

Legal Protection Of Copyright Owners For Error In Persona In Decision No.33/PDT.SUS-Copyright/2018/PN Niaga Jakarta Pusat

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Abstract

Infringements of so many intellectual property rights, especially copyrights, concern and even harm many creators. Decision No. 33/Pdt.Sus-Copyright/2018/PN Similar to the copyright litigation in Niaga Central Jakarta. Copyright owners sue in court for infringement. However, the lawsuit brought by the first-level copyright owner was duly flawed due to a personal error, namely a mispronunciation of Defendant I's name. This also happened with appeals at the level of renunciation. The petition filed by the petitioner will be dismissed because it merely repeats the matters reviewed by Judex Facti. This paper aims to discuss how legal protection for copyright owners against persona errors exists in legal regulations and Islamic law. This study is classified as a normative study. As a result of the discussion, it was concluded that there are no specific rules that provide for legal protection of copyright holders when persona claims are false, and that there is a problem of norm vacuum and that there are no rules. Fix implying issues. Under Islamic law, copyright owners must obtain legal protection in order to generate profits consistent with the purposes of maqasid as-syari'ah, including: preservation of the soul (Hifz al-nafs), preservation of reason (Hifz al-'aql), preservation of property (Hifz al-mal).

Keywords: *Legal Protection, Error in Persona Exception, Copyright Creator*

Introduction

Copyright is one of the intellectual property rights that includes science, art, and literature. In the Copyright Law, it has been explained that copyright is an exclusive right for the creator or recipient of the right to give permission to reproduce or announce his creation.¹ Creations that are born from a person certainly create economic value for a creator. If other people use the author's work without permission, it is certain that the author will experience economic losses which will not get royalties. If you want to use other people's work, you must first ask permission from the creator or copyright holder whether it is used for commercial or not. If it is not used for commercial purposes, it must include the source or name of the creator/copyright holder.²

In practice, the process of transferring or distributing copyrights often creates conflicts, and does not rule out the possibility that copyright infringement will occur. This can be seen from the many cases of intellectual property rights disputes in the last 3 years. In 2018 complaints of intellectual property infringement received by the Directorate General of Intellectual Property (DJKI) amounted to 36 complaints of which 24 actions were taken. In 2019 the Ministry of Law and Human Rights noted that the most intellectual property violations that were reported to the Directorate General of Intellectual Property were trademark infringement with 34 complaints, copyright infringement 7 complaints, patents 2 complaints, and industrial designs 4 complaints. With a number of cases of these violations.³

Seeing the many violations of Intellectual Property, especially copyright, many creators feel restless and even harmed by the use of their creations without prior permission. To overcome this, the copyright infringement is submitted to the Court to be resolved. Such as the copyright case between Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga as Plaintiffs against Flex Films Production House as Defendant I and PT. Hutchison 3 Indonesia as Defendant II. Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga as the plaintiffs registered

¹Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual*, (Malang: Setara Press, 2018), 31.

²Dewi Aminatuz Zuhriyah, "Kesadaran Pelaku Ekonomi Kreatif Soal Hak Cipta Perlu Ditingkatkan," *Bisnis.com*, 11 November 2019, diakses 2 Februari 2021, <https://ekonomi.bisnis.com/read/20191111/12/1169073/kesadaran-pelaku-ekonomi-kreatif-soal-hak->

³ Andry Novellno, "Pelanggaran Merek Paling Banyak Diadukan Ke Kemenkumham", *CNN Indonesia*, 1 Januari 2020, diakses 12 Maret 2021, <https://www.cnnindonesia.com/teknologi/20191231141341-185-461331/pelanggaran-merek-paling->

at the Registrar's Office of the Commercial Court which was accepted by the Jakarta District Court on July 10, 2018 with Register No. 33/Pdt.Sus-Copyright/2018/PN Niaga Central Jakarta.⁴

The Plaintiffs had initially collaborated with Defendant I to take pictures or photos only to be used for the production of TVC advertisements, digital, all electronic media, cinema, ooh print add, and pos. Subsequently, there was a change in the agreement whereby the Plaintiffs' pictures or photos would be used on Billboards by Defendant I, where an agreement had been reached in which they would receive additional payments from Defendants I. However, the Plaintiffs were very surprised when they saw the pictures or photos used on the packaging. The Tri "bima" card has been widely circulated in the community.

Where the use was carried out by Defendant I and Defendant II without prior permission to the Plaintiffs both in writing and orally. The existence of these conditions is a form of copyright infringement which has been regulated in Law no. 28 of 2014 concerning Copyright. The Plaintiffs have also given subpoenas/warnings three times to Defendant I and Defendant II but there is still no goodwill from the Defendants to resolve the issue. Thus the Copyright Owner as the Plaintiffs to solve this problem is to bring this matter to the Court.

After the plaintiff filed a lawsuit to the Court, then the Defendant through his attorney responded to the lawsuit. The contents of the letter of response to the lawsuit contain the exception of Error In Persona, which means that the Plaintiff's claim has been misdirected, in which the name of the Defendant in the lawsuit was written incorrectly. Whereas based on the deed of establishment of a Limited Liability Company which has been approved by the Decree of the Minister of Law and Human Rights of the Republic of Indonesia, the name and form of business of Defendant I is PT. Flex Film and not Flex Film Production House written by the Plaintiff. So in this case, the Panel of Judges granted the defendant's exception regarding the plaintiff's Error In Persona claim and stated that the plaintiff's claim was unacceptable (Niet Ontvankelijke Verklaard).

⁴Putusan Nomor 33/Pdt.Sus-Hak Cipta /2018/PN Niaga Jakarta Pusat.

Many researches on Error In Persona have been carried out with the theme, among others, compensation due to errors in persona, responsibility in terms of error in persona, analysis of judge enforcement in terms of error in persona, reviewing judges' considerations in claims by the wrong party, or legal protection due to errors in persona. Like the research of Bientang Maharany Khoirunnisa (2021), andres wijaya and andri yurikosari (2019), sonambela sandro (2017), Marito dailyja medlin (2017), these studies explain how the judge's legal considerations in decisions and what forms of legal protection should be obtained creditor for the error in persona exception in the decision of the Singaraja District Court Number 473/PDT.G/2015/PN Sgr, Decision Number 65/Pdt.Sus PHI/2015/PN.JKT.

The similarity with this article lies in the form of legal protection for errors in persona in court decisions. The difference in the research is in the object of the problem. However, there has been no research that discusses the themes written by in this article. The purpose of this study is to describe the legal protection of copyright owners for the occurrence of errors in persona in the decision No.33/Pdt.Sus-Hak Cipta/2018/Pn Niaga Central Jakarta based on statutory regulations and Islamic law.

Based on the description above, it is evidence that the exception of Error In Persona has harmed the Plaintiff in copyright ownership. Because this article is interesting to examine the problem in a research in the form of a scientific paper with the title Legal Protection Against Copyright Owners for the Occurrence of Error In Persona in Decision No.33/Pdt.Sus-Hakcopy/2018/Pn Niaga Central Jakarta.

Research Methodology

This research can be categorized in normative legal research. Normative legal research can be said to be doctrinal legal research.⁵ Often the law in this study is conceptualized with what is written in the legislation or it can be said that the law is conceptualized as a rule that is a benchmark for community behavior towards what is considered appropriate. The research approach used is the statutory approach, the case approach, and the conceptual approach.⁶ The statutory approach uses statutory regulations and Law Number 8 of 2014 concerning Copyright, and Islamic Law. The

⁵Jonaedi Efendi, dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta:Kencana, 2018), 124.

⁶Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2011), 93.

case approach used is Decision No.33/Pdt.Sus-Hakcopy/2018 Central Jakarta District Court between Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga as Plaintiffs against Flex Films Production House as Defendant I and PT. Hutchison 3 Indonesia as Defendant II. The conceptual approach is carried out through understanding legal concepts related to legal protection for the occurrence of errors in persona in Decision No.33/Pdt.Sus-Hak Cipta/2018 PN Niaga Central Jakarta based on statutory regulations and Islamic law. Sources of legal materials used are primary, secondary and tertiary data. The data collection method contains a logical description of the procedure for collecting primary legal materials,⁷

Discussion

Sit down

The seat of the case in the Decision of the Central Jakarta Commercial District Court Number 33/pdt.sus-copyright/2018/pn commerce in Central Jakarta is as follows:⁸Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga (Plaintiffs) have collaborated with Flex Films Production House (Defendant I) and PT. Hutchions 3 Indonesia (Defendant II) in taking and using photos/images of the Plaintiffs. This cooperation agreement has been made between the Plaintiffs and the Flex Films Production House (Defendant I) which states that the images/photos are used for the production of advertisements for TCV, Digital, All Electronic Media, Cinema, Ooh Print Add, Pos.

Subsequently, there was a change in the agreement whereby the images/photos were used on the Billboard and it was agreed by both parties between Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga with Flex Films Production House and PT. Hutchions 3 Indonesia and the Plaintiffs will receive additional fees (fees) from Flex Films Production House (Defendant I). However, it was later discovered that the photos of the Plaintiffs were found on the packaging of the Tri “bima+” card and had been widely circulated in the community until the time the lawsuit was filed.

During the collaboration in taking photos by the Flex Films Production House (Defendant I) there was never an agreement between the Plaintiffs and Defendant I and

⁷Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia, 2007),296.

⁸Putusan Nomor 33/Pdt.Sus-Hak Cipta /2018/PN Niaga Jakarta Pusat.

Defendant II that the images/photos were used in the packaging of the Tri "Bima+" card. Because the Plaintiffs felt that the photos were used without permission, the Plaintiffs tried to clarify the Defendants in good faith by visiting and meeting in person, but there was no good faith from the Flex Films Production House (Defendant I) and PT. Hutchions 3 Indonesia (Defendant II) to resolve this issue amicably.

In addition, taking photos that were used without the permission of the owner of the rights caused losses to the Plaintiffs because they were used by Defendant II for commercial purposes. Where should the Plaintiffs get paid because the photos/images of the Plaintiffs were used on the packaging of the Tri "Bima+" card. Thus, to solve the problem because there was no amicable settlement, Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga took the matter to the Commercial Court at the Central Jakarta District Court to try the matter.

Exactly on July 11, 2018, this case was registered at the Registrar's Office of the Central Jakarta District Court with Case Registration Number 33/pdt.sus-copyright/2018/pn commerce, central Jakarta. In the lawsuit filed by the Plaintiffs that pleaded with the judge to pass a decision, one of which reads stating that the Defendants are proven to have violated Article 12 paragraph (1) of Law Number 28 of 2014 concerning Copyright, punishing the Defendants jointly and severally to pay the losses. material amounting to Rp.1,000,000,000 (One Billion Rupiah) and immaterial in the amount of Rp. 9,000,000,000 (Nine billion rupiah).

After the Plaintiffs filed a lawsuit against the Defendants, the Defendants submitted an exception or rebuttal and answers to all the claims filed by the Plaintiffs, one of which was that the Plaintiffs had written the name of the party incorrectly (Error In Persona), especially the writing of the name of Defendant I Flex Film Production House. which should be PT. Asian Flex Film. The judge's legal considerations in the study of the decision of the Central Jakarta Commercial District Court Number.33/pdt.sus-copyright/2018/pn commerce in central Jakarta have received an exception from Defendant I regarding the Plaintiffs' Error In Persona lawsuit.

Legal Protection Against Copyright Owners Who Wrongly Mention the Parties in Their Lawsuits Based on the Laws and Regulations

In the use of someone else's copyrighted work to prevent unwanted things from happening, causing a loss from the copyright owner, copyright will give birth to a basic

concept that will provide legal protection for copyrighted works that have characteristics as a form of authenticity from the owner. . Copyright will give birth to a conception in the form of moral rights for the creator or copyright owner or his heirs.⁹ Moral rights are considered to be personal rights owned by a creator in order to prevent the occurrence of deflections (deviations) against his copyrighted work and to gain respect or appreciation for his work.¹⁰

In copyright law, there are several aspects of works that can be protected including in the form of expressions, images, as well as sound and video forms. The forms in question are in the form of writings, articles, poems, books, photographs, architectural drawings, maps, song recordings, and videos.¹¹ Legal protection for creators or copyright owners is regulated in Indonesian laws and regulations, namely the enactment of Law Number 28 of 2014 concerning Copyright.¹² Article 40 paragraph (1) letter k of Law Number 28 of 2014 states that protected works are creations in the form of science, art and literature, and consist of photographic works.¹³ That often happens around us in the use of other people's pictures/photos without the owner's permission which are used for commercial purposes. This can result in the loss of the copyright owner as the object of the portrait who should receive economic rights in the form of royalties due to the use of photos without permission (illegal).

Not infrequently there is also mutual trust between the two parties in entering into an agreement which, after being mutually agreed upon or by permitting the use of a work from the copyright owner, is not uncommon. However, it is usually also found that a trust that has been formed from the beginning will eventually lead to a dispute between the two. When a problem occurs, what can be done is to make a family settlement or submit it to the Court. This is contained in Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution that

⁹ Theresia N. A. Narwadan, *Hak Moral Pencipta Atas Karya Cipta Yang Diunduh Dari Internet*, Jurnal Sasi, Vol. 20 No.2 Bulan Juli - Desember 2014, 71.

¹⁰ Fajar A enurut Pasal 12 Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta Di Indonesia," *JOM Fakultas Hukum III*, no. 2 (Oktober 2016): 1–15.

¹¹ Rukmana Aji, Hieronymus Febria Rosando, Abraham Ferry, "Perlindungan Hukum Terhadap Hasil Foto Pribadi Yang Digunakan Orang Lain Di Instagram," *Jurnal Hukum Bisnis Bonum Commune II*, no. 1 (2019): 66–76.

¹² Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.

¹³ Mirza Rahmaniar, Hendro Saptono, Rinitami Njatrijani, "Perlindungan Hak Cipta Pada Karya Fotografi Produk Online Shop Atas Tindakan Penggunaan Tanpa Izin Untuk Kepentingan Komersial," *Diponegoro Law Journal 8*, no. 3 (2019): 2177–85.

dispute resolution outside the court can be carried out through consultation, negotiation, mediation, conciliation or expert judgment.¹⁴

In the case of copyright infringement that occurred between the copyright owner and the Flex Film Production House and PT. Hutchions 3 Indonesia which has filed a lawsuit to the Court and obtained an exception from Defendant I that the lawsuit had an error in persona, causing a formally flawed lawsuit. Thus, the panel of judges tried to accept the exception of Defendant I regarding the Plaintiffs' claim for error in persona (the error of the parties).

Based on the evidence contained in this decision, the error in persona deserves to be granted by the Panel of Judges. In connection with the exception of Error In Persona proposed by Defendant I, namely PT. Flex Film Asia in the Decision of the Central Jakarta District Court Number.33/pdt.sus-copyright/2018/pn niaga central Jakarta stated that the Plaintiffs had wrongly written the name of the Defendant I. Based on the deed of establishment of PT dated May 24, 2010 number 59 which made before Sri Juwariyati, SH, Magister Notary, Notary in East Jakarta and has been approved by the Decree of the Minister of Law and Human Rights of the Republic of Indonesia dated 12 September 2012 Number: AHU-076.AH.02.02-Year 2012, name and form The business of Defendant I is PT.

In addition, it can be said that the lawsuit is error in persona by looking at the three error in persona qualifications. First, Disqualification in Persona, can arise because if the plaintiff in acting is a person who does not meet the requirements. In this lawsuit, the plaintiff has fulfilled the requirements to act, including having the right to sue the disputed case, and has been proficient in taking legal action. It is proven that in the lawsuit the age of the Plaintiffs has been explained which states that the Plaintiffs are legal subjects who are old enough to carry out legal actions.¹⁵ The two targets of the party being sued are the people who were drawn as the wrong defendant, causing an error in persona. This article reveals that the lawsuit is a lawsuit that was wrongly targeted by the party being sued. This happened because of the wrong writing of the name of the Defendant I, which the author has explained above.

¹⁴ Jimmy Joses Sembiring M. Hum SH, *Cara Menyelesaikan Sengketa di Luar Pengadilan* (Jakarta: VisiMedia, 2011), 11.

¹⁵ Putusan Nomor 33/Pdt.Sus-Hak Cipta /2018/PN Niaga Jakarta Pusat.

Thus, the defendant does not have the legal status of *persona standi in judicio* (who has the legal authority to act in court). The third lawsuit is lacking parties, the party acting as the plaintiff or being withdrawn as the defendant is incomplete and lacking parties. In this lawsuit, the parties from the Plaintiffs are complete, so this lawsuit cannot be classified as an error in *persona* because the lawsuit lacks parties. Seeing some of the qualifications of the error in *persona* described above, the problems contained in the lawsuit can be qualified on the wrong target of the party being sued.

The term Error In *Persona* is used at the exception stage of a lawsuit in court. Error In *Persona* was filed by the Defendant on the basis that the lawsuit was directed at the wrong person. In the Civil Procedure Code, it is explained that a formal defect that arises due to an error in acting as a plaintiff or as a defendant can be said that the lawsuit contains an error in *persona*.¹⁶

Seeing this, the Panel of Judges stated that the Plaintiff's claim was unacceptable. Then the Plaintiffs filed through their proxies based on a special power of attorney dated June 8, 2018 to file a cassation request on January 18, 2019. However, the Supreme Court is of the opinion that the reasons put forward by the Petitioners cannot be justified because they only contain repetitions of things that have been stated previously. considered by *Judex Facti*. After the Supreme Court read and studied *Judex Facti*'s considerations related to the objection to the Cassation Application and the response of the Cassation Respondent in the counter cassation memorandum I and II, it was of the opinion that *Judex Facti*'s decision was not wrong in applying the law. So it is true if the implementation of the decision on a lawsuit must be directed to the right party. This is not proven in this lawsuit. In this case, the lawsuit is addressed to the Flex Films Production House as Defendant I, while the name according to the Deed of Establishment Number 59 dated 24 May 2016 is PT. Asian Flex Film. So it is appropriate that the Cassation Application in this case cannot be accepted.

Seeing the problems experienced by Willy Afiyana, Mieke Amelia Eka Putri, Andi Suhandro, and Riana Prayoga, where the lawsuit from the first level to the level of cassation was rejected because of an error in *persona*, there must be legal protection obtained by the Plaintiffs / Petitioners. The definition of protection itself is to provide protection for human rights that have been harmed by others and this protection is given

¹⁶ M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2005), 111.

to the community so that they can enjoy all the rights granted by law that must be given by law enforcement officials to provide a sense of security both mentally and physically from harassment. and various threats from any party.¹⁷In protecting legal subjects in the implementation of a sanction, legal protection is divided into two, namely preventive legal protection and repressive legal protection.¹⁸

In the study of this decision, basically preventive protection can no longer be obtained by copyright owners, because preventive legal protection is protection given with the aim of preventing infringement before the infringement occurs. Because this case has occurred a dispute so that it can no longer be prevented, the copyright owner does not obtain preventive legal protection. Furthermore, the legal protection that can be obtained by copyright owners is repressive legal protection, which means resolving disputes, including their handling in judicial institutions.

However, this case has been brought to the Court which has permanent legal force and that the panel of judges adjudicated the plaintiff's claim including a lawsuit (NO) so that it cannot be accepted and sentenced the plaintiff to pay the case. So that repressive legal protection cannot be obtained by the Copyright Owner, therefore the next legal protection that can be obtained by the copyright owner is to take legal action.

Legal remedies are efforts given by law in certain cases to oppose the judge's decision to a person or legal entity.¹⁹In theory and practice, we recognize that legal remedies are divided into two types, namely ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies consist of *verzet*, appeal, and cassation. Meanwhile, extraordinary legal remedies consist of judicial review (PK) and third party resistance (*derden verzet*). In the study of this decision, it is a decision that has permanent legal force, so that legal remedies that can be taken by the copyright owner to obtain legal protection due to an error in persona in his lawsuit can take extraordinary legal remedies, namely by reviewing the decision. previously obtained.

¹⁷ Dyah Permata Budi Asri, ““Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta,”” *Journal of Intellectual Property* 1, no. 1 (2018): 12–23.

¹⁸ Afrizal, “*Rekonstruksi Perlindungan Hukum Terhadap Korban Salah Tangkap (Error In Persona) Di Tingkat Penyidikan Dalam Perspektif Pembaharuan Hukum Acara Pidana*”, (Undergraduate thesis Universitas Muhammadiyah Malang,2020) ,hl. 9..

¹⁹ M.Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2005), 97.

Review is an effort to make court decisions that have legal force become raw again both at the District Court, High Court, and Supreme Court levels. In other words, it is an effort to reject the judge's decision which has permanent legal force. This is explained in Article 15 of Law Number 19 of 1964 concerning the Basic Provisions of Judicial Power and is regulated in Article 385 Rv. The review is submitted by the entitled party to the Supreme Court through the head of the District Court who decides the case at the first level.²⁰

In addition to being legally binding, the submission of a judicial review must fulfill several reasons that led to the request for a judicial review contained in Article 67 of the Law of the Supreme Court in conjunction with PERMA Number 1 of 1982. Where in the Law there is one reason that causes the Rights Owner to Copyright can carry out a review, namely in a decision there is an error on the part of the judge or there is a real error. Thus, the form of legal protection that can be obtained for copyright owners in this case study is to take legal action for review by taking into account the requirements in making the lawsuit.

According to this article, the legal protection obtained by the copyright owner in the form of a review should be obtained. However, this has become something that is commonplace for all cases to get if they want to continue solving problems and the decision has been submitted to the level of cassation and has permanent legal force. Therefore, this article tries to determine the typical form of protection obtained by copyright owners in the form of regulations other than bail reviews in the form of laws and regulations or others.

However, there is no specific regulation that regulates legal protection for copyright owners for lawsuits that are error in persona. Thus, this problem includes a vacuum of norm problem, which means that there is no regulation that regulates the problem. So with that, the government immediately follows up by issuing regulations governing the protection of copyright owners for errors in persona.

Legal Protection Against Copyright Owners Who Wrongly Mention the Parties in His Lawsuit Based on Islamic Law

²⁰ M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2005), 104.

Default that occurred as a result of the actions of the Defendants due to the use of photos by the Plaintiffs without permission caused harm to the Plaintiffs as copyright owners. The copyrighted work owned by the copyright owner is a work that has its own authenticity in accordance with the characteristics of the owner. Therefore, the copyrighted work must get a sense of respect or appreciation as the only copyrighted work that is only owned by the owner. In order not to happen something that is not desired by the copyright owner and results in losses, there must be legal protection that must be obtained by the copyright owner.

In the case study of the Central Jakarta District Court Decision Number 33/pdt.sus-copyright/2018/pn niaga central Jakarta, the copyright owner filed a lawsuit against the actions caused by the Defendants as a result of carrying out the agreement between the Plaintiffs and the Defendants there were irregularities committed by the Defendants in violation of the agreed agreement. The infringement committed by the Defendants was to use the photos of the Plaintiffs without the permission of the copyright owner (Plaintiffs). Therefore, the copyright owner submitted the lawsuit to the Jakarta District Court.

In the perspective of Islamic law, using the rights of others without the permission of the owner is not justified because copyright is the property of the owner. Islam also recommends always respecting the ownership of others for the results of one's hard work. As explained in the letter Al-Baqarah verse 188 which means:

"And do not eat the wealth between you by vanity and (do not) bribe you with it to the judges with the intention that you can eat up some of the wealth of others by way of sin, even though you know."²¹

After the copyright owner files a lawsuit, the position of the copyright owner is as the Plaintiffs. Meanwhile, parties who have harmed the rights of the Plaintiffs are called Defendants. The lawsuits that have been filed by the Plaintiffs to the Defendants to the Court then the Defendants submit an exception or rebuttal and answers to all the claims filed by the Plaintiffs, one of which is that the Plaintiffs have written the name of the party incorrectly (Error In Persona), especially the writing of the name of Defendant I. The Flex Film Production House which should be PT. Asian Flex Film. The judge's legal considerations in the study of the decision of the Central Jakarta Commercial

²¹Kementerian Agama RI, Al-Qur'an Dan Tafsirnya (Edisi Yang Disempurnakan) (Jakarta: Widya Cahaya, 2011) al Baqarah: 188.

District Court Number.33/pdt.sus-copyright/2018/pn commerce in central Jakarta have received an exception from Defendant I regarding the Plaintiffs' Error In Persona lawsuit.

The result of the Petitioners filing an appeal to the Supreme Court only contains a repetition of the things that have been considered by Judex Facti. So the Supreme Court cannot justify in this case. And after reading and studying Judex Facti's considerations related to the objections to the Cassation Application and the responses of the Cassation Respondent in the counter cassation memorandum I and II, the Supreme Court is of the opinion that Judex Facti's decision is not wrong in applying the law. So it is true if the implementation of the decision on a lawsuit must be directed to the right party. This is not proven in this lawsuit. So that the decision at the level of cassation cannot be accepted.

Thus, it can cause harm to the plaintiffs as copyright owners for the second time, suffer losses due to default by the Defendants and lose in the trial because the lawsuit from the copyright owner (Plaintiffs) at the first level to the level of cassation has been wrong in mentioning the legal subject being sued in this case is called an error in persona so that the lawsuit is declared unacceptable because of a formal defect. So this article needs to conduct an in-depth discussion of the protection obtained by copyright owners for errors in persona with the perspective of Islamic law methods.

In the view of Islam, the case regarding the wrong party called error in persona can be observed through the purpose of Islamic law itself which in the scope of ushul fiqh is called maqasid as-syari'ah. The understanding of maqasid as-shari'ah is the goals of Islamic teachings or the goals of shari'ah (Allah) actions in outlining the teachings of Allah.²²The substance of maqasid as-shari'ah is benefit, so the theory of maqasid as-syari'ah cannot be separated from the discussion of maslahah. In Ash-Syatibi's view, Allah revealed the Shari'a or the rule of law with the aim of creating the benefit of humans in this world or in the hereafter.²³

Maslahah can simply be interpreted as something that is good and can be accepted by reason. A benefit will be realized if the five main elements are fulfilled. Al-Syatibi

²²Musolli, "Maqasid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer ", *Jurnal At-Taurus* , Volume V, Nomor 1 (2018):60-82.

²³ Moh Nasuka, "Maqasid Syari'ah Sebagai Dasar Pengembangan Sistem, Praktik, Dan Produk Perbankan Syari'ah," *Diktum: Jurnal Syariah Dan Hukum* 15, no. 1 (2017): 1-10.

said that there are five main elements in the goals of Islamic law, including the aim of protecting religion, soul, mind, lineage, and property.²⁴The five main elements of the objectives of the Shari'a, in this article will apply to the protection obtained by the copyright owner as a result of the claim being unacceptable due to an error in persona (wrong party). First, maintaining religion (Hifz ad-din), namely maintaining and carrying out religious obligations which include the obligation to pray, read the two sentences of the creed, zakat, fasting, and hajj. In this case the protection obtained by the Copyright Owner is not in line with the sharia maqasid theory, namely maintaining religion.

Second, Nurturing the soul (Hifz an-nafs), the case of the Copyright Owner in making a claim experienced an error in persona or an error in writing the name of the party being sued which caused the disruption of the purpose of Islamic law, namely disturbing a person's soul. Where this can put him in danger, such as experiencing losses due to his photos being used without permission, as well as experiencing a second loss due to an error in persona lawsuit and then the lawsuit is rejected so that he pays court fees. In this case a person's soul or life is very disturbed. Thus, legal protection must be obtained for Copyright Owners so that they can file a lawsuit again to get their rights back by justifying the name of the appropriate Defendant I.

Third, Maintain common sense (Hifz al-'aql), Copyright owners (Plaintiffs) in making a lawsuit filed with the Jakarta District Court in suing the Defendants and submitting to the Supreme Court there was an error in writing the names of the defendants or called an error in persona. . This caused the loss suffered by the copyright owner (the Plaintiffs) to suffer a second loss, the loss due to default by the Defendants and the second was the loss in the trial because both the first level to the cassation level incorrectly mentioned the subject being sued in the case. this. Therefore, the copyright owner in accordance with the laws and regulations can provide legal protection in order to file his lawsuit again. Thus, obtaining legal protection is the beginning of the process of recovering a lawsuit that will be filed by the copyright owner and fostering enthusiasm for his rights again after a default due to the use of photos from the copyright owner without permission. In this process, it will at least give authority to the

²⁴ Iffatin Nur dan Ngizzul Muttaqin, "Bermedia Sosial Dalam Perspektif Maqasid Asy-Syari'ah (Membangun Komunikasi Di Media Sosial Berdasarkan Etika)", *Journal of Social Religion Research*, Volume 5, Nomor 1(2020): 1-14.

copyright owner in this case. The protection facilities obtained are in accordance with the maqasid sharia theory which can maintain reason.

Fourth, Maintaining descendants (Hifz an-nasl), Problems with copyright owners whose lawsuits were rejected from the first level to the level of cassation because errors in persona caused losses twice. However, the loss he gets does not cause or threaten the existence of the offspring. So with this the legal protection facilities obtained by the Copyright Owner are not in line with the sharia maqasid theory in maintaining offspring.

Fifth, maintaining property (Hifz al-mal), In this case the Defendants have taken the authority of the property that should have belonged to the Plaintiffs. So that the Plaintiffs suffered material losses. The second disadvantage experienced by copyright owners (Plaintiffs) is that they have incorrectly stated the subject being sued in this case (error in persona), so that the lawsuit filed by the Plaintiffs cannot be accepted. Thus, the Plaintiffs were sentenced to jointly and severally pay court fees of Rp. 1,516,000, (one million five hundred and sixteen thousand rupiah).

Copyright owners must obtain legal protection so that all rights are returned by filing a lawsuit again by writing the name of Defendant I correctly. Therefore, the legal protection facilities obtained are in accordance with the maqasid sharia theory which can maintain assets. Looking at the five qualifications of the basic elements of sharia objectives described above, the facilities for obtaining legal protection in accordance with the sharia maqasid theory are maintaining the soul (Hifz al-nafs), maintaining reason (Hifz al-'aql), and maintaining property (Hifz al-'aql). -mall).

Seeing the polemic due to the copyright owner in filing a lawsuit in court there was an error in mentioning the name of the Defendant I (error in persona) until the submission to the cassation level, namely the Supreme Court which has been described above, the author hopes that the copyright owner can make a new lawsuit again so that get legal protection in accordance with maqasid ash-shari'ah in al-Syatibi's view that there are four aspects contained in maqasid shari'ah.²⁵

Thus, the protection obtained by the copyright owner is in accordance with the existence of maqasid shari'ah. The copyright owner can realize a benefit that he gets

²⁵ Iffatin Nur dan Ngizzul Muttaqin, "Bermedia Sosial Dalam Perspektif Maqasid Asy-Syari'ah (Membangun Komunikasi Di Media Sosial Berdasarkan Etika)", *Journal of Social Religion Research*, Volume 5, Nomor 1(2020): 1-14.

from filing a new case, namely getting back compensation or responsibility from the Defendants due to default by the Defendants and because of his defeat in the trial because the lawsuit from the copyright owner (the Plaintiffs) has made a mistake in mentions the legal subject being sued in this case which is called error in persona.

From the aspect of justice by looking at the theory of maqasid shari'ah, it is true that the copyright owner provides legal protection for it so that there is a benefit which is a form of substance from maqasid shari'ah by obtaining justice after the occurrence of copyright infringement which causes material losses and errors in making lawsuit so that it is required to pay court fees.

Looking at the aspect of expediency, it is known that maqasid places benefit as a legal goal. The intended benefit is the benefit of all mankind. So that by carrying out legal protection by the Copyright Owner, it will cause a benefit, namely problems for the copyright owner himself.

However, if you see that the grace period in submitting a request for reconsideration based on Article 67 of Law no. 5 of 2004 concerning the Supreme Court is 180 days. In this case, due to an error in writing the name of the party in the lawsuit and it has permanent legal force, it is calculated from the date of obtaining permanent legal force and has been notified to the litigants. An application for reconsideration that is submitted beyond the grace period cannot be accepted and the case file does not need to be sent to the Supreme Court with the determination of the Head of the District Court. So that if legal protection is not carried out by the copyright owner, it is not in accordance with the maqasid sharia because there will be no benefit obtained by the copyright owner.

Conclusion

Seeing the problem of the Copyright Owner where the lawsuit from the first level to the level of cassation was rejected because of an error in persona, it must be done or obtained a legal protection that must be obtained. If you look at the order of the first level, appeal, then cassation, then the copyright owner can take legal action for reconsideration in order to make a new case by correcting an error in writing the name of Defendant I. However, there is no specific regulation that regulates legal protection for the owner. copyright for the occurrence of an error in persona lawsuit. Thus, this problem includes a vacuum of norm problem, which means that there is no regulation

that regulates the problem. So with that, the government immediately follows up by issuing regulations governing the protection of copyright owners for errors in persona. In the view of Islam, it can be reviewed with maqasid as-syari'ah because it can lead to benefit. Where the copyright owner must obtain legal protection in order to create benefits in accordance with the objectives of maqasid as-syari'ah including; Preserving the soul (Hifz al-nafs), Preserving reason (Hifz al-'aql) and Preserving property (Hifz al-mal). And in line with al-Syatibi's view that there can be a benefit that will get back compensation or responsibility from the Defendants due to default by the Defendants and the reason for their defeat in the trial due to an error in persona.

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