



Volume 4	Issue 1	July (2024)	DOI: 10.47540/ijqr.v4i1.1442	Page: 70 – 80
----------	---------	-------------	------------------------------	---------------

## Protecting Photo Copyrights Against Unauthorized Reuploads on E-commerce Platforms

Hannin Pradita Nur Soulthoni<sup>1</sup>, Rika Ratna Permata<sup>2</sup>, Dewi Y. Wijayanti<sup>2</sup>

<sup>1</sup>Awardee Ministry of Communication and Information Technology, Universitas Padjadjaran, Indonesia

<sup>2</sup>Faculty of Law, Universitas Padjadjaran, Indonesia

**Corresponding Author:** Hannin PN Soulthoni; Email: [hpraditans@gmail.com](mailto:hpraditans@gmail.com)

### ARTICLE INFO

**Keywords:** Copyright, E-Commerce Platform, Law Enforcement.

*Received* : 28 May 2024

*Revised* : 01 June 2024

*Accepted* : 26 July 2024

### ABSTRACT

Copyright infringement on e-commerce platforms is a growing concern, especially with the unauthorized use of individuals' photos for commercial purposes. Eliska's case highlights the negative consequences of uploading product photos without permission, violating the moral and economic rights of the original owners. Indonesia's Copyright Law No. 28 of 2014 imposes serious legal sanctions on such violations, holding individuals and e-commerce platforms like Tokopedia accountable for monitoring and enforcing copyright rules. This research uses normative legal methods to analyze regulations, licensing, and copyright protection related to photography and portraits in e-commerce, focusing on Tokopedia. A descriptive-analytical approach is employed to explain legal regulations concerning copyright in product sales on the platform, with data collected through theoretical literature review, legislative analysis, and online studies. Findings indicate that copyright infringement on e-commerce platforms significantly impacts original owners and the integrity of online commerce. Eliska's case shows how unauthorized photo use can lead to financial loss and reputation damage. Law No. 28 of 2014 provides for criminal sanctions and fines for such violations, while e-commerce platforms must ensure compliance with copyright regulations. Legal certainty and collaboration between copyright owners and platforms are essential for a safe and fair online trading environment.

### INTRODUCTION

The Industrial Revolution 4.0 is built on the foundation of the Internet of Things (IoT). This technology enables physical objects like machines or equipment to be connected over the internet network (Davies, 2015). These connected objects can communicate with each other and provide real-time data, facilitating better decision-making and faster response (Angela Merkel, 2014). The IoT concept is centered around the idea of transmitting data over the network without human intervention (Maftai et al., 2023). Indonesia has emerged as one of the largest internet users in the world, with 77% of its population utilizing the internet (Ani Petrosyan, 2024).

The Industrial Revolution 4.0 is closely linked to the concept of Society 5.0, which was first introduced in Japan in 2015. Society 5.0 prioritizes

the role of technology in addressing environmental, economic, and social issues to create a better society (Yuko Harayama, 2018). One of the critical aspects of Society 5.0 is how technology can help humans overcome the various challenges they face, including environmental, economic, and social problems (Carayannis & Morawska-Jancelewicz, 2022). Using advanced technology such as the Internet of Things (IoT), Society 5.0 aims to enhance the quality of human life by providing innovative solutions for various aspects of life (Kotamraju et al., 2021). One of the significant benefits of Society 5.0 is that it enables society to achieve a balance between economic growth and the improvement of the quality of life (Alimohammadlou & Khoshsepehr, 2023).

The digital economy has emerged as a major contributor to economic growth in Indonesia. This

growth is supported by three key pillars: the sharing economy, sharing trust, and knowledge sharing. The sharing economy involves the use of technology to facilitate the exchange of goods and services between individuals, optimizing resources and promoting economic efficiency (Danviranto Budhijanto, 2019; Upe, 2023). Sharing trust involves building relationships of mutual trust between consumers, service providers, and digital platforms, creating a safe and reliable environment for economic activities. Knowledge sharing involves the exchange of information and skills to increase the capacity of individuals and businesses to face the challenges of the digital economy.

The Indonesian government has taken proactive steps to support the development of the digital economy by prioritizing the improvement of access and connectivity (Ferry Kosadi et al., 2021). The development of digital infrastructure is a key focus, enabling more people to connect to the Internet and participate in the digital economy (Jiayu & Wang, 2024). Additionally, the government is working to increase digital use and skills to ensure that Indonesian citizens have the necessary abilities to adapt to technological changes (Anshari & Almunawar, 2022).

The digital creative economy in Indonesia has experienced a significant increase, leading to a substantial contribution to the country's Gross Domestic Product (GDP). This sector has contributed approximately 1,100 trillion rupiah to Indonesia's GDP, making it the third largest in the world, just after the United States and South Korea (Creative Economy Outlook 2022, 2022). The growth of start-up businesses, particularly in the digital commerce and e-commerce sectors, has been the driving force behind this development (I Gusti Putu Diva Awatara et al., 2018). Start-ups in Indonesia have shown their ability to innovate and deliver creative solutions to meet various consumer needs (Lubis et al., 2023). Furthermore, the vast market potential in Indonesia, along with a progressively tech-savvy population, has led to the expansion of e-commerce businesses.

With the advancement of technology and the rise of e-commerce in Indonesia comes the risk of copyright infringement (Dio Bintang Gidete et al., 2022). This is particularly evident on various online platforms, where photos are often misused. This not only causes harm to creators, but also to businesses

that use photos of their products, and to sellers of original products who may face unfair competition from those who use their photos illegally (Lutfi Ulinnuha, 2017). Indonesia has strong copyright regulations in place to protect the creative and intellectual works of its citizens (Eko Rial Nugroho & Wahyu Priyanka NP, 2019).

Evenoon, a fashion brand founded by Eliska in 2020, faced a copyright infringement case that affected their business. Eliska envisioned providing a unique and high-quality shopping experience for her customers. However, other stores on Tokopedia took the original photos of Evenoon products and altered the sales titles in their stores. These actions misled consumers, harmed Evenoon's reputation, and violated their intellectual property rights. Business owners often use watermarks or logos on every photo and video to provide a visual identity and minimize the risk of unauthorized use. However, there is a gap in cutting and editing the watermark, which can lead to misuse. Eliska reported copyright violations to e-commerce parties, such as Tokopedia, to protect her intellectual property rights.

E-commerce companies in Indonesia, such as Tokopedia, have taken proactive measures to protect copyright, particularly photos on their platforms. Tokopedia offers users suggestions to report any copyright violations of product photos (Tokopedia, 2024a). This reporting process enables the company to promptly review and remove any content that infringes on copyright, thereby safeguarding the interests of genuine creators and sellers on its platform (Frenken et al., 2020). Other steps taken by e-commerce companies include collaborating with relevant authorities and institutions to enforce copyright law, as well as educating users on the significance of respecting copyright (Bildhäuser, 2015).

The labor doctrine is a crucial aspect of copyright law that ensures the rights of creators are protected, creativity is promoted, and innovation is encouraged in society (Han, 2012). Creators are provided with economic incentives to continue creating works that can contribute to broader social and economic benefits. Additionally, it is essential to balance copyright protection with the freedom of operation for e-commerce platforms. The safe harbor theory provides legal protection to these platforms provided they follow illegal content

notification and removal procedures (Alexandre DE Stree et al., 2020). By bringing together all relevant parties, including sellers, e-commerce platforms, society, and government, we can establish a framework that supports the protection of intellectual property rights and regulates copyright infringement and theft of digital content (Forman & MacNaughton, 2016). Collaboration and better understanding between stakeholders can help overcome challenges and find fair and sustainable solutions in today's digital era (Duraismy Gnanasekaran & s. Balamurugan, 2014).

## **METHODS**

The research method used in this study is normative legal research, which involves analyzing relevant legal regulations related to Copyright regulations, Copyright licensing, and Copyright law protection associated with photographic and portrait content on e-commerce platforms (Siregar et al., 2020). This research has descriptive-analytical characteristics and aims to describe, analyze, explain, and provide a comprehensive understanding of legal regulations related to Copyright regulations, Copyright licensing, and Copyright legal certainty in the context of product sales on e-commerce platforms (Kurniawan Sihombing et al., 2021). This study also utilizes a statutory approach to evaluate and analyze all laws and regulations related to the legal issue under investigation, namely the Copyright Law.

## **RESULTS AND DISCUSSION**

### **Rights in Photo Copyright**

A photograph is a creative work that involves intellectual property rights, such as copyrights. Intellectual property is an asset that stems from the outcome of someone's thoughts (Cornelia DUMITRU, 2015). According to the World Intellectual Property Organization (WIPO), intellectual property includes creations of the mind, such as inventions, literary works, art, symbols, names used in commerce, and designs. Intellectual Property Rights (IPR) essentially refer to the exclusive rights possessed by individuals who create a process or product that is beneficial to humans (Hari Sutra Disemadi, 2023).

According to the declarative principle, copyright arises automatically when the creator first announces it, without requiring registration. This

principle is in line with the Berne Convention's basic principles, which state that copyright is automatically protected without the need for formal registration (Oksidelfa Yanto, 2016). In Article 40 paragraph (1) of Law Number 28 of 2014, works that are protected by copyright are explained in detail, including photography. According to Law Number 28 of 2014, three types of rights are protected under copyright law: exclusive, economic, and moral rights.

#### **1. Copyright as an Exclusive Right**

Copyright protection aims to safeguard the personal and intellectual relationship between the creator and their work. This implies the existence of two dimensions in copyright protection, namely moral rights which relate to the personal and intellectual relationship between the creator and his work, as well as economic rights which relate to the use or exploitation of the work by the norms. The concept of protecting exclusive rights primarily concerns safeguarding the interests of creators (Rahmi Jened Parinduri Nasution, 2017).

#### **2. Copyright as an Economic Right**

Copyright is a type of Intellectual Property Right (IPR) that grants special economic rights. This economic right allows the owner to obtain financial benefits from their intellectual property. According to Article 8 of Law Number 28 of 2014 regarding Copyright, economic rights are defined as a set of rights that pertain to the economic benefit of the owner of the intellectual property.

Copyright encompasses certain economic rights, such as the right to make announcements and the right to reproduce (World Intellectual Property Organization, 2016). These rights are considered exclusive, which means that the creator or copyright holder has the authority to create and distribute copies of their work while profiting from the sale (Luk, 2024). They can also permit others to produce, duplicate, and sell copies of their work, which is not only to allow the use of their creation but also to derive financial gain from it (Henry Soelistyo, 2017).

Economic rights refer to the benefits that arise from the use of intellectual property rights, whether by the owner or others who have obtained a license to use them (Ika Atikah et al., 2022). When a license is issued, it includes not only the permission to use the copyrighted material but also an

agreement regarding the sharing of profits generated by the licensee.

According to Djumhana, economic rights in any country typically include various types of rights granted to creators. These include the Right of Reproduction or Duplication, which allows creators to make copies of their work. Adaptation Rights enable creators to modify works, such as translating, arranging music, or dramatizing. Distribution Rights allow creators to distribute their work to the public. Performance Rights allow the direct presentation of works, whether visually or audibly, including broadcasting films and sound recordings on media such as television or radio (Monteiro et al., 2022). Broadcasting Rights permit the transmission of works, while Cable Program Rights allow broadcasting through cable. *Droit de Suite* is an additional material right for the creator, while Public Lending Right gives the creator the right to receive payment when their work is frequently borrowed from the library by the public (Budi Agus Riswandi & M. Syamsudin, 2005).

The creator of a work holds economic rights over it, which can be transferred partially or fully. According to Article 16, paragraph 2 of Law Number 28 of 2014 regarding Copyright, these rights can be transferred through inheritance, gifts, donations, wills, written agreements, and other legally permitted reasons, as per the existing statutory regulations.

### 3. Copyright as a Moral Right

The discussion of copyright cannot be separated from moral issues because copyright is fundamentally connected to moral rights if copyright protection remains in effect. Moral problems arise because every individual has a responsibility to respect and honor the creative works of others (Varytimidou, 2023). Individuals should not take or modify someone else's work carelessly, to claim it as their own. Once copyright has been transferred to another person, the rights to the work cannot be altered without the creator's permission. This rule applies even in the event of the creator's death, in which case the permission of their heirs must be obtained. Additionally, any changes to a work's title, subtitle, author name, or pen name must also be approved by the creator or their heirs (Gatot Supramono, 2010).

The Berne Convention includes a provision called the "concept of moral rights", which was

added to the Roman Reformation of 1929 and is regulated in Article 6 bis. This concept was further refined in the Brussels Revision by adding originality requirements, and in the Stockholm Revision by adding provisions regarding the period of protection of moral rights. Article 6, paragraph 2 states that moral rights are subject to the same level of protection as copyright. In addition to the Berne Convention, moral rights are also recognized in the International Declaration of Human Rights. Article 27 paragraph 2 of the Declaration states (WIPO Database of Intellectual Property Legislative Texts, 1979).

### **Photo Copyright Violation on E-Commerce Platforms**

#### 1. Legal Consequences for Third Parties Who Duplicate Photos Without Permission

The labor doctrine recognizes and appreciates intellectual work, such as creating product photos. Although the labor doctrine may not have a direct impact in cases of photo copyright infringement on e-commerce platforms, it is still relevant because the owner of the photo work has a copyright that must be respected and protected (Vera, 2024).

The safe harbor doctrine primarily concerns e-commerce platforms. These platforms bear the responsibility of preventing copyright infringement committed by their users. It is expected that e-commerce platforms will take measures to prevent any copyright abuse on their platform. These measures may include implementing policies related to copyright and reporting procedures to handle any photo copyright violations (Kim et al., 2021).

In the background provided, the Eliska case is an example of copyright infringement that is prevalent in the world of e-commerce. Eliska discovered that other business actors had downloaded and uploaded photos of their products onto an e-commerce platform without permission. This action is a clear violation of Article 12 of Law No. 28 of 2014 concerning Copyright, which deems the use of photos for commercial purposes without the consent of the copyright owner as an unlawful act. In the context of an e-commerce platform, this practice can be considered a severe violation because it not only harms Eliska as the photo owner but also reduces consumer trust in the e-commerce platform itself.

This case could hurt Eliska's economic rights. If other businesses use Eliska's photos without permission, it could lead to unfair competition and reduce Eliska's income. Moreover, this copyright violation damages the integrity of e-commerce platforms, which should be a place for fair and transparent trade. Such breaches can reduce the reputation of e-commerce platforms and create trust issues among users in the long run.

Further explanation is contained in Article 14 of Law No. 28 of 2014 concerning Copyright provides further explanation that photographs may only be distributed for security purposes, public interests, and/or criminal proceedings. Re-uploading photos without permission for economic purposes violates this provision. This is because the primary aim is to sell products using product photos belonging to other business actors. Article 8 clearly explains that economic rights are exclusive to creators or copyright holders and allow them to benefit financially from their creations. If a third party uses Eliska's photos for commercial purposes without her permission, they are violating her economic rights and potentially reducing her income. This can also harm Eliska's business. Such actions weaken copyright protection and undermine the integrity of e-commerce platforms. To ensure fairness and transparency in online commerce and protect the rights of creators, e-commerce platforms must increase their supervision and enforcement of copyright violations.

If a third party reproduces a photo without the permission of the entrepreneur, they may face legal consequences as per Law Number 28 of 2014 concerning Copyright, Article 113 Paragraph 3. This includes Article 9 Paragraph 1 letter (a) which pertains to the publication of a work, letter (b) which refers to the reproduction of a work in any form, and letter (e) which relates to the distribution of a work. These are the economic rights of the creator. If someone uses a copyrighted work (or a copy thereof) and/or publishes a copyrighted work for commercial purposes without the permission of the creator or copyright holder, they may face imprisonment of up to four years and/or a fine of over IDR 1,000,000,000.00 (one billion rupiah) (Undang-Undang (UU) Nomor 28 Tahun 2014 Tentang Hak Cipta, 2014).

Law No. 28 of 2014 regarding Copyright regulates exceptions regarding the use of photos. If

the party uploading the photos has permission from the copyright owner, such use becomes legally valid. For instance, if Eliska permits resellers to use product photos, this use becomes legal according to the law. Article 15, paragraph 1, states that the duplication of product photos can be done if there is written permission from the copyright owner. Additionally, Article 16, paragraph 2, explains that copyright can be transferred or assigned if there is a written agreement between the parties involved.

The consequences for anyone who duplicates photos on an e-commerce platform without authorization can vary depending on several factors. These factors include the platform's policies, the role and responsibilities of the platform in preventing copyright infringement, and whether the infringement was intentional or not. Although the safe harbor doctrine can protect e-commerce platforms from liability for user actions that violate copyright, those who duplicate photos without permission can still be legally prosecuted. Third parties who infringe copyright may face sanctions based on Law No. 28 of 2014 concerning Copyright. This includes fines and potential prison sentences if the violation is proven.

## 2. Legal Responsibility for Losses Caused by Photo Copyright Infringement

E-commerce platforms like Tokopedia have a legal responsibility when it comes to losses incurred due to photo copyright infringement. This responsibility also involves ensuring that business users comply with copyright rules and do not violate the rights of shop owners on the platform. As a space for online trading, Tokopedia must maintain the legality of all trading activities on its platform. Therefore, Tokopedia must ensure that the content uploaded by business users is lawful and adheres to copyright rules.

If a third party uses a photo for commercial purposes without permission on an e-commerce platform, they are violating the photo owner's copyright. In addition, the business actor may face legal action from the photo owner. As an e-commerce platform, Tokopedia has a responsibility to actively monitor and take action against any such violations. This is necessary to protect the rights of photo owners in e-commerce stores and maintain consumer trust. If Tokopedia, an e-commerce platform, fails to monitor and handle copyright violations, it may endanger the reputation that they

have built and reduce the trust of its users. Therefore, Tokopedia needs to establish a clear policy regarding photo copyright to ensure that all online trading activities on its platform are safe, fair, and legal.

Copyright owners of photos have strong rights to protect their works from unauthorized usage on Tokopedia's e-commerce platform. According to Article 1367 of the Civil Code, not only is a person responsible for losses caused by other violations committed by third parties, but they must also be responsible for any copyright violations they commit themselves (Kitab Undang-Undang Hukum Perdata, n.d.). Therefore, the owner of a copyrighted photo has the right to file a civil lawsuit to obtain financial compensation for losses suffered due to an infringement act.

The labor doctrine emphasizes that copyright owners have the right to profit from the work they create, such as photographs of products produced by business actors. Using product photos without permission from third parties for commercial purposes is a clear violation of the economic rights of the copyright owner (Simatupang, 2021).

#### **Implementation of Legal Certainty in Photo Copyright Protection on E-Commerce Platforms**

##### **1. Legal Basis Provides Certainty for Photo Creators**

The Indonesian Law No. 28 of 2014 on Copyright provides a legal basis for guaranteeing legal certainty to creators whose works are being used on e-commerce platforms. The law includes several articles that aim to safeguard the copyright of photos on such platforms, thereby protecting the rights of photo creators and ensuring that their work is used lawfully. By examining these articles closely, we can gain a better understanding of how photo copyright is protected on e-commerce platforms.

Article 8 of copyright law grants creators exclusive rights to their creative work. This means that the creator or copyright holder has the right to obtain financial benefits from their creation. By having complete control over their work, photo creators can decide how their photos are used and accessed by others. For instance, if a creator wants to grant a license to an e-commerce platform to use their photo work, they can specify the terms and conditions of that license, including the usage of the photos.

E-commerce platforms must comply with Article 8 to ensure that every photo they use has valid permission from the creator or copyright holder. This article sets limits and responsibilities that e-commerce platforms must follow to protect photo copyrights. Therefore, they must take the necessary steps to verify photo usage rights and work with photo creators to protect their copyrights. Article 8 also encourages e-commerce platforms to implement policies and systems that support copyright protection, such as mechanisms for reporting copyright violations and removing infringing content. By complying with this article, e-commerce platforms can create a safe and fair digital environment for all parties involved, including photo creators and platform users.

Photographic works are defined as a type of copyright product that is protected by law under Article 40, paragraph 1, letter k. This provision ensures that photo creators receive legal certainty that their work is protected by statutory regulations. This protection applies to all forms of photography, including photos used on e-commerce platforms for various purposes, such as product promotions, advertising, or other visual content.

According to Article 40 paragraph 3, photographic works are also protected under Article 40 paragraph 1. This means that the protection applies to works that have been created in a tangible form that can be reproduced, whether or not they have been published. As a result, photo creators have the right to permit or deny the use of their work by other parties, including e-commerce platforms. If a photo is used without the creator's permission, it is considered a violation of copyright and may result in legal consequences by applicable laws. This legal basis also provides e-commerce platforms with clarity on ensuring that they have obtained permission from the creator or legal copyright holder before using photos on their platform. With this legal certainty, photo creators can feel more secure and protected in producing their photographic works. Moreover, this regulation encourages the ethical use of photographic works on e-commerce platforms, ensuring that the rights of creators are respected and given proper protection.

Article 9, paragraph 1, letters b and g provide strong legal protection for photo creators by prohibiting the duplication and publication of

copyrighted photos in any form without permission from the creator or copyright holder. Letter b specifically prohibits duplication of copyrighted photos without permission, including all forms of reproduction such as printing, digital duplication, or other copies. This protects the economic rights of creators by ensuring they receive financial benefits from any copying of their work. For example, if product photos owned by Eliska are duplicated without permission on an e-commerce platform, it could result in a loss of potential income for the creator.

On the other hand, letter g prohibits the publication of photo copyright works in any form without permission. This includes announcing photographic works to the public via print, electronic, or digital media. In the context of an e-commerce platform, this means that the use of photos for advertising, promotions, or website content must obtain approval from the creator. This prohibition protects the moral rights of creators, including their right to control how their photographic works are presented to the public and their right to be recognized as creators. Complying with Article 9, paragraph 1, letters b and g is crucial for e-commerce platforms to ensure that the use of photo works on their platforms is lawful and ethical. By adhering to these provisions, e-commerce platforms can foster an environment that respects creators' rights and promotes a robust and sustainable photography industry.

According to Article 9, paragraph 2, of copyright laws, the use of economic rights related to copyrighted works, as stated in Article 9, paragraph 1, requires permission from the creator or copyright holder. This applies to the use of photo works on e-commerce platforms as well. This provision empowers photo creators to have control over how their photo works are used by other parties, including in electronic commerce activities. Therefore, any party intending to use photo works on e-commerce platforms must first obtain approval from the creator to ensure that the use is legal and fair.

Granting exclusive rights to creators or copyright holders enables them to receive economic benefits from their work, such as royalties or licensing. This also ensures that creators are fairly compensated for any use of their work on e-commerce platforms. Moreover, this provision

helps prevent any unauthorized use or exploitation of photographic works, which could financially or reputationally harm the creator. E-commerce platforms should note the significance of Article 9 paragraph 2, which highlights the need to obtain legal permission for all content containing photo copyright works on their sites. This not only safeguards the rights of photo creators but also ensures that e-commerce platforms operate ethically and lawfully. By doing so, e-commerce platforms can maintain their reputation, foster positive relationships with photo creators, and contribute positively to the creative industry ecosystem.

Article 113 paragraph 3 is a legal provision that safeguards the economic rights of photo creators. It imposes criminal sanctions on anyone who violates these rights without the creator's permission or without a legal right to do so. The violation covers various acts, such as publishing the work (point (a)), reproducing the work in any form (point (b)), presenting the work for commercial exploitation (point (g)), and other acts specified in the law. Article 113 paragraph 3 outlines the penalties for violating the economic rights of photo owners. The maximum punishment is imprisonment for up to four years and/or a fine of up to IDR 1,000,000,000.00 (one billion rupiah). This serves as a deterrent for those who might attempt to infringe on copyright, especially on e-commerce platforms where photographic works are frequently used for commercial purposes. Thus, this article plays a crucial role in maintaining copyright integrity in the digital era.

Article 114 is a legal provision that ensures the protection and preservation of copyright integrity in all trading venues, including online marketplaces. This provision mandates that all individuals who manage physical or virtual marketplaces must ensure that the goods sold or distributed on their premises do not infringe any copyright or related rights. If an e-commerce platform is found to be intentionally or knowingly allowing the sale and/or duplication of goods that violate copyright or related rights, they may face criminal sanctions in the form of a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).

Besides the protection provided by Copyright Law No. 28 of 2014, Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2009 concerning Information and Electronic Transactions

also protects photos by regulating legal sanctions for copyright infringement in the digital world. The law requires the name of the author or copyright holder to be displayed on works published on photo platforms, as per Article 32, paragraphs 1 and 2, and Article 48, paragraphs 1 and 2, thereby ensuring that the platform operates in compliance with the law (Undang-Undang (UU) Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, 2016).

Article 32, paragraphs 1 and 2 states that it is illegal for anyone to change, destroy, or delete electronic information and/or electronic documents that belong to other individuals without their legal consent. This provision applies to photography as well, which means that photo creators have the right to control the use and distribution of their work digitally. Any use of their work must include clear credit to acknowledge the ownership of their work.

In case of violation of Article 32, paragraphs 1 and 2, Article 48, paragraphs 1 and 2 impose criminal sanctions on the violators. These actions include using photographic works without permission, damaging the credibility of the work, or eliminating the creator's credit. Violators may be subject to imprisonment and/or a fine for violations based on Article 32, paragraph 1. The maximum punishment for such violation is 8 years of imprisonment and/or a fine of up to IDR 2,000,000,000.00 (two billion rupiahs). Similarly, if a violator commits an offense based on Article 32, paragraph 2, the punishment is imprisonment for up to 9 years and/or a fine of up to IDR 3,000,000,000 (three billion rupiahs).

The implementation of the provisions of the ITE Law strengthens the protection of copyright for photography in the digital world, thereby supporting a healthy and fair creative industry. This encourages e-commerce platforms to comply with applicable regulations and ensure that the use of photo works is carried out legally and ethically. Photo creators can feel safer and more protected in carrying out their work digitally, while also having the opportunity to receive fair economic benefits from their work.

## 2. The Role of the E-commerce (Tokopedia) in Ensuring Legal Certainty

The Tokopedia website contains information regarding the consequences of violating intellectual

property. According to Tokopedia, if a business actor is found guilty of committing an intellectual property violation, which includes violating product photo copyrights, then Tokopedia can take several actions. These actions may include the removal of the product by Tokopedia, the potential prohibition of similar products from being sold by the store, and the possibility of the store being moderated by Tokopedia. Here are the stages when a product violates Tokopedia's intellectual property.

According to the research, several businesses on the Tokopedia platform have encountered cases of photo copyright violations. If a product on the platform is found to violate photo copyright, either through the report of the copyright holder or the investigation of the Tokopedia team, the product will be removed as part of their efforts to ensure the platform's integrity and protect the rights of copyright holders. This step has been taken to ensure that the platform remains a secure business environment where products adhere to legal and ethical standards regarding photo copyright (Tokopedia, 2024).

The removal of a product due to photo copyright infringement not only affects the product itself but can also hurt the overall performance of a store. Stores that have products removed may experience reduced visibility on the platform, which can potentially lead to a decline in store rankings and customer trust. This impact will affect the store's revenue and seller reputation on Tokopedia. Therefore, sellers must be careful in ensuring that the content and images they use for their products comply with photo copyright rules to avoid these consequences and keep their store performance optimal.

In addition, if a photo copyright holder reports a third-party seller for selling products that violate their copyright on Tokopedia's platform, the seller's products may be removed from the shop window. This may prevent the third-party shop from selling similar products in the future. This is part of Tokopedia's efforts to maintain platform integrity and security, as well as to protect photo copyright owners' rights. If the store continues to offer products that infringe copyright, more stringent action may be taken, including restrictions on future sales of similar products.

If third-party stores repeatedly violate photo copyright even after the temporary moderation



period, Tokopedia can take more stringent action by subjecting them to permanent moderation. Permanent moderation refers to the removal of third-party stores from the platform, given their continuous violations that demonstrate non-compliance with photo copyright policies and an inability to maintain business integrity on Tokopedia. This is the final step taken to safeguard the rights of photo copyright owners and maintain the security and reputation of the platform. Furthermore, this action aims to set an example for other sellers, highlighting the importance of complying with the rules and regulations regarding photo copyright on e-commerce platforms.

E-commerce platforms play an important role in ensuring legal certainty, one of which is following the safe harbor doctrine. This doctrine protects e-commerce platforms like Tokopedia from direct responsibility for copyright infringement committed by users, as long as they have followed the proper reporting procedures for sellers facing photo copyright infringement issues and taken proactive steps to address it. Sanctions are imposed on the platform if the sellers violate photo copyright laws. By following the safe harbor doctrine, the e-commerce platform can provide legal certainty to users and other related parties while also maintaining integrity and public trust in the services provided by Tokopedia. This doctrine not only protects e-commerce platforms from potential lawsuits but also promotes a safe and fair business environment for all parties involved.

E-commerce platforms such as Tokopedia are protected by the safe harbor doctrine, which shields them from direct liability for any copyright infringement by their users. However, Tokopedia must still take proactive measures to address any violations of photo copyrights to maintain a safe and fair business environment for all parties involved. By doing so, Tokopedia can offer legal certainty to its users and safeguard the rights of copyright owners, thereby further strengthening public trust in their services.

## CONCLUSION

This research examines the importance of the safe harbor doctrine, which provides legal protection for e-commerce platforms against direct responsibility for copyright violations committed by their users. Platforms must comply with relevant

laws and act as responsible stewards. The labor doctrine is also relevant in this context as it highlights the significance of appreciation and recognition for product photography work. This recognition is a crucial effort to protect the rights of the owners of original product photos. Copyright infringement can harm the industry and hinder the development of creativity.

This research emphasizes the importance of taking appropriate measures by e-commerce platforms to address photo copyright infringement. These measures include more stringent monitoring of user-generated content, taking strict action against copyright infringement, and collaborating closely with copyright owners. By implementing these measures, e-commerce platforms can ensure that they actively participate in protecting creative rights and promoting the growth of the digital industry.

## REFERENCES

- Alexandre De Stree, Elise Defreyne, Hervé Jacquemin, Michèle Ledger, & Alejandra Michel. (2020). *Online Platforms' Moderation of Illegal Content Online*.
- Alimohammadlou, M., & Khoshsepehr, Z. (2023). The role of Society 5.0 in achieving sustainable development: a spherical fuzzy set approach. *Environmental Science and Pollution Research*, 30(16), 47630–47654.
- Angela Merkel. (2014). Speech by Federal Chancellor Angela Merkel to the OECD Conference. *Organisation for Economic Co-Operation and Development Conference*.
- Ani Petrosyan. (2024). *Countries with The Largest Digital Populations in The World as of January 2023*. <https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/>.
- Anshari, M., & Almunawar, M. N. (2022). Adopting open innovation for SMEs and industrial revolution 4.0. *Journal of Science and Technology Policy Management*, 13(2), 405–427.
- Bildhäuser, C. (2015). User rights to photos: copyright as a weapon in e-commerce? *Journal of Intellectual Property Law & Practice*, 10(9), 709–712.

- Budi Agus Riswandi, & M. Syamsudin. (2005). *Hak Kekayaan Intelektual dan Budaya Hukum*. Raja Grafindo Persada.
- Carayannis, E. G., & Morawska-Jancelewicz, J. (2022). The Futures of Europe: Society 5.0 and Industry 5.0 as Driving Forces of Future Universities. *Journal of the Knowledge Economy*, 13(4), 3445–3471.
- Cornelia DUMITRU. (2015). Appropriating Creative Works Protected By Intellectual Property Rights. *Lex et Scientia*, 12(2), 28–42.
- Creative Economy Outlook 2022. (2022). *The International Year of Creative Economy for Sustainable Development: Pathway to Resilient Creative Industries*. 60–62.
- Danviranto Budhijanto. (2019). *Hukum Ekonomi Digital di Indonesia*. Logoz Publishing.
- Davies, R. (2015). *Industry 4.0 Digitalization for Productivity and Growth*.
- Dio Bintang Gidete, Muhammad Amirulloh, & Tasya Safiranita Ramli. (2022). Pelindungan Hukum atas Pelanggaran Hak Cipta pada Karya Seni yang dijadikan Karya Non Fungible Token (NFT) pada Era Ekonomi Digital Legal Protection for Copyright Infringement on Artworks used as Non - Fungible Token (NFT) Works in the Digital Economy Era. *Jurnal Fundamental Justice*, 3(1), 3.
- Duraisamy Gnanasekaran, & s. Balamurugan. (2014). Intellectual Property Rights Awareness by Stakeholders: An Empirical Study. *European Academic Research*, 2(8), 10487–10505.
- Eko Rial Nugroho, & Wahyu Priyanka NP. (2019). Tanggung Gugat Pemegang Hak Cipta Terhadap Perbuatan Melawan Hukum Pelanggaran Hak Cipta. *Journal of Intellectual Property*, 2(2), 24.
- Ferry Kosadi, Wajib Ginting, & Vina Merliana. (2021). Digital Receipts of Online Transactions In The Reconciliation Process And The Preparation Of Financial Reports. *Journal of Indonesian Economy and Business*, 36(1), 31–50.
- Forman, L., & MacNaughton, G. (2016). Lessons learned: a framework methodology for human rights impact assessment of intellectual property protections in trade agreements. *Impact Assessment and Project Appraisal*, 34(1), 55–71.
- Frenken, K., van Waes, A., Pelzer, P., Smink, M., & van Est, R. (2020). Safeguarding Public Interests in the Platform Economy. *Policy & Internet*, 12(3), 400–425.
- Gatot Supramono. (2010). *Hak Cipta dan Aspek-Aspek Hukumnya*. PT. Rhineka Cipta.
- Han, D. (2012). Copyrighting Media Labor and Production. *Television & New Media*, 13(4), 283–306.
- Hari Sutra Disemadi. (2023). *Mengenal Perlindungan Kekayaan Intelektual di Indonesia* (1st ed., Vol. 1). Rajawali Pers.
- Henry Soelistyo. (2017). *Hak Cipta Tanpa Hak Moral* (2nd ed.). Rajawallil Pers.
- I Gusti Putu Diva Awatara, Anwar Hamdani, Siti Fatonah, & Linda Nur Susila. (2018). Analysis of internal barriers toward the growth of start up business in Indonesia. *International Journal of Business and Economic Development*, 6(1), 48–55.
- Ika Atikah, Ahmad Zaini, & Iin Ratna Sumirat. (2022). Intellectual Property Rights As The Resource For Creative Economic In Indonesia. *Jurnal Penelitian Hukum De Jure*, 22(4), 451–464.
- Jiayu, W., & Wang, Z. (2024). Economic integration through renewable energy and digital currency in RCEP. *Economic Change and Restructuring*, 57(2), 58.
- Kim, D., Heo, S., Kang, J., Kang, H., & Lee, S. (2021). A Photo Identification Framework to Prevent Copyright Infringement with Manipulations. *Applied Sciences*, 11(19), 9194.
- Kitab Undang-Undang Hukum Perdata, Pub. L. No. 1367.
- Kotamraju, S. K., Arepalli, P. G., Vejendla, L. N., & Kanumalli, S. S. (2021). Implementation patterns of secured Internet of Things environment using advanced blockchain technologies. *Materials Today: Proceedings*. <https://doi.org/10.1016/j.matpr.2020.11.492>
- Kurniawan Sihombing, A., Ratna Permata, R., & Safiranita Ramli, T. (2021). Comparison of Digital Copyright Protection on Over the Top (OTT) Streaming Content Media in Indonesia and the United States.

- PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 8(2), 183–212.
- Lubis, A. S., Wijaya, C., & Sakapurnama, E. (2023). Analysis of entrepreneurial ecosystem factors on productive entrepreneurship of digital start-ups in Indonesia. *International Journal of Business Ecosystem & Strategy* (2687-2293), 5(3), 11–21.
- Luk, A. (2024). The relationship between law and technology: comparing legal responses to creators' rights under copyright law through safe harbour for online intermediaries and generative AI technology. *Law, Innovation and Technology*, 16(1), 148–169.
- Lutfi Ulinnuha. (2017). Penggunaan Hak Cipta sebagai Objek Jaminan Fidusia. *Journal of Private and Commercial Law*, 1(1), 87.
- Maftai, A. A., Lavric, A., Petrariu, A. I., & Popa, V. (2023). Massive Data Storage Solution for IoT Devices Using Blockchain Technologies. *Sensors*, 23(3), 1570.
- Monteiro, A. P., García-Sánchez, I.-M., & Aibar-Guzmán, B. (2022). Labour Practice, Decent Work and Human Rights Performance and Reporting: The Impact of Women Managers. *Journal of Business Ethics*, 180(2), 523–542.
- Oksidelfa Yanto. (2016). Konverensi Bern dan Perlindungan Hak Cipta. *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, 6(1), 117.
- Rahmi Jened Parinduri Nasution. (2017). *Inteface Hukum Kekayaan Intelektual dan Hukum Persaingan, Penyalahgunaan HKI*. Raja Grafindo Persada.
- Simatupang, K. M. (2021). Tinjauan Yuridis Perlindungan Hak Cipta dalam Ranah Digital. *Jurnal Ilmiah Kebijakan Hukum*, 15(1), 67.
- Siregar, A. A., R., K., & Siregar, M. Y. (2020). Copyright Legal Protection Results Photographic Works. *The International Journal of Business & Management*, 8(6).
- Tokopedia. (2024a, April 11). *Tokopedia Intellectual Property Platform*. <https://www.tokopedia.com/intellectual-property-protection>.
- Tokopedia. (2024b, April 16). *Platform Perlindungan Kekayaan Intelektual Tokopedia*. <https://www.tokopedia.com/perlindungan-kekayaan-intelektual>.
- Undang-Undang (UU) Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, Pub. L. No. 19 (2016).
- Undang-Undang (UU) Nomor 28 Tahun 2014 Tentang Hak Cipta, Pub. L. No. 28 (2014).
- Upe, A. (2023). Innovation and Technological Adaptation of Business Actors in the Digital Age: A Digital Sociology Perspective. *Indonesian Journal of Innovation and Applied Sciences (IJIAS)*, 3(3), 218–227.
- Varytimidou, C. (2023). The New A(I)rt Movement and Its Copyright Protection: Immoral or E-Moral? *GRUR International*, 72(4), 357–363.
- Vera. (2024, April 22). *Menkominfo: Safe Harbor Policy Upaya Proteksi Kepentingan Masyarakat*. [https://www.kominfo.go.id/index.php/content/detail/9403/menkominfo-safe-harbor-policy-upaya-proteksi-kepentingan-masyarakat/0/berita\\_satke](https://www.kominfo.go.id/index.php/content/detail/9403/menkominfo-safe-harbor-policy-upaya-proteksi-kepentingan-masyarakat/0/berita_satke).
- WIPO Database of Intellectual Property Legislative Texts. (1979). *Berne Convention for The Protection of Literary and Artistic Works*.
- World Intellectual Property Organization. (2016). *Understanding Copyright and Related Rights*.
- Yuko Harayama. (2018). Society 5.0: Aiming for a New Human-centered Society. *Hitachi Review*, 47.