Indonesia*. Op. Cit

⁴² Soerjono Soekanto, *Antropologi Hukum, Proses Pengembangan Ilmu Hukum Adat*, Rajawali, Jakarta, 1994, page. 202-203.

and what is bad (so it must be avoided). These values are the basis of ethics (regarding what is right and wrong), norms or rules (which contain orders, prohibitions or permissibility) and patterns of human behavior. Legal culture is part of the culture of society. Culture as a pattern for behavior contains a value system, recipes, blueprints, and norms and rules contained in the human head as a knowledge system. Thus, in fact the culture is a set of knowledge (knowledge model) that is used to understand, deal with, manipulate and utilize their environment, both the social environment and is used in an effort to fulfill their main basic needs. Used selectively by its supporters, depending on the situation and circumstances as well as the social arena, where the supporters of the culture carry out activities. This culture is owned by an individual through a learning process in his social environment and becomes knowledge of individual culture.⁴³ Likewise with the legal culture that is created through an individual learning process. Everyone will have a different perspective on law as a result of the learning process that is not the same between one individual and another.

G. Research Method

The research is based on empirical juridical methods, which analyze problems from a point of view according to current legal and regulatory

⁴³ Koentjaraningrat, *Pengantar Antropologi II*, Op. Cit, page. 12.

provisions. The approach methods carried out in this study are qualitative descriptive, where the obtained legal materials are discussed descriptively and analyzed using qualitative. This research uses primary legal sources in the form of applicable laws and regulations and secondary legal materials in the form of explanations of secondary legal materials such as books, journals, and tertiary legal materials, namely dictionaries, and encyclopedias.

So, the legal culture is the attitudes and values of individuals and groups of people who have interests which are then processed into demands related to law. These interests and demands are social forces that determine the functioning of the legal system or not.

1. Object of research

The object of this research is the practice of Copyright Law protection circulating on social media.

2. Research Subjects or Research Resources

The research subjects or parties chosen to provide information or information about the problem under study are creative workers, in this case illustrators in Indonesia (specifically). Meanwhile, the sources or experts who will be interviewed to assist the analysis in this research are Social Media Observers, Intellectual Property Rights Observers, and lecturers who are knowledgeable about Intellectual Property Rights.

3. Nature of Research

This research will be analyzed qualitatively, which is done by digging qualitative data and does not bring up numbers and percentages.

4. Types of research

This research is empirical legal research (sociological or non-doctrinal), namely research on how the law is implemented in the field. Empirical legal research in this study can be interpreted as a research method that reviews the function of a law or rule in terms of its application in society. Empirical legal research is carried out on the basis of the theoretical basis raised. Friedman's main idea that the importance of legal culture in the enforcement of the legal system indicates the need for social research to understand the law.

5. Data source

Sources of data needed in this study were taken from three kinds of data, namely:

- a. Primary Data. The primary data to be used refers to the results of data collection in the field (research in the community) related to this research. This primary data was obtained through interviews with respondents and observations of the research object.
- b. Secondary Data. The secondary data that will be used are primary legal materials taken from Law Number 19 of 2002 that has been amendment in Law Number 28 of 2014 concerning Copyright and secondary legal materials that can support and explain primary legal materials. This

secondary legal material is obtained from books, journals, previous research, as well as news from print and online media.

- c. Tertiary Data. Tertiary data that will be used is obtained from supporting materials that can help understand and analyze the problems studied in the study. Tertiary data obtained from dictionaries, encyclopedias, and lexicon. (It would be better if it was explained what dictionary, encyclopedia, etc.)

6. Method of collecting data

The data collection method used to obtain the data that has been determined above is carried out by empirical research. The data was obtained through interviews with respondents related to the problems raised in this study as well as observations on the object of research.

7. Data Processing Method

The data processing method used is non-statistical because in this study, it was carried out by digging up allitative data and did not generate numbers.

8. Research Approach

This approach is empirical research with a sociological approach, namely law, sociology, psychology, and others.

9. Analysis Method

The data obtained will be analyzed through a qualitative descriptive method. The descriptive qualitative method here includes classifying data and presenting the results of the analysis which are then presented

descriptively. Then the data obtained is selected from the research, which is then analyzed in order to obtain an explanation of the actual reality that is useful for answering the problem.

H. Thesis Framework

To write research that is in order and understandable, the writer puts a systematic thought into four chapters, each of which is accompanied by sub-chapters that are arranged in a coherent manner.

First Chapter or Chapter I consists of introduction of this research. In this chapter, it will be explained through sub-chapters in sequence; Context of Study, Problem Formulation, Research Objective, Research Originality, Literature Review, Operational Definition, Research Method and Theoretical Review. Chapter II will contain The Definition of Copyrights, Illustration Image, Scope of Copyrights, Legal Cultural Aspects, Legal Protection, Copyrights in Islamic Perspective. Chapter III will contain a discussion and analysis. In this chapter, the author or researcher will describe several concepts related to research and explain the research and analysis results to answer the formulation of the problem. Furthermore, Chapter IV is the closing section which contains conclusions about the overall discussion and suggestions for the case by the author.

CHAPTER II
GENERAL OVERVIEW OF COPYRIGHT, LEGAL PROTECTION,
AND LEGAL CULTURE

A. Copyright

1. Definition of Copyright

Copyright is the exclusive right for the creator or recipient of the right to publish or reproduce his creation or give permission for it without reducing the restrictions according to the applicable laws and regulations. Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.⁴⁴ Related Rights are rights related to Copyright which is an exclusive right for performers, phonogram producers, or broadcasting institutions. Copyright infringement is a violation of the exclusive rights of the creator such as reproducing, selling, and exhibiting the work without the permission of the creator.

In the Law of the Republic of Indonesia No. 28 of 2014 concerning Copyright Law also regulates the types of activities that do not violate copyright. For example, use and reliance for education, research, writing

⁴⁴ Hendra Tanu Atmadja, *Hak Cipta Musik atau Lagu*, UII Press, Jakarta, 2003, page. 39-40.

scientific papers, reports, criticism, reviews, lectures and performances as long as including the complete source of the work. For use that is for profit, the author's permission must first be obtained. International Copyright Law has been regulated in the Berne convention, the Rome Convention, the WIPO Copyright Agreement, the WIPO Performance and Phonogram Agreement, and the Fair Access to Science and Technology Research Act of 2015. Copyright in Indonesia is regulated in the Law of the Republic of Indonesia No. 28 of 2014 concerning copyright issued on October 16, 2014. Law No. 19 of 2002 concerning Copyright states that Copyright is a right that regulates intellectual works in the fields of science, art and literature which are set forth in a distinctive form and given to ideas, procedures, methods or concepts that have been set forth in a permanent form. To get protection through Copyright, there is no need to register. Registration is for verification purposes only. Thus, once a work is tangible, the Copyright is automatically attached to the work. Usually, publication is done by including the Copyright sign. Legal protection for Copyright holders is intended as an effort to create a better climate for the growth and development of the spirit of creation in the fields of science, art and literature.

There are several terms that are often used in Copyright, including:

- 1) Creator: is a person or persons who jointly with their inspiration gave birth to a Creation based on the ability of the mind, imagination,

dexterity, skill, or expertise which is poured into a unique and personal form.

2) Creation: is the result of every work of the Creator that shows its authenticity in the field of science, art, or literature.

3) Copyright: special rights for creators and recipients of rights to publish or reproduce their creations or to give permission for it without reducing restrictions? restrictions according to applicable laws and regulations.

4) Copyright Holder: is the Author as the Copyright Owner, or the party receiving the right from the Author, or another party receiving further rights from the party receiving the right.

2. Scope of Copyright

a. Protected Creation

Article 40 paragraph (1) of Law Number 28 of 2014 concerning Copyright Law stipulates in detail the works that can be protected, namely:⁴⁵ books, computer programs, pamphlets, layouts of published written works, and all other written works; lectures, lectures, speeches,

⁴⁵ Budi Agus Riswandi, *Selayang Pandang Hak Cipta di Indonesia*, Total Media, Yogyakarta, 2009, page. 41.

and other similar creations; teaching aids made for the benefit of education and science; songs or music with or without subtitles; drama or musical drama, dance, choreography, *wayang*, and mime; fine arts in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage, and applied arts; architecture; map; batik art; photography; cinematography; translations, interpretations, adaptations, anthologies, databases, and other works from the translation.

1) Works that are not copyrighted

As an exception to the above provisions, copyrights are not granted for the following: results of open meetings of state institutions; legislation; a state speech or a speech by a government official; court decision or judge's decision; or decisions of arbitral tribunals or decisions of other similar bodies.

2) Form and Length of Protection

The form of protection provided includes a prohibition for anyone to publish or reproduce the protected work except with the permission of the Copyright Holder. The period of Copyright protection generally lasts for the life of the Author and continues

for up to 25 (twenty-five) years after the Author's death. However, Article 59 of the Copyright Law states that:⁴⁶

- a) photographic works;
- b) portrait;
- c) cinematographic works;
- d) video games;
- e) Computer program;
- f) appearance of written works;
- g) translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation;
- h) translation, adaptation, arrangement, transformation or modification of traditional cultural expressions;
- i) compilation of Works or data, either in a format that can be read with a Computer Program or other media;
- j) a compilation of traditional cultural expressions as long as the compilation is an original work, valid for 50 (fifty) years since the announcement was first made.

⁴⁶ Article 59 Law Number 28 of 2014 concerning Copyright.

Copyright protection for Works in the form of applied works of art is valid for 25 (twenty-five) years since the first Announcement was made.

3) Copyright Acquisition

In the case of creations protected by copyright, the process of occurrence can be obtained automatically when creations in the fields of art, literature and science have been manifested in a real way. This is confirmed in the provisions of Article 1 paragraph 1 of Law No. 28 of 2014 which states:⁴⁷

“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.”

Under the Copyright Law in force in Indonesia, applications for the registration of works are regulated starting from Article 64 – Article 79 in Chapter X concerning Registration of Works and Related Rights Products. If you look at the provisions in Article 64 paragraph (1), it can be seen that the registration of works and related rights products is carried out by the Minister. However, in paragraph (2) of the article it is stated:

⁴⁷ Article 1 paragraph 1 Law Number 28 of 2014 concerning Copyright.

"Recording of works and related rights products as referred to in paragraph (1) is not a requirement for obtaining copyright and related rights."⁴⁸

Based on these two paragraphs in Article 64, it is clear that the registration of works is not mandatory for the creator. Even so, it is also important to record creations, this is to make certainty.

4) Copyright Validity Period

Copyright as an exclusive right has a validity period. The period for which a copyright is valid is determined by the type of copyright itself. If we look closely at the provisions of Law No. 28 of 2014, the validity period of copyright can be divided into four types, namely:⁴⁹

a) For types of works in the form of: books, pamphlets, all written works, plays or musicals, choreographic dance, all forms of song or musical art, architecture, lectures, lectures, speeches, other similar creations, props, maps, translations, interpretations, adaptations and anthologies, the validity for the life of the Author and continues for 70 (seventy) years after the Creator dies, starting from January 1 of the following year.

⁴⁸ Article 64 paragraph 2 Law Number 28 of 2014 concerning Copyright.

⁴⁹ Law Number 28 of 2014 concerning Copyright.

b) For the types of works in the form of: computer programs, cinematography, photography, databases, works resulting from the transformation, the validity copyright protection for Works in the form of works of art is valid for 25 (twenty-five) years since the announcement was made for the first time.

c) Types of works in the form of: folklore, products of folk culture, such as stories, saga, fairy tales, legends, chronicles, songs, handicrafts, choreography, dances, calligraphy and other works of art, the validity period is unlimited.

d) For a type of work that is published but the creator or publisher is unknown, the validity period is fifty years from the first time the work is publicly known.

3. Copyright Registration

Protection of creation arises automatically since the creation is manifested in a tangible form. Registration of works is not an obligation to obtain copyright. However, both the creator and the copyright holder who register their creation will receive a work registration letter which can be used as initial evidence in court if a dispute arises in the future against the work. Works can be registered with the Copyright Office, Directorate General of Intellectual Property Rights-Ministry of Law and Human Rights (*Ditjen HKI KemenkumHAM*).

4. Copyright Restrictions

According to the provisions of Article 1 point 2 of Law No. 28 of 2014 stipulates that the creator is a person or several people together whose inspiration creates a creation based on the ability of the mind, imagination, dexterity, skill or expertise which is poured into a form that is unique and personal in nature. A person is considered a creator if he is the one who designed the creation. This is in line with the provisions of Article 34 of Law No. 28 of 2014 which states:⁵⁰

“In the event that a work is designed by a person and realized and carried out by another person under the leadership and supervision of the person who designed it, the person who is considered the creator is the person who designed the work.”

The copyright owner is exclusive. This right has the meaning of the ability to give birth to new rights, so one copyrighted work has several rights that are bound by one right bond. These many rights in use as in the framework of the transfer of rights can be carried out as a whole, or separately.⁵¹

The characteristics of copyright can be found in the provisions of Article 16 paragraphs 1 and 2 which read:

- 1) Copyright is an intangible movable object.

⁵⁰ Article 34 Law Number 28 of 2014 concerning Copyright.

⁵¹ Muhammad Djumhana dan R Djubaedillah, *Hak Milik Intelektual Sejarah, Teori dan Prateknya di Indonesia*, Citra Aditya Bakti, Bandung, 1997, page. 55.

- 2) Copyright can be transferred or transferred, either in whole or in part due to:
- a) Inheritance;
 - b) Grant;
 - c) Will;
 - d) Written agreement;
 - e) other reasons justified by laws and regulations.

Based on the wording of this provision, the characteristics of copyright are considered as movable objects. Furthermore, characterized copyright can be transferred or transferred. Transfer or transfer of Copyright cannot be done verbally, but must be done in writing, either with or without a notarial deed. Transitional forms can be carried out through inheritance, grants, wills, written agreements and other reasons that are justified according to the applicable laws and regulations.

Article 43 of Law No. 28 of 2014 stipulates copyright restrictions. Copyright restriction means that an act of copyright infringement is not considered as an infringement, namely:⁵²

⁵² Article 43 Law Number 28 of 2014 concerning Copyright.

- 1) Announcement and/or reproduction of the State emblem and national anthem according to their original nature.
- 2) Announcement and/or reproduction of everything announced and/or reproduced by or on behalf of the government, unless the copyright is stated to be protected, either by law or by a statement on the work itself or when the work is announced and/or reproduced.
- 3) Collection of actual news, either in whole or in part, from news agencies, broadcasting institutions and newspapers or other similar sources, provided that the source must be stated in full.
- 4) Creation and distribution of Copyright content through information and communication technology media that are non-commercial and/or beneficial to the Author or related parties, or the Creator states that he has no objection to such creation and distribution.
- 5) Reproduction, Announcement, and/or Distribution of Portraits of the President, Vice President, former President, former Vice President, National Hero, heads of state institutions, heads of ministries/non-ministerial government agencies, and/or heads of regions with due regard to dignity and fairness in accordance with regulatory provisions legislation.

5. Violations and Sanctions of Copyright

By mentioning or citing the source, it is not considered as a Copyright infringement on:⁵³ use of the Works of other parties for the purposes of education, research, writing scientific papers, compiling reports, writing criticisms or reviewing a problem without prejudice to the reasonable interests of the Author; taking the Creation of another party, in whole or in part, for the purpose of defense inside or outside the Court; taking the Works of other parties, in whole or in part, for the purposes of: lectures solely for educational and scientific purposes; or performances or performances that are free of charge provided that they do not harm the legitimate interests of the Creator. Reproduction of a Work in the fields of science, art, and literature in braille for the purposes of the blind, unless the Reproduction is of a commercial nature; reproduction of a Work other than a Computer Program, limited by means or by any means or similar process by public libraries, scientific or educational institutions, and non-commercial documentation centers solely for the purposes of their activities; changes made based on considerations of technical implementation of architectural works, such as building works; making a backup copy of a Computer Program by the owner of a Computer Program that is carried out solely for his own use.

⁵³ Budi Agus Riswandi, Op.cit., page. 40.

According to Article 112⁵⁴ of the Copyright Law, everyone who without rights commits acts as referred to in Article 7 paragraph (3) and/or Article 52 for Commercial Use, shall be subject to imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah). In addition, some other sanctions are: Any person who manages a trading place in all its forms who intentionally and knowingly allows the sale and/or duplication of goods resulting from copyright infringement and/or related rights at the trading place they manage as referred to in Article 10, shall be punished with a fine of up to Rp. 100,000,000. 00 (one hundred million rupiah). Everyone who without the consent of the person being photographed or their heirs makes Commercial Use, Reproduction, Announcement, Distribution, or Communication of the Portrait as referred to in Article 12 for the purposes of billboards or advertisements for Commercial Use, both in electronic and non-electronic media, shall be punished with a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

Following are examples of violations of economic rights in accordance with Article 9 paragraph (1) and 113 of the Copyright Law:

⁵⁴ Article 112 Law Number 28 of 2014 concerning Copyright.

- 1) Disseminating works or distributing works or copies thereof, for example distributing an author's book by uploading it to an unofficial site/platform that can be accessed by the public free of charge;
- 2) Reproducing creations in all its forms, for example recording a film in a cinema using a cellphone camera;
- 3) Translation of works, for example translating unofficially and uploading them on paid sites/platforms for personal gain;
- 4) Adapting, changing arrangements, or transforming creations, for example covering a song and then uploading it and making a profit;
- 5) Showing creations, for example streaming Netflix movies that are broadcast via other platforms such as Zoom;
- 6) Renting creations, for example a comic illustrator employee rents out his boss's drawings for merchandise purposes.

Thus, it can be understood that it is very important for people who are surrounded daily by the use of copyrights to pay attention to and respect the moral rights and economic rights of the creators of works so that their use does not harm all parties.⁵⁵ The Indonesian government itself through the Directorate General of Intellectual Property (DJKI) has provided legal protection for works or creations by recording copyrights. A work or creation can be registered at

⁵⁵ <https://kontrakhukum.com/article/jenis-pelanggaran-hak-cipta/> accessed on 7/02/2023, at 18.03 WIB.

the DJKI Copyright Office of the Ministry of Law and Human Rights so that the creator will receive a creation registration letter which can be used as evidence in court if a dispute arises against the work at a later date.

6. Copyright Law Settlements

Utilization of works which contain copyright without the permission or knowledge of the creator or copyright holder can result in a copyright dispute. In the provisions Article 95 of Law No. 28 of 2014 Copyright Law disputes can consist of civil or criminal disputes. In the case of civil disputes, the copyright dispute resolution mechanism can be carried out in two ways, namely the Arbitration process and Alternative Dispute Resolution in accordance with the provisions of Law No. 30 of 1999 and Lawsuit to the Commercial Court.⁵⁶ For arbitration, the decision is final and binding, while for other Alternative Dispute Resolutions outside of arbitration and the court, the power of the award depends heavily on the good faith of the parties. If the Alternative Dispute Resolution decision has not provided a sense of justice to one of the parties, a lawsuit can be made to the Commercial Court. Legal remedies from the Commercial Court's decision can be made through cassation and judicial review. Meanwhile, criminal disputes can be resolved in one way, namely through the court process.

⁵⁶ Budi Agus Riswandi, *Op.cit.*, 2009, page. 45.

Copyright disputes that contain criminal elements for their settlement start from the process of investigation, investigation, prosecution and examination. Violating Copyright and/or Related Rights in the form of Piracy, as long as the parties to the dispute know of their existence and/or are located in the territory of the Unitary State of the Republic of Indonesia must first seek settlement of disputes through mediation before carrying out criminal prosecution.

B. Legal Protection

1. Definition of Legal Protection

Satjipto Raharjo, legal protection means that:

"Providing protection for human rights (HAM) that is harmed by other people and the protection is given to the community in order to enjoy all the rights given by law."

Legal protection is all endeavors to satisfy rights and give help and security to witnesses and additional casualties.⁵⁷ Legal protection for victims of crime as part of community protection can be realized in various forms, such as through restitution, compensation, medical services, and legal assistance. In addition, Maria Theresia Geme defines legal protection as:

⁵⁷ Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, page. 54.

"Relating to the actions of the state to do something by (enacting exclusive state law) with the aim of providing assurance of the rights of a person or group of people."⁵⁸

Philipus M. Hadjon argues that legal protection is the protection of dignity, as well as recognition of human rights that are owned by legal subjects based on legal provisions of arbitrariness, with "government action" as a central point, (associated with legal protection for the people).⁵⁹

According to Hadjon, legal protection is divided into two objectives, namely preventive legal protection and repressive legal protection. Preventive legal protection gives people the opportunity to raise objections (*inspraak*) or provide their opinions before a government decision becomes a definitive form. Preventive legal protection is very meaningful for government action based on freedom because preventive legal protections encourage the government to exercise its discretion carefully. The purpose of preventive legal protection is to prevent the occurrence of disputes, while repressive protection aims to resolve disputes.

According to CST Kansil, legal protection is an assortment of legitimate endeavors that must be embraced by legal authorities to give

⁵⁸ Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, Rajawali Pers, Jakarta, 2014, page. 259.

⁵⁹ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta, 2011, page. 10.

security, both mentally and physically, from obstruction and different dangers from any party.⁶⁰ The definition of legal protection theory is:

*"The theory that examines and analyzes the form or purpose of protection, protected legal subjects and objects of protection provided by law to the subject."*⁶¹

Legal protection is a form of protection for human rights that are harmed by others and legal protection is given to the community so that the community can enjoy all the rights provided by law or it can be said that legal protection is a variety of legal measures that must be provided by law enforcement officials to provide a sense of security, both mind and physically from disturbances and various threats from any party.

Legal protection is the protection of dignity as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will protect one thing from other things.⁶² With regard to women as victims, it means that the law provides protection for the rights of women as victims of trafficking in persons from something that results in the fulfillment of these rights. Legal protection is a narrowing of the meaning of protection, in this case only protection by law.

⁶⁰ C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989, page. 102.

⁶¹ <https://eprints.umm.ac.id/37697/3/jiptummpp-gdl-jakarayaan-47946-3-babii.pdf> accessed on 14/2/2023, at 07:46 WIB.

⁶² Philipus M. Hadjon. *Perlindungan Hukum Bagi Rakyat Indonesia*. Bina Ilmu, Surabaya, 1987, page. 25.

The protection provided by law is also related to the existence of rights and obligations, in this case those owned by humans as legal subjects in interactions with fellow humans with their environment.⁶³ As a legal subject, humans have the right and obligation to take legal action. Legal protection is an act or effort to protect people from arbitrary actions by authorities who are not in accordance with the rule of law, to create order and order, thus enabling humans to enjoy their dignity as humans. On the other hand, defines legal protection as all government efforts to ensure legal certainty to provide protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable regulations.

Thus, it can be said as legal protection if it contains the following elements:⁶⁴

- 1) There is protection from the government for its citizens.
- 2) Legal certainty guarantee.
- 3) With regard to the rights of citizens.
- 4) There are penalties for those who violate them.

⁶³ Ibid.

⁶⁴<http://repository.pertanian.go.id/bitstream/handle/123456789/15255/MODUL%20DAN%20LS%20PERTEMUAN%20KE%20V%20KELAS%20XII%205.pdf?sequence=1&isAllowed=y>
accessed on 7/02/2023, at 18.20 WIB.

Legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that are manifested in attitudes and actions in creating order in the social life between people. Based on the description above, it can be concluded that legal protection is all forms of efforts to protect human dignity and human rights in the field of law.

2. Forms of Legal Protection

In Indonesia, legal protection is manifested in the presence of various laws and regulations.⁶⁵ The forms of protection or categories vary, for example legal protection, including civil law protection, consumer law protection, child protection, and so on. Implicitly, civil law protection in Indonesia is reflected in the Civil Code. In the Civil Code, protection is regulated for victims or parties who experience losses, namely in the form of compensation. Legal protection is an effort to protect the government or authorities with a number of existing regulations. Here's what it means and how to get it. This is as explained in Article 1365 of the Civil Code which states that a person who violates the law and causes losses is obliged to compensate for the losses incurred because of it. Furthermore, consumer protection is regulated in the Consumer Protection Act. The meaning of

⁶⁵ <https://jdih.sukoharjokab.go.id/informasi/detail/90> accessed on 6/02/2023, at 15.30 WIB.

consumer protection as set forth in Article 1 Number 1 of the Consumer Protection Law is all efforts that guarantee legal certainty to provide protection to consumers. This law also explains a number of consumer rights and legal certainty.

Article 4 of the Consumer Protection Act explains that a consumer is entitled to the following eight rights:⁶⁶

1. The right to comfort, security and safety in consuming goods and/or services.
2. The right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions as well as the guarantees promised.
3. The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services.
4. The right to have their opinions and complaints heard about the goods and/or services used.
5. The right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes.
6. The right to obtain consumer guidance and education.

⁶⁶ Article 4 Law No. 8 of 1999 Concerning Consumer Protection.

7. The right to be treated or served properly and honestly and not discriminatory.
8. The right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be.

3. Factors Affecting Legal Protection

The maximum implementation of legal protection and law enforcement is certainly the hope of everyone. However, there are a number of factors that influence the protection and enforcement of the law. According to Soerjono Soekanto, there are five factors that influence the law enforcement process in terms of providing protection.⁶⁷

1. The legal factor itself.
2. Law enforcers, namely parties who form or apply the law.
3. Supporting facilities and/or infrastructure.
4. Society, namely the environment in which the law is applied.
5. Culture, namely the work, creation, and taste of the results of human initiative.

⁶⁷ Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, Penerbit. PT.RajaGrafindo Persada Jakarta, 2013, page. 7.

Based on the explanation explained, in short legal protection is an effort to provide protection for legal subjects. Then, law enforcement is an effort made by law enforcement officials to create, maintain and maintain peace. Realizing law protection and enforcement is not easy, because in practice there are many obstacles encountered.

C. Legal Cultural Aspects

1. Definition of Legal Cultural Aspects

Indonesia is a state based on law(*rechtsstaat*) and not based on mere power(*machtsstaat*). This means that since independence the Indonesian nation has decided to choose a form of constitutional state as the only option. As a result of this election the consequence is that all aspects of life related to the activities of administering the Republic of Indonesia must obey and comply with legal norms, whether related to political, economic, social, cultural, and other aspects. Law must fundamentally display its role as a central point in all individual life, social life, as well as the life of the nation and state. The portrait of the history of Indonesian law still shows an imbalance between the implementation of legal functions and the development of its substance and structure. If the law codification and unification program is used as a measure, then the development of legal structure and substance has been going quite well and is stable because from

time to time there has been an increase in productivity; but on the other hand, it can be seen that the function of law tends to decline. The unsynchronized growth between function, substance, and legal structure is due to factors that do not and/or do not support the legal system in Indonesia. The issue of legal culture is one of the legal reform agendas that must be addressed and worked on seriously, in addition to other legal aspects.

The past experience of the Indonesian nation which only emphasized formal juridical aspects, without emphasizing the development of legal behavior and legal morality in society, has led the Indonesian nation to fall into serious mistakes. Thus, the study of legal culture is important and relevant today. When legal subjects come into contact with the law, the law in question is no longer fully textual in meaning as written in the law or other positive legal sources. The law must have been linked to the concrete facts that are being faced. In other words, the law in abstracto is connected with the context of the concrete facts that occurred, so that in the end an answer will be found as to what kind of legal case will be resolved. This answer, if stated in the judge's decision, will become an in concreto law. The sentence above emphasizes that legal texts are never separated from context. In the process when a law is formed, for example by the House of Representatives and the Government as the legislator, the draft law must accommodate the needs of the community that is the target of the legal norm. This means that the laws made must be in line with the demands of the community's needs. This

demand for needs is not something that is in the air, but a need that actually exists in people's lives, which is seen as urgent to be regulated into positive law. This means that when a positive law, especially a law is enacted, there is already a guarantee that this positive law can apply sociologically (because people really need it) and apply philosophically (because people think that it should indeed be made rules). Thus, it is the duty of the state to stipulate the regulation into positive law, so that the regulation applies juridically. In this case, it can be seen that positive law, both when it is formed and when it is applied in concrete cases in the field, will be in contact with space and time factors. The spatial factor refers to the place (location) where the legal subjects are located and interact with each other and the natural surroundings. The time factor refers to a certain period of time when the legal subject is alive and active. These two factors frame human activities as individual beings and social beings, so that these space and time factors can shape the behavior patterns of community members. Customs and habits are examples of patterns of behavior of people who are in the same space at a certain time. These similarities shape the culture. Lexically, 'culture' is defined as thoughts, reason, customs, or something that has become a habit that is difficult to change. Meanwhile, there is the word 'culture' which is interpreted as the result of the activity and creation of the human mind (mind) such as belief, art, and customs. It can also be interpreted as the overall knowledge of humans as social beings that are used to understand the environment and their

experiences and which guide their behavior. Judging from the subjects that make up the legal culture, Friedman is divided into two. There is an external legal culture that involves the wider community in general. In addition, there is an internal legal culture, namely a culture developed by law enforcement officers. These two types of legal culture influence each other. If the external legal culture is healthy, then the internal legal culture will automatically adjust because law enforcement officers are essentially a product of their own society. If the public is not accustomed to giving bribes, law enforcement officers will also not be accustomed to asking for bribes. On the other hand, if law enforcement officers are accustomed to firmly rejecting every form of bribery, then the public will not dare to take the initiative to give bribes. A healthy legal culture is manifested in the form of legal awareness (*rechtsbewustzijn*), while a sick (unhealthy) legal culture is shown through legal feelings (*rechtsgevoel*). The term legal culture emerged along with the further development of the study of law and society and culture. Thurnwald, quoted by Soekanto,⁶⁸ argues that law must be considered as an expression of a cultural attitude, meaning that legal order must be studied and understood functionally from a cultural system. Podgorecki, also quoted by Soekanto, uses the term legal sub-culture to show the relevance between law and culture.

⁶⁸ Sosiologi Hukum dari Polandia pada tahun 1973 menerbitkan buku: *Knowledge and Opinion About Law*.

This term has been used since 1966 as an independent variable on the actual functioning of law along with other variables, namely the social system, economy and personality. The notion of legal sub-culture starts from a discussion of the culture that applies in general in a society. Culture is defined as a set of general social values such as ideas, knowledge, arts, institutions, patterns of attitudes, patterns of behavior and material results. The attention of his studies is only directed at specific sub-cultures that are developed by the socio-cultural environments in the society concerned. It also emphasizes the legal feeling aspect which plays an important role. The legal sub-culture is very important because it is the cause or determinant of the types of legal attitudes and behavior of the community.⁶⁹

Koentjaningrat argues that the relationship between culture and law is described as follows:

*A cultural value system consists of the conceptions that live in the minds of most people about things that they should consider very valuable in life. Therefore, a system of cultural values usually serves as the ultimate guide for human behavior. Systems of human behavior at a more concrete level, such as norms, laws and special rules, are all guided by a system of cultural values.*⁷⁰

⁶⁹ Soerjono Soekanto et.al, *Disiplin Hukum dan Disiplin Sosial*, Jakarta: Rajawali Pers, 1988, page. 164.

⁷⁰ Koentjaraningrat, *Kebudayaan Mentalitas dan Pembangunan*, Cet. Ke 13, Jakarta: PT Gramedia, 1987, page. 25.

From the explanations put forward by these experts, it can be seen that law and culture have a very close relationship, that is, law is a concretization of the cultural values of a society, in other words, law is an embodiment of the system of cultural values of society.

In the development of this study, a new term was born, namely 'legal culture' as a compound between the variables of law and culture. The term legal culture was first put forward by Friedman to refer to social forces that influence the operation of law in society, which are in the form of elements of the values and attitudes of society in relation to legal institutions. Friedman stated that:

*Social forces are constantly at work on the law-destroying here, renewing there; inigorating here, dying there; choosing what parts of "law" will operate, which part will not, what substitutes, detours, and by-passes will spring up; what changes will take place openly or secretly. For want of a better term, we can call some of these forces the legal culture. It is the element of social attitude and value.*⁷¹

It was further stated that the term legal culture refers to public knowledge, attitudes and patterns of community behavior related to the legal system.

The term legal culture has been loosely used to describe a number of related phenomena. It refers to public knowledge of and attitudes and behavior patterns toward the legal system. Do people feel and act as if the courts are fair? When are they willing to use courts? What part of the law do they consider legitimate? What do they know about the law in general? These differ from person to person, but one attitude can also speak of the legal

⁷¹ Lawrence M.Friedman (1), op.cit., page. 15.

*culture of a country or a group, if there are patterns that distinguish it from the culture of the country or group.*⁷²

2. Legal Culture in Law Enforcement

Culture, according to E.B. Tyler, as quoted by E.K.M. Masinambow, is:

*"Culture or Civilization is that complex whose which includes knowledge, belief, art, morals law, customs, and any other ability and habits by man as a member of society."*⁷³

Starting from this definition, legal studies can be carried out in the context of understanding that law is an aspect of culture.

Meanwhile, Friedman stated: that the law is a system consisting of three components, namely:⁷⁴

- 1) the substance of the law, namely the norms and rules used institutionally, along with the behavior patterns of the actors in the legal system;
- 2) legal structures, namely institutions that store legal evidence, such as the police, and the judiciary (judges, prosecutors, and lawyers);

⁷² Lawrence M.Friedman (1), op . cit., page. 193-194.

⁷³ E.K.M. Masinambow, (ed), *Hukum dan Kemajemukan Budaya* (Jakarta: Yayasan Obor Indonesia, 2003), page. 1.

⁷⁴ Lawrence M.Friedman (1), op. cit., page. 11-16.

- 3) legal culture, "legal culture", namely habits, views, ways of acting and thinking in the general public that can influence social forces according to certain development directions.

According to Hilman Hadikusuma, legal culture is the same general response of certain people to legal phenomena.⁷⁵ The response is a unified view of legal values and behavior. So legal culture shows the pattern of individual behavior as members of the community that describes the same response (orientation) to the legal life that is lived by the community concerned.

Talking about the role of law in society, two perspectives emerge when the question is cultural pluralism. On the one hand, pluralism can be seen from what is called: "legal pluralism", namely the view that in the pragmatic world there are at least two system of norms or two systems of rules manifested in social interaction, while on the other hand, that view departs from: " cultural pluralism", and examines how the law plays a role and adapts itself in such conditions.⁷⁶ Legal culture is a term used to describe the relationship between social behavior in relation to law. Academically, legal culture examines the role and rule of law in a society. However, academic Ralf Michaels considers that the concept of legal culture itself does not have a definite definition and

⁷⁵ Hilman Hadikusuma, *Antropologi Hukum Indonesia* (Bandung: Alumni, 1986), page. 51.

⁷⁶ E.K.M. Masinambow, *Op. Cit.*, page. 5.

the study of legal culture in his view tends to override the study of legal sociology and legal anthropology. Legal culture is considered to have different meanings depending on what academic background the reviewer has. A clear legal culture is the intersection between law and culture but the boundaries between the two are still blurred. The relationship between law and culture has long been studied by legal figures such as by Baron de Montesquieu with his *Esprit des lois* (Indonesian: Spirit of Law) published in 1748 where he wrote that positive law must be adapted to geographical and cultural features.

Local community culture. In Europe in the 19th century, law was regarded as a cultural achievement of the people who initiated it. However, Friedrich Carl von Savigny sees in the German context that law as a cultural achievement does not mean that the law is representative of the people of a country or the *Volksgeist* but only by a handful of elites who make the law. Michaels is of the view that a legal culture requires a relatively homogeneous group and one method of determining homogeneity is the nation-state. The differences between a national legal culture and other national legal cultures are usually studied in comparative law. Lawrence Friedman's 1989 writing entitled *Law, Lawyers and Popular Culture* expanded the conception of legal culture. Legal culture is defined as opinions related to law while popular culture is defined as opinions formed by the masses, norms, and values held by a group of people. Popular legal culture as an idea initiated by Friedman is an intersection between legal culture and popular culture and is interpreted as an opinion

formed by the masses, norms, and values related to law and legal people (academics and practitioners). However, what needs to be considered regarding Friedman's writing is the context of its publication, namely when the status of law is questioned whether it is a branch of science or just a career choice, so what is law does not need to be studied in more depth. There was a blurring between what was popular culture and what was legal culture at that time, especially in the deception of law by popular culture. Between legal pluralism and cultural pluralism there are different nuances of meaning that can be inferred from the use of expressions. If legal pluralism is in question, what is meant first of all is "contrast" as opposed to "complementarity" which complements each other, or the opposite, namely "incompatibility". In terms of cultural pluralism, the main concern is how the cultural aspects of one social group differ from those of another. Normative law or rules are one of these aspects of culture. Thus, if the law is contrasted with cultural pluralism, what is meant is state law that is applied nationally, tends to shift local law. Cultural pluralism in the context of Indonesian society is also a plural understanding, because the notion of culture itself depends on aspects of life in society, and is theoretically considered the main thing to understand the behavior of citizens. Indonesian society is divided into: "*adatrechtskringens*" (customary environment), which more or less reflects the so-called "culture area" – but is not congruent with the linguistic area. As an illustration, the following description of Minangkabau culture will be described. Talking about the

Minangkabau ethnic group and its culture is the same as talking about many other ethnic groups in Indonesia, one cannot ignore the changes that have long removed the homogeneity that once existed. What was once considered an area of Minangkabau culture, may now have many other elements included. It cannot be considered that every resident is a holder of Minangkabau culture; and conversely, not everyone whose father and mother are of Minangkabau descent can be said to be a supporter of Minangkabau culture, especially if they grew up outside the Minangkabau cultural area. Lineage in Minangkabau society is calculated according to matrilineal lines. A child belongs to his mother's family and not according to his father's family. A father is outside the family of his wife and children. Members of a family in Minangkabau society can be calculated as follows (taking into account two generations above the male ego and one generation below it). Mother's sister and mother's brother; mother's brothers and sisters; sons and daughters of ego mothers; ego's brothers and sisters; mother's sister's sons and daughters; ego's sister's son and daughter. As a comparison, an illustration of Javanese culture will be given. The Javanese kinship system is based on the principle of bilateral descent. In society, there are customs that stipulate that two people cannot marry each other if they are siblings; if they are *pancer lanang*, namely the children of two brothers; when they are *misan*; and finally, if the male side is younger according to his mother than the female side. There are other types of marriages that are allowed, namely "*composing wulu*" or "*wayuh*". Ngalang

wulu marriage is the marriage of a widower with a woman who is one of the younger siblings of his late wife. The wayuh is a marriage of more than one wife (polygamy).⁷⁷ Two or three days before the ceremony where the bride and groom meet, an asok-tu-kon ceremony is held. This ceremony is a sign of symbolically handing over the wealth of the men to the women. The assets are in the form of money, food, household utensils, cattle, buffalo, horses, and so on which are handed over to the parents or guardians of the bride-to-be, witnessed by her relatives.

Asok-tukon which is also called "*srakah*" or "*sasrahan*" is a sign of a dowry. In the field of customary criminal law, the following examples can be given:⁷⁸

1. In the Majapahit legislation, it is stated that: whoever holds a married woman, the ruling king has his hand cut off (Article 207).
2. Anyone who touches another person's wife, has long been subject to a fine by the ruling king (Article 198).
3. Whoever sleeps with another person's wife, after following him to the woman's house because he is interested in her, is subject to capital punishment by the ruling king (Article 199).

⁷⁷ Kodiran, *dalam Manusia dan Kebudayaan di Indonesia*, Ibid, page. 329.

⁷⁸ Slamet Muljana, *Perundang-undangan Majapahit* (Jakarta: Bha-tara, 1967), page. 25.

A. Challenges and Constraints of Legal Culture in Law Enforcement

Many behaviors of the life of the Indonesian people can illustrate this, an example that is very easy to see is the change in behavior in resolving a dispute. In the past, the Indonesian people in resolving disputes or disagreements were resolved by way of deliberation to reach a consensus, in a peaceful way, but the current developments whenever dispute arise are mostly resolved in court, even though everyone knows that now courts are not the place to seek justice. On the other hand, there are many acts that are detrimental to society that are not resolved. This does not mean that there are no rules, laws, and a weak legal structure, but rather due to the weak legal culture, which in this case is the legal awareness of society. Indonesian people's legal awareness is getting better day by day, therapy is getting less and less.

This is because the Indonesian nation's legal culture has shifted to a materialistic view. One of the reasons for this shift in views was the ineffectiveness of the law. The ineffectiveness of this law is due to the fact that there are many legal products that are not in accordance with the spirit and values that live in Indonesian society, so that people obey the law not because they are aware of the importance of law but rather because they are afraid of law enforcement officials. This condition forms a mindset in society that thinks the law is an officer, so if there are no officers it is considered that there is no law. The individualistic view has significantly changed the

development of the legal culture of the Indonesian nation. Indonesian society which is communal becomes very individual, including in its legal behavior. Today's society tends to use law to achieve goals as well as patterns and justice for their own or group interests, and even people tend to avoid or intentionally misuse legal developments for certain purposes which in the end are unfair to other communities. Someone will obey the law or not, influenced by various factors. The most influential factor on a person's obedience is his legal culture. The legal culture in the environment of people working in offices will be different from the legal culture of people who work on the streets, or it can be said that the legal culture of people from lower social status will be different from the legal culture of people whose social status is from the upper class. Our society's legal awareness (legal culture) is weak, so whatever catalysts (laws, rules and legal structures) are enforced in the social system, the results are ineffective. Given that this collective awareness (legal culture) is formed from interactions between components of society, then if the legal awareness of society is weak, it means that the quality of interaction within society is not meaningful.

D. Copyright in Islamic Perspective

Copyright was known during the Islamic caliphate. We can see this from the decisive actions of judges or caliphs towards poets who recite or acknowledge the works of other people's poetry. In Balaghoh science, this is better known as sariqoh. There are even many 'ulama' who have special essays on poems which are the result of adaptations of other people's works, including Al-'Amidi's book Al-Ibanah which contains pirated verses by Al-Mutanabbi as well as the book of Al-Hujjah which contains bootleg poetry by Ibn Hujjah. Apart from that, in the course of its history, Islam also recognizes the obligation of scientific accountability by strengthening hadith with sanad in accordance with the provisions stipulated in the science of mushtalah hadith. Among the concrete evidence of the existence of copyright in Islamic history is the story of Imam Al-Suyuti who sued Imam Al-Qostilani before Shaykh Zakariyyah Al-Anshori who was the judge at that time, because he had adapted the results of scientific thought in several of his books without mentioning the source and the author.⁷⁹ When asked whether Syaria'at Islam recognizes the existence of copyright, Muhammad Sa'id Ramadlan Al-Buthy replied "Yes, I don't even know there is a difference in the scholars" in this matter. Imam Ahmad bin Hambal also forbade quoting or writing an opinion from someone except after getting permission from him.⁸⁰

⁷⁹ Syadzarat Al-Dzahab, Volum.8, page. 122.

⁸⁰ Al-Buyu' Al-Syai'ah, page. 212-213.

The Basic Provisions of the Koran, which form the basis of all Islamic law, emphatically state that Allah is the absolute owner of everything, as stated in the Al-Quran Surah Ali Imran Verse 189 which reads:

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

*To Allah belongs the Kingdom of the heavens and the earth, and Allah has power over all things.*⁸¹

Humans are only God's caliph on earth. This means that Allah created all things for Himself. In the Qur'an it is stated: "He is Allah who made everything on earth for you..." (Q.S, Al-Baqarah: 29). This verse emphasizes that what has been created by Allah is owned collectively by all Indonesian people. Legally individual property rights are the right to own, enjoy and transfer wealth that is recognized and maintained in Islam, but they have a moral obligation to give their wealth in charity, because that wealth is also the right of society and even animals (Q.S, Adz-Dzariyat: 19).

The term intellectual property rights, there are 3 keywords from the term, namely: rights, property and intellectual.

1. Right, which means ownership, possession, authority, power to do something according to the law.
2. Wealth means something that can be owned, transferred, bought or sold.

⁸¹ Soenardjo dkk, Al-Quran dan Terjemahnya....opt.cit, page. 97.

3. Intellectual property means wealth for all products produced by intelligence, such as technology, knowledge, art, literature, songs, written works, caricatures.⁸²

The study of intellectual property rights according to Islam came from the Indonesian Ulema Council (MUI), an institution that is the place or assembly that brings together Indonesian Muslim clerics, zuama and intellectuals to unite the movements and steps of Indonesian Muslims in realizing common goals. According to MUI, copyright protection is not against Islamic law. MUI even issued a special fatwa relating to the protection of IPR, namely MUI fatwa No. 1 of 2003 concerning copyright. The opinion of the MUI classifies copyrights as valuable items that may be utilized according to syara' (Islamic law) the majority of scholars from the Maliki, Syafi'i, and Handali Schools are of the opinion that copyrights on original creations and benefits are classified as valuable assets, as if objects are allowed to be utilized according to syara' (Islamic law).⁸³

Intellectual property rights in Islam, is an urf which is recognized as a type of property where the owner is entitled to all of it. May be traded and constitute a commodity (Qarar Majma Al-Fiqh Al-Islami No. 5, Fifth Mukhtar, December

⁸² Romi Satria Wahono, Antara HAKI, Islam dan Teknologi Informasi <http://romisatriawahono.net/>, monday, 21 March 2016 at 14.30 WITA.

⁸³ Dr Fathi al-Duraini, haqq al-ibtikar fi al-fiqh al-Islam al-Muqaran, (Beirut: Mu'assasah Kacamata Hukum Islam, <http://hukumonline.com/detail.asp?id=9234&el=Berita>

10-15 1988, Kuwait) 21 copyrights in Islam, Islam recognizes copyright as property or wealth that must be maintained and protected.⁸⁴

In this Fatwa, what is meant by intellectual property is wealth that arises from the results of brain thinking that produces a product or process that is useful for humans and is recognized by the state based on applicable laws and regulations. Therefore, IPR is the right to enjoy economically the results of an intellectual creativity of the person concerned so as to provide private rights for him to register and obtain protection for his intellectual work. As a form of appreciation for the work of intellectual creativity, the state gives exclusive rights to its registration and/or the owner as the right holder has the right to prohibit other people without his consent or without the right to trade or use these rights in all forms and ways. The purpose of recognizing this right by the state is that everyone is motivated to produce their creativity.

The legal provisions contained in the MUI fatwa regarding the protection of intellectual property rights are:

1. In Islamic law, intellectual property rights are seen as one of the huquq maliyyah (property rights) that receive legal protection (mashu) as mal (wealth).

⁸⁴ <https://romisatriawahono.net/2008/04/22/antara-haki-islam-dan-teknologi-informasi/> accessed on 05/02/2023, at 19:13 WIB.

2. Intellectual property rights that are protected by Islamic law as referred to in number 1 are IPRs that do not conflict with Islamic law.
3. Intellectual property rights can be used as objects of contracts (*al-ma'qud'alaih*), both *mu'awadhah* contracts (exchange, commercial), and *tabarru'at* contracts (non-commercial), and can be donated and inherited.
4. Every form of violation of intellectual property rights, including but not limited to using, disclosing, making, using, selling, importing, exporting, distributing, handing over, making available, announcing, reproducing, plagiarizing, counterfeiting, pirating other people's intellectual property rights without rights is injustice and the law is unlawful.⁸⁵

Intellectual property rights according to the MUI fatwa consist of:

1. Copyright, namely the exclusive right for the creator or recipient of the right to announce or reproduce his work or give permission for it without prejudice to restrictions according to applicable laws and regulations (Law No. 19 of 2002 concerning copyright).
2. Trademark rights, namely exclusive rights granted by the Republic of Indonesia to other parties who use them. (Law No. 15 of 2001 concerning marks, Article 3).

⁸⁵ MUI, *Fatwa MUI*, [http://www. Mui.or.id/mui_in/fatwa.php?id=132](http://www.Mui.or.id/mui_in/fatwa.php?id=132) accessed on 15/01/2023, at 10:20 WIB.

3. Patents, namely exclusive rights granted by the Republic of Indonesia to inventors for their inventions in the field of technology for a certain time carry out themselves or give approval to other parties to carry out these rights (Law No. 14 of 2001 concerning patents, Article 1 Number 1).

CHAPTER III

THE ROLE OF LEGAL CULTURE IN PROTECTING THE COPYRIGHT OF ILLUSTRATED IMAGES CIRCULATING ON SOCIAL MEDIA

A. Role of Legal Culture in Protecting the Copyright of Illustrated Images Circulating on Social Media

Law is an expression, one of the most important expressions besides language, of the people's spirit (Volksgeist). This is a very mystical notion that at least involves the thought that law is more than a set of rules or judicial precedents. It reflects and expresses all cultural views. The laws of such people or nations written in every age are nothing more than a static representation of an ever-continuing process of cultural evolution.⁸⁶

The development of law proceeded through the initial stage of unwritten customs, which was followed by the writing of these customs as rules. The reduction of legal form to written form reflects the emergence of political authority and the transformation of law from customary norms of individual relations arising from unforeseen circumstances into aspects of political power.⁸⁷

⁸⁶ Umanailo, M. C. B, *Sosiologi Hukum*. Jakarta: Fam Publishing. 2016.

⁸⁷ Purwaganda, Salya, *PENEGAKAN HUKUM PIDANA TERHADAP PELAKU PEMBAKARAN HUTAN DAN LAHAN DI PROVINSI RIAU SELAMA TAHUN 2016*. Undergraduate thesis, Universitas Bhayangkara Jaya. 2018.

A healthy legal culture is manifested in the form of legal awareness (rechtsbewustzijn), while a sick (unhealthy) legal culture is shown through legal feelings (rechtsgevoel). Legal feeling is the community's evaluation of the law that is expressed spontaneously, directly, and as it is, while legal awareness is more of an indirect assessment because legal awareness departs from the results of thought, reasoning, and argumentation.⁸⁸

To find out how healthy a legal system is, it can be seen when the law is enforced in concrete cases. What is faced by judges in courtrooms is a touchstone for understanding the soundness of a legal system, including the elements of legal culture that live in society. Therefore, legal culture and law enforcement are two interconnected links.

The concept of culture is at the heart of Sumner's thinking. The concept of culture is the group's way of doing things, the way they solve problems. All human beings of all ages and cultural stages are basically controlled by a large number of societal cultures. these are works of unconscious creation but are like products carried out by humans unconsciously or consciously.⁸⁹

The law grows, or should grow, from mores. The legal culture within Indonesia is changing slowly as living conditions change but there is little

⁸⁸ Marsinah, R, *Kesadaran Hukum Sebagai Alat Pengendali Pelaksanaan Hukum Di Indonesia*. Jurnal Ilmiah Hukum Dirgantara, 6(2). 2018, page. 3.

⁸⁹ Sugiharto, B, *Kebudayaan Dan Kondisi Post-Tradisi: Kajian Filosofis Atas Permasalahan Budaya Abad Ke-21*. PT Kanisius: 2019.

scope for changing it fundamentally through conscious legislative action. Sumner provides a sociological basis for the Common law assumptions about the deep social roots of law and the slow process of law evolution. Common law thinking does assume something like this slow emergence through a process of evolution of social norms.⁹⁰

Legal culture is a component of the legal system in addition to the structure and substance of the law. These three components are in the process of interaction with each other so as to form a totality which is called the legal system. Legal culture is defined as the values and attitudes of society related to law and its institutions, both positively and negatively. The concept of legal culture covers a very broad dimension, including substantive (material) law and objective (formal) law. The substantive legal dimension is related to the content of legal rules, while the objective legal dimension is related to procedural procedures or dispute resolution in court. Legal culture can also be distinguished between internal legal culture and external legal culture. The internal legal culture is related to the values and attitudes of law enforcement officials such as judges, prosecutors, police and lawyers in the law enforcement process, while the external legal culture is related to the values and attitudes of society in general who are subject to the rule of law. The

⁹⁰ Strong, C. F, *Konstitusi-konstitusi politik modern: Studi perbandingan tentang sejarah dan bentuk*. Nusamedia. 2019.

concept of legal culture is used as an analytical framework to examine the process of the operation of law in solving problems faced by society.⁹¹

By looking at law as a process, starting from the input - process - output, it is possible to see factors outside the law, namely the values and attitudes of society in dealing with the law. Therefore, researching legal culture is useful in providing a broader and more complete explanation regarding the legal process in society, namely whether the presence of legal institutions is truly accepted, needed and obeyed by the community or vice versa. Has the legal system worked in accordance with its goals and functions in society or is it the other way around? What are the social and cultural factors that support and hinder the operation of law in society, and so on. Departing from the importance of researching the issue of legal culture, this study raises the topic of the legal culture of scientists regarding copyright with the aim of analyzing the values and attitudes of scientists regarding copyright and what factors contribute to the formation of a scholar's legal culture in carrying out scientific activity. This research belongs to the type of empirical legal research, namely looking at the law in the nature of experience and human behavior that actually and potentially will or has been patterned. Each of these behaviors is a social reality that is observed in the realm of empirical sensory experience. The

⁹¹ Huda, H. M., & SH, M, *Perbandingan Sistem Hukum*. CV Cendekia Press: 2020.

behavior referred to in this study is the behavior of scientists (lecturers) in tertiary institutions in the activities of producing scientific works regulated by Law no. 12 of 1997 concerning Copyright.⁹²

The need for cooperation between authorized institutions in eradicating copyright infringement. Including, disseminating information as a whole to the public about copyright. It has been four years since the existence of Law no. 28 of 2014 concerning Copyright is the legal umbrella for the protection of copyrighted works. However, throughout 2018 the enforcement of the Copyright Law in society has not shown significant progress in enforcing the Copyright Law. Because of this, breakthroughs and political will are needed from all stakeholders, especially government administrators. Among other things, building a legal culture for the community so that there is concern for copyright.

UU no. 19 of 2002 concerning Copyright states that Copyright is a right that regulates intellectual works in the fields of science, art and literature which are set forth in a distinctive form and are given to ideas, procedures, methods or concepts that have been set forth in a permanent form. To get protection through Copyright, there is no obligation to register. Registration is solely for verification purposes only. Thus, once a creation is tangible, the

⁹² Friedman, L. M, *Sistem Hukum: Perspektif Ilmu Sosial*. Nusamedia. 2019.

Copyright is automatically attached to the creation. Usually, publication is done by including the Copyright sign. Legal protection for Copyright holders is intended as an effort to create a better climate for the growth and development of the spirit of creativity in the fields of science, art and literature.

Copyright is born and arises from the results of human thinking in the fields of science, art and literature. Copyright arises automatically as soon as a creation is born. Copyright is a civil right attached to the creator. Copyright is a private right. The justification is because a creation is born by the creator's creations. Creations that arise from the thought and creativity of the creator. A copyright must be born from human creativity, not something that already exists outside of activity or outside the results of human creativity. Copyright is regulated in Law Number 28 of 2014. Based on the provisions of article 1 paragraph (1) of Law No. 28 of 2014 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 the provisions of the legislation. Copyright is a part of intellectual property which has the broadest scope of protected objects, because it includes science, art and literature (art and literary) which also includes computer programs. The development of the creative economy, which is one of the mainstays of Indonesia and various countries and the rapid development of information and communication technology, requires the

renewal of the Copyright Law, considering that Copyright is the most important basis of the national creative economy. With the Copyright Law that fulfills the elements of protection and development of the creative economy, it is hoped that the contribution of the Copyright and Related Rights sectors to the country's economy can be more optimal.⁹³

The legal culture of scientists regarding copyright is formulated as the values and attitudes of scientists related to copyright law. The culture of the scientist's law regarding copyright is operationalized as a score obtained from the research subject using a scale instrument of the scientist's legal culture regarding copyright. The score is categorized into three variations, namely strong, medium and weak. The higher the results of the values and attitudes of scientists towards the Copyright Law, the stronger the legal culture. Conversely, the lower the results of the values and attitudes of scientists towards the Copyright Law, the weaker the legal culture will be. The value of the Copyright Act is a scientist's evaluation of the contents of Law no. 12 of 1997 concerning Copyright. These values include the dimensions of the values of justice, benefits and the value of legal certainty from the Copyright Act. Scientists' evaluation of Copyright Law is based on the opinions and views of scientists regarding the three Copyright Law values. The value of justice is

⁹³ Jaman, U. B., Putri, G. R., & Anzani, T. A, *Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital*. Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia, 3(1). 2021, page. 9.

related to the problem of whether the presence of Copyright Law has fulfilled the scientist's sense of legal justice in scientific work activities. The value of certainty relates to the issue of whether the presence of Copyright Law has provided certainty of legal protection for scientists in scientific work, while the value of expediency is related to the issue of whether the presence of Copyright Law has provided the benefit of scientists in scientific work. The attitude of scientists towards the Copyright Law contains aspects of scientists' cognition, affection and conation towards Copyright Law.

Uploading a work created by someone else, such as an illustration image on social media, is something that is currently happening frequently. Whether consciously or unconsciously, many people download an illustration work that is not their creation and then re-upload it on social media pages for personal gain without including the source or name of the creator of the work. This action is certainly not justified. Re-uploading without acknowledging the source or crediting the creator violates moral rights. This action also affected the productivity of new works due to the lack of direct appreciation that illustrators received for their illustrative works, thereby closing job opportunities and drawing requests which were the main source of income for illustrators. Indirectly this action does not respect the economic rights of the illustrator.

So, in my conclusion, Legal culture plays a role in copyright protection for illustrative images. The Copyright Act very clearly provides protection for

creations in the form of images. This is regulated in Article 40, an image is a creation that is protected in the fields of science, art and literature.

Efforts that can be made by the Copyright Holder if there is a dispute over his copyrighted work is to take the non-litigation route or the litigation route. If the settlement through the non-litigation route does not find a bright spot from both parties, and the right holder still feels aggrieved, then the copyright holder can take the litigation route by filing a lawsuit for copyright infringement to the Commercial Court. This is in accordance with Article 95 Copyright Law. Regarding the procedure for submitting it, it is regulated in Article 100 Copyright Law.

The problem factors of the reality legal culture in Indonesia that often occurs is the general lack of understanding of copyright by the public. There is an assumption among the public that a work can be shared and shared and what is on the internet is considered public property. File digital artwork with more virtual distribution of content, but also making it easier to reproduce. The problem that often occurs is usually where someone re-uploads a digital illustration with the aim of appreciating it, but does not include the author's name or credit where he got the illustration. One of the cases related to copyright infringement on illustration images in Indonesia occurred when Marilyn Monroe's Wedha's Pop Art Portrait (WPAP) illustration created by a digital artist named Ahmad Nusyirwan was redrawn into a painting and traded

on Instagram via the @75gallery account under the name Aprilisfiya Handayani. This action gives the impression that the WPAP Marilyn Monroe painting in question is not the result of Ahmad Nusyirwan's intellectual property but from someone else. This of course violates moral rights and economic rights because the act was carried out without the knowledge and approval of the creator for commercial purposes.

The large number of copyright infringements that have become cases and which have not become cases can illustrate that the level of public legal awareness in the field of copyright is still relatively low. The low level of public legal awareness is due to the fact that most people still do not know and understand the Copyright Law. The law was made as a national regulation but it is only known by certain members of the community and has not yet been known to all levels of society. Until now there are still differences between the views of the Copyright Law and the views of the public. The law views copyright as private property, while society views copyright as shared property. These differences of opinion have a very large influence on the level of public legal awareness.

If citizens still view copyright as shared property and on the other hand the public does not understand that buying pirated goods, plagiarizing copyrighted illustrations is a crime, then such an attitude will have the effect of "fertilizing" piracy and copyright plagiarism in our country. Therefore, efforts

are needed to increase legal awareness, especially in the field of copyright by changing the public's view of copyright as joint property to being owned by individuals by conducting legal counseling or lectures on copyright as well as on other IPRs to the community. The government, through the Ministry of Law and Human Rights, needs to pay serious attention to preparing personnel and be supported with sufficient funds for this so that legal counseling can run smoothly. Counseling can be carried out within a certain period of time by paying attention to the public's understanding of copyright.

@75 gallery Aprilisfiya Handayani violates copyright by sharing Marilyn Monroe Wedha Pop Art Portrait images without permission. Therefore, respecting copyright is a form of appreciation for the process of making a work, so that it will motivate and inspire others to produce new works. So, with that freedom, illustrators are empowered to use it to produce digital illustrations that are then theirs.

The concept of copyright as a complaint offense which requires a "complaint" from the creator whose rights are violated. Meanwhile, in most cases, creators do not know that their work is infringed due to the massive distribution of data on the internet. Even though the Copyright Law does regulate copyright protection for digital illustrations and regulates threats and arbitration proceedings in the event of copyright infringement, but it is constrained by people who do not understand copyright, digital illustrations,

and the easy distribution of digital illustrations via the internet makes protection difficult to protect. The threats contained in Copyright Law are also considered to be less successful in preventing copyright infringement.

The progress of the times continues to demand that Copyright Law arrangements continue to evolve. This can be seen from the emergence of several types of new creations that were not previously listed in the 2002 Copyright Law to be protected in the 2014 Copyright Law. In fact, referring to the Copyright Law, it prohibits the duplication of copyrights without the permission of the copyright holder. Article 9 paragraph (3) states:

"Every person without the permission of the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works."⁹⁴

When the public is aware of the prohibition and implements the Copyright Law, they automatically do not reproduce any copyrights of other people without the owner's permission. It is undeniable that society is confronted between law enforcement and the demands of life. This really needs to be a new breakthrough in overcoming copyright issues, even though there is a Copyright Law. However, in implementation in the field, there is a need for coordination between authorized agencies or institutions.

⁹⁴ Article 9 paragraph (3) Law Number 28 of 2014 concerning Copyright.

The problem of public legal awareness is more focused on legal awareness of written law, this problem can be seen in the smooth implementation of the law. If in the implementation of the written law many members of the public do not heed or do not comply with the rule of law so that there are many legal deviations, it can be concluded that the legal awareness of the community is low. The Copyright Law is one of the written laws in our country and we have known this law as above for a long time, but in the course of implementing the Copyright Law (UUHC) so far it appears that there have been deviations from its principles in the form of good violations where the perpetrators were prosecuted or not tried.

B. The Strategy to Create a Better Legal Culture to Support Copyright Protection for Illustrated Images on Social Media

Strategy is an overall approach related to the idea, planning and execution of an activity within a certain period of time. In a good strategy there is coordination of the work team, has the theme of identifying supporting factors in accordance with the principles of implementing ideas rationally, efficiency in funding and having tactics to achieve goals effectively.⁹⁵

⁹⁵ Barreto, M., & Giantari, I. K., *Strategi Pengembangan Objek Wisata Air Panas Di Desa Marobo*, Kabupaten Bobonaro, Timor Leste. E-Jurnal Ekonomi dan Bisnis Universitas Udayana, 4(11). 2015, page. 775.

The strategy shows the general direction that the organization wants to take to achieve its goals. This strategy is a big plan and an important plan. Every organization to achieve its goals. This strategy is a big plan and an important plan. Every well-managed organization has a strategy, even if it is not stated explicitly.⁹⁶

Building a strong legal culture means making efforts so that the desired legal culture can become more basic, stronger, more widely embraced, and can be firmly passed down from generation to generation. Building a legal culture in society is part of efforts to build nation character, namely building attitudes and changing the mentality of the nation.⁹⁷

A legal intelligent society is a society that understands the law comprehensively, which is related to their rights and obligations. Knowing the permissibility and prohibitions, understanding the advantages and risks that will be experienced in connection with the legal actions that are carried out. Thorough and thorough, in taking steps and legal actions, able to stay away from all actions that can lead to violations of the law. The ability to avoid actions that lead to violations of the law is a form of legal intelligence in society, because often logic can no longer be relied upon when a person who has no

⁹⁶ Yunus, E, *Manajemen strategis*. Penerbit Andi. 2016.

⁹⁷ Sihabudin, H. A, *Komunikasi antarbudaya: Satu perspektif multidimensi*. Bumi Aksara. 2022.

intention at all commits a more serious offense or crime but then does it because he is under pressure from his feelings and fears. can come suddenly.

The legal counseling strategy is prepared by referring to the strategic plan and adapted to the development of the dynamics of society and advances in information technology. The implementation of its activities uses more new innovations and increases the use of more modern communication media, both electronic media, print media and other media, including in legal counseling techniques and methods.⁹⁸

So far, the general public has not understood much legal material. One of the strategies in building and creating a legal culture in society is through general legal education aimed at the whole community in the form of legal dissemination and counseling. The process of law education and acculturation is carried out for all layers, both state administrators, law enforcement officials and society in general. Implementation of law dissemination and counseling is an element that cannot be separated from the application of the principle of legal fiction which states that "everyone is considered to know the law". The application of the principle of legal fiction without the support of good legal socialization can result in not protecting the community itself because the

⁹⁸ Jawardi, J, *Strategi Pengembangan Budaya Hukum (Strategy of Law Culture Development)*. Jurnal Penelitian Hukum De Jure, 16(1). 2016, page. 79.

community can be caught up in violations that they may not know about and do not want.⁹⁹

Here are some things that need to be done to support the efforts to civilize and enlighten the legal profession or creator:¹⁰⁰

1. Efforts to civilize law must be carried out using appropriate and effective methods, by utilizing various media and infrastructure as well as institutions that live and grow in society.
2. Dissemination of various legal materials, efforts need to be continued so that every latest development regarding legislation is known and understood by the public. Thus, the availability and ease of access to legal material information easily becomes an important part of efforts to civilize public law.
3. The legal culture of society must be built in parallel with increasing the professionalism of law enforcement officials and the bureaucracy. Because this professionalism will greatly affect people's trust in the law itself.

⁹⁹ Munna, T. R. A., & Prayogi, A, *Strategi Peningkatan Kesadaran Hukum Masyarakat Kelurahan Bligo Kecamatan Buaran Kabupaten Pekalongan*. JURPIKAT (Jurnal Pengabdian Kepada Masyarakat), 2(3). 2021, page. 406.

¹⁰⁰ Iman Pasu Marganda Hadiarto Purba, *Penguatan budaya hukum masyarakat untuk menghasilkan kewarganegaraan transformatif*, Vol. 14, 2017, page. 151.

4. It is necessary to carry out patterns and programs for cultivating law in an integrated, planned and based on the facts of the legal problems that have occurred. Thus, the existence of legal extension functional staff needs to be realized immediately.
5. Legal cultivation must be carried out from an early age and starting from the household as the smallest miniature of a rule of law, to achieve a legal cultured society today and in the future.

Legal culture and community legal intelligence will produce a legal cultured or legal intelligent society. The characteristics of a legally intelligent society are people who understand the law comprehensively related to their rights and obligations, know the permissibility and prohibitions and understand the benefits and risks that will be experienced related to the legal actions they carry out, are thorough and careful in taking steps -legal steps and actions as well as being able to stay away from all actions that can lead to violations of the law.

As it is known that creating something copyrighted is not something that is easy for someone to do. Therefore, other people are obliged to respect it and this is a need that should not be neglected. Other people know for sure that a copyrighted work must have a creator, so they cannot just say it is their work or imitate creations that are not theirs. If you want to reproduce it, it's polite to ask the owner's permission first.

On the other hand, the person who creates (the creator) has the rights that arise over the creation and supervises the copyrighted works that use their creation circulating in the community. The creator has the right to prohibit other people from using his creation without his permission, and has the right to sue the person concerned legally. This shows that the existence of the creator requires recognition by both society and law. The background is related to the economic field, because a work that is reproduced without the permission of the creator is then sold to the public, it will benefit other people who reproduce the work. Meanwhile, the creator will feel disadvantaged for this act because morally the name of the creator is being sold and materially the creator does not benefit from the creation that is reproduced by someone else.

The rise of legal counseling has an effect on people who do not understand copyright. Copyright is only understood by a certain number of people whose duties are in the field of copyright or those who study the law. Therefore, what appears is that the Copyright Law (UUHC) was made only to reach certain layers of society and what should have reached all levels of society.

In order for all parties to know about copyright, the government must disseminate it to various levels of society. But socialization work cannot only demand the government, but society and professional associations or associations have the same responsibility. For example, associations or

associations of singers, musicians to the Indonesian Publishers Association (IKAPI). Therefore, the introduction of the ins and outs of copyright also needs to be continuously encouraged by the media. Especially television media. People tend to prefer visuals over written socialization that requires reading. Thus, the public will develop a legal culture and concern for copyright when they have complete information and the need for cooperation between authorized institutions in eradicating copyright infringement.¹⁰¹

Increasing the use of more modern communication media in the implementation of legal dissemination and counseling, both electronic media, print media, and other media that support the acceleration of dissemination, knowledge, understanding and appreciation of law.

¹⁰¹ Gatot Supramono, *Hak Cipta dan Aspek-Aspek Hukumnya*, Rineka Cipta, Jakarta, 2010, page. 160-161.

CHAPTER IV

CLOSING

A. Conclusion

From the discussion in the previous chapter, it can be concluded:

1. The meaning of legal culture itself is as the values and attitudes of society related to law and its institutions. It can be positive or negative. The creation of a strong legal culture among the community requires support from various aspects, not only the government or legal institutions but also the role of the community in legal awareness itself. Reorganizing legal institutions according to their duties, creating quality human resources, increasing law enforcement with integrity and high moral standards, continuous education to foster public understanding of the law and implementation of good governance are some of the ways to increase legal awareness among the community itself. Therefore, high legal awareness in society will create a positive legal culture. With a role as well as the government, legal institutions and the public, high legal awareness will have implications for the existence of the Copyright Law in Indonesia. Communities who have high legal awareness will influence people's behavior in interpreting and practicing sound policies. related to copyright. For the sake of order in Indonesia, the law must be obeyed by every level of society, with the growth of legal awareness from oneself, stakeholders,

and the high moral quality of society, a good legal system will also be created in Indonesia.

2. The legal counseling strategy is prepared by referring to the strategic plan and adapted to the development of the dynamics of society and advances in information technology. The implementation of its activities uses more new innovations and increases the use of more modern communication media, both electronic media, print media and other media, including in legal counseling techniques and methods. So far, ordinary people do not understand much about legal matters. One of the strategies in building and creating a legal culture in society is through general legal education which is aimed at the whole community in the form of socialization and legal counseling.

B. Suggestion

1. A breakthrough and political will is needed from all stakeholders, especially government administrators. Efforts are needed to increase legal awareness, especially in the field of copyright by changing the public's view of copyright as shared property to become private property by conducting counseling or legal counseling regarding copyright and other HKI to the public.

2. Applying the principle of legal fiction without the support of good legal socialization can result in unprotected society, therefore good legal socialization support is needed so that people are not trapped in violations that they may not know about and do not want.

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