

**PROTECTION OF INDIVIDUAL MORAL RIGHTS FROM STREET  
PHOTOGRAPHY ACTIVITIES IN PUBLIC SPACES: MASLAHAH  
MURSALAH PERSPECTIVE**

**THESIS**

**BY:**

**TRI YOGA UNGGUL PAMINTO**

**SIN 210202110014**



**SHARIA ECONOMIC LAW**

**SHARIA FACULTY**

**MAULANA MALIK IBRAHIM ISLAMIC STATE UNIVERSITY**

**MALANG**

**2025**

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**MALANG**

**2025**

## STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**PROTECTION OF INDIVIDUAL MORAL RIGHTS FROM STREET  
PHOTOGRAPHY ACTIVITIES IN PUBLIC SPACES: MASLAHAH  
MURSALAH PERSPECTIVE**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 21 May 2025

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### **APPROVAL SHEET**

After reading and correcting thesis of Tri Yoga Unggul Pamiinto Student ID 210202110014, Department of Sharia Economic Law, Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

**PROTECTION OF INDIVIDUAL MORAL RIGHTS FROM STREET  
PHOTOGRAPHY ACTIVITIES IN PUBLIC SPACES: MASLAHAH  
MURSALAH PERSPECTIVE**

The supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

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










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Activities In Public Spaces: Masalah Mursalah Perspective

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1.	Thursday/06-03-2025	Thesis Proposal Discussion and Revision	
2.	Friday/14-02-205	Discussion Outline	
3.	Friday/04-04-2025	Revised Outline Discussion	
4.	Thursday/10-04-2025	Discussion of Problem 1&2	
5.	Monday/28-04-2025	Revision of Problem 1	
6.	Monday/05-05-2025	Discussion of Problem 2	
7.	Friday/09-05-2025	Discussion of Problem 1&2	
8.	Wednesday/14-05-2025	Discussion of Problem 1&2	
9.	Friday/16-05-2025	Revision of Thesis Discussion Writing	
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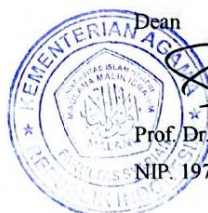
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## **MOTTO**

“In this world nothing happens by chance, because everything happens for a reason”

- Rayleigh.

“Because of ignorance, we become unable to see whether something is right or wrong.”

- Pandji Pragiwaksono.

## AKNOWLEDGEMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillah wa syukurillah, all praise to Allah SWT who is the most gracious again the most merciful for the blessings of the grace of taufik and guidance of the thesis with the title:

### **“PROTECTION OF INDIVIDUAL MORAL RIGHTS FROM STREET PHOTOGRAPHY ACTIVITIES IN PUBLIC SPACES”**

can be completed properly and on time. Sholawat and salam remain poured out to the great prophet Muhammad SAW who has guided the ummah from the age of darkness to the brightly lit age of addinul islam wal iman.

This thesis is prepared to fulfill the final assignment of students to obtain a bachelor of law degree in the Sharia Economic Law Study Program, Faculty of Sharia, UIN Maulana Malik Ibrahim Malang. Of course, the success of writing this thesis cannot escape the guidance, direction, assistance and motivation of various parties. Therefore, on this occasion the author would like to thank:

1. Prof. Dr. H. M. Zainuddin, MA, as the Chancellor of the State Islamic University of Maulana Malik Ibrahim Malang
2. Prof. Dr. Sudirman, M.A. as the Dean of the Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang
3. Prof. Dr. Fakhruddin, M.HI. as the Head of the Sharia Economic Law Study Program, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang



4. Prof. Dr. Fakhruddin, M.HI. as the author's Advisor during his studies at the Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang. The author would like to thank him for providing guidance, advice, and motivation during his studies.
5. Risma Nur Arifah, M.H. as the author's advisor who has devoted time to providing direction and motivation in completing this thesis.
6. All Lecturers of the Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all their deeds be part of worship to obtain the pleasure of Allah SWT.
7. Staff and employees of the Faculty of Sharia, State Islamic University, State Islamic University of Maulana Malik Ibrahim Malang, the author would like to thank you for your participation in completing this thesis.
8. My father and mother who I love the most, the author would like to thank you as much as possible more than what I can say, thank you for always trying, always praying for the author up to this point, and the author dedicates this thesis to both of the author's parents.
9. My friends who always support and also remind me to work on this writing without stopping. Thank you for the help, enthusiasm and also support given, so that I can be at this point.
10. Never tired of expressing gratitude for being given such an extraordinary environment in the form of support, enthusiasm and also good prayers that are always affirmed to me, especially to "*Ena-Ena Universe, Ta'at Sholat Berjamaah, Sad Boys and Sad Gang*" who are friends in the form of groups or gangs that accompany me to maintain the fire of enthusiasm to become a better person.

11. Not forgetting myself who can fulfill the responsibility to complete his duties as best as possible by always trying to become a better person.

With the completion of writing this thesis, it is hoped that the knowledge gained by the author during his education at UIN Maulana Malik Ibrahim Malang can be useful both in the world and in the hereafter. The author realizes that the writing of this thesis is far from perfect and is not free from mistakes, therefore the author asks for suggestions and criticisms that can be constructive for future improvements.

## TRANSLITERATION GUIDELINES

In writing scientific papers, the use of foreign terms is often inevitable. In general, according to the General Guidelines for Indonesian Spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following table presents the transliteration guidelines as a reference for writing scientific papers. Arabic-Indonesian transliteration of the Faculty of Sharia UIN Maulana Malik Ibrahim Malang is guided by the Library of Congress (LC) model of the United States as follows:

Arab	Indonesia	Arab	Indonesia
ا	'	ط	t
ب	b	ظ	z
ت	t	ع	'
ث	th	غ	gh
ج	j	ف	f
ح	h	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w

س	s	هـ	h
ش	sh	ء	'
ص	s	ي	y
ض	d		

To indicate a long vowel sound (madd), the method is to write a horizontal streak above the letter, such as ā, ī and ū. (أ, ي, و). Arabic double vowels are transliterated by combining the two letters “ay” and “aw” such as layyinah, lawwāmah. Words ending in tā' marbūṭah and functioning as an adjective or muḍāf ilayh are transliterated with “ah”, while those functioning as muḍāf are transliterated with “at”.

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## ABSTRAK

Tri Yoga Unggul Paminto. NIM 210202110014. **Perlindungan Hak Moral Individu Dari Kegiatan *Street Photography* Di Ruang Publik: Perspektif Masalah Mursalah.** Skripsi. Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Risma Nur Arifah, M.H.

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**Kata kunci:** hak moral, *street photography*, masalah mursalah

*Street photography* merupakan sebuah bentuk ekspresi seni yang bertujuan merekam berbagai fragmen kehidupan yang berlangsung di ruang publik. Meskipun demikian, praktik ini kerap kali memunculkan berbagai dilema hukum yang kompleks, khususnya yang berkaitan dengan perlindungan hak moral individu yang menjadi subjek dalam karya fotografi tersebut. Di Indonesia, Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta telah mengatur mengenai perlindungan hak moral bagi pencipta karya. Akan tetapi, kerangka hukum tersebut dinilai belum secara spesifik dan komprehensif memberikan perlindungan yang memadai bagi individu yang menjadi objek dalam *street photography*. Dari hal itu, penelitian ini memiliki tujuan utama untuk melakukan analisis mendalam mengenai perlindungan hukum terhadap hak moral individu dalam konteks praktik fotografi jalanan di ruang publik. Analisis ini dilakukan dengan hukum yang berlaku di Indonesia, hukum internasional yang relevan seperti Perjanjian TRIPS (Trade Related Aspects of Intellectual Property Rights), serta perspektif Masalah Mursalah dalam hukum Islam.

Penelitian ini menggunakan metode penelitian yuridis normatif dengan dukungan pendekatan perundang-undangan (*statute approach*) dan pendekatan konsep (*conceptual approach*). Melalui pendekatan ini, penelitian mengkaji secara kritis bagaimana Undang-Undang Hak Cipta di Indonesia memberikan perlindungan bagi individu yang menjadi subjek dalam karya fotografi. Selain itu, penelitian ini juga melakukan analisis terhadap konsep Masalah Mursalah sebagai suatu pendekatan alternatif dalam merumuskan kerangka perlindungan hukum yang lebih adil, seimbang, dan mampu mengakomodasi berbagai kepentingan yang terlibat.

Hasil penelitian menunjukkan bahwa sistem hukum di Indonesia saat ini lebih memfokuskan perlindungan hak moral pada kepentingan pencipta atau fotografer, sementara perlindungan terhadap individu yang menjadi objek foto masih relatif terbatas. Dalam konteks ini, ratifikasi TRIPs dan pendekatan Masalah Mursalah menawarkan sebuah solusi alternatif yang mempertimbangkan kemaslahatan umum secara lebih luas. Pendekatan ini berupaya untuk menyeimbangkan antara hak-hak fotografer sebagai pencipta karya dengan hak-hak individu yang difoto, sehingga dapat mencegah terjadinya penyalahgunaan atau eksploitasi tanpa izin yang berpotensi merugikan salah satu pihak.



## ABSTRACT

**Tri Yoga Unggul Paminto.** Student ID: 210202110014. **Protection Of Individual Moral Rights From Street Photography Activities In Public Spaces: Masalah Mursalah Perspective.** Undergraduate Thesis. Sharia Economic Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. **Supervisor:** Risma Nur Arifah, M.H.

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**Keywords:** moral right, street photography, masalah mursalah

Street photography is a form of artistic expression that aims to record various fragments of life that occur in public spaces. However, this practice often gives rise to various complex legal dilemmas, especially those related to the protection of the moral rights of individuals who are the subjects of the photographic work. In Indonesia, Law Number 28 of 2014 concerning Copyright has regulated the protection of moral rights for creators of works. However, this legal framework is considered not to specifically and comprehensively provide adequate protection for individuals who are the objects of street photography. From this, this study has the main objective to conduct an in-depth analysis of the legal protection of individual moral rights in the context of street photography practices in public spaces. This analysis is carried out with the laws in force in Indonesia, relevant international laws such as the TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement, and the Masalah Mursalah perspective in Islamic law.

This study uses a normative legal research method supported by a statute approach and a conceptual approach. Through this approach, the study critically examines how the Copyright Law in Indonesia provides protection for individuals who are the subjects of photographic works. In addition, this study also analyzes the concept of Masalah Mursalah as an alternative approach in formulating a more just, balanced legal protection framework that can accommodate the various interests involved.

The results of the study show that the legal system in Indonesia currently focuses more on protecting moral rights on the interests of creators or photographers, while protection for individuals who are the objects of the photos is still relatively limited. In this context, the ratification of TRIPs and the Masalah Mursalah approach offer an alternative solution that considers the public interest more broadly. This approach seeks to balance the rights of photographers as creators of works with the rights of individuals who are photographed, so as to prevent misuse or exploitation without permission that has the potential to harm one party.

## الخلاصة

تري يوجا أنغول بامينتو. هوية الطالب: 210202110014. حماية الحقوق المعنوية الفردية من أنشطة تصوير الشوارع في الأماكن العامة: منظور مصالحة مرصلة. أطروحة البكالوريوس. برنامج دراسة القانون الشرعي الاقتصادي، كلية الشريعة، مولانا مالك إبراهيم جامعة الدولة الإسلامية ملانج. المشرف: ريسمة نور عارفة، م.ح.

---

الكلمات المفتاحية: الحقوق المعنوية، التصوير الفوتوغرافي في الشارع، المصلحة العامة

التصوير الفوتوغرافي في الشوارع هو أحد أشكال التعبير الفني الذي يهدف إلى تسجيل أجزاء مختلفة من الحياة التي تجري في الأماكن العامة. ومع ذلك، فإن هذه الممارسة غالباً ما تؤدي إلى ظهور معضلات قانونية معقدة مختلفة، وخاصة تلك المتعلقة بحماية الحقوق المعنوية للأفراد الذين هم موضوع العمل الفوتوغرافي، في إندونيسيا، ينظم القانون رقم 28 لسنة 2014 بشأن حقوق التأليف والنشر حماية الحقوق المعنوية لمبدعي الأعمال. ومع ذلك، لا يُعتقد أن الإطار القانوني يوفر حماية كافية بشكل محدد وشامل للأفراد الذين هم موضوع التصوير الفوتوغرافي في الشوارع. ومن هنا فإن هذه الدراسة تهدف بشكل رئيسي إلى إجراء تحليل معمق للحماية القانونية للحقوق المعنوية الفردية في سياق ممارسات التصوير، الفوتوغرافي في الشوارع في الأماكن العامة. تم إجراء هذا التحليل في ظل القوانين المعمول بها في إندونيسيا ومنظور (TRIPS) والقوانين الدولية ذات الصلة مثل اتفاقية الجوانب التجارية لحقوق الملكية الفكرية المصلحة المرصلة في الشريعة الإسلامية

يستخدم هذا البحث أسلوب البحث القانوني المعياري المعياري بدعم من نهج النظام الأساسي والنهج المفاهيمي. من خلال هذا النهج، يدرس البحث بشكل نقدي كيف يوفر قانون حقوق النشر في إندونيسيا الحماية للأفراد الذين هم مواضيع في الأعمال الفوتوغرافية. وبالإضافة إلى ذلك، يحلل هذا البحث أيضاً مفهوم المصلحة المرصلة كنهج بديل في صياغة إطار حماية قانونية أكثر عدلاً وتوازناً وقدرة على استيعاب مختلف المصالح المعنية

وتظهر النتائج أن النظام القانوني الحالي في إندونيسيا يركز أكثر على حماية الحقوق المعنوية على مصالح المبدع أو المصور، في حين أن حماية الفرد الذي هو موضوع الصورة الفوتوغرافية لا تزال محدودة نسبياً. وفي هذا السياق، فإن التصديق على جوانب حقوق الملكية الفكرية المتصلة بالتجارة ونهج المصلحة المرصلة يقدم حلاً بديلاً يأخذ بعين الاعتبار الصالح العام الأوسع. ويسعى هذا النهج إلى تحقيق التوازن بين حقوق المصور الفوتوغرافي بصفته مبتكر العمل وحقوق الفرد الذي تم تصويره، وذلك لمنع إساءة الاستخدام أو الاستغلال غير المصرح به الذي قد يضر بأي من الطرفين

# CHAPTER I

## INTRODUCTION

### A. Background

Intellectual Property Rights has experienced rapid development in the modern era in line with technological advances and increasing levels of human creativity.<sup>1</sup> As these advances developed the use of photography in commercial activities, issues related to copyright, privacy rights, and individual rights became increasingly complex. Photography, which often involves taking pictures of people in everyday situations, is now a staple in the creative, advertising, and media industries. The use of an individual's photo in a commercial context in the form of an advertisement, promotion, or marketing campaign may raise questions about legal protection for the individual who is the subject of the photo. This is important because the use of an individual's photo for commercial purposes can affect the copyright as well as the privacy rights of the person concerned.<sup>2</sup>

One form of creativity that has emerged is street photography, which is a genre of photography that documents the moments of daily life in public

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<sup>1</sup> Uha Suhaeruddin, "Hak Kekayaan Intelektual di Era Digital: Tantangan Hukum dan Etika dalam Perlindungan Karya Kreatif dan Inovasi," *Jurnal Hukum Indonesia* 3, no. 3 (12 Juli 2024): 122–28, <https://doi.org/10.58344/jhi.v3i3.888>.

<sup>2</sup> Sahal Farhian, "Analisis Yuridis Pelindungan Hukum Terhadap Orang Yang Dipotret Dalam Karya Fotografi Untuk Penggunaan Komersial Menurut Undang- Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Undergraduate thesis, Universitas Sumatera Utara, 2024), <https://repositori.usu.ac.id/handle/123456789/94624>.

spaces.<sup>3</sup> This becomes more complicated when discussing the legal status of the subject being photographed in relation to Intellectual Property Rights. In practice, the person who is the object of street photography cannot control the taking or use of the photo. When the photo is used for commercial purposes, the subject in the photo risks violating a person's right to privacy and individual rights. The regulations in the Copyright Law focus more on the protection of photographers' works and have not been able to pay attention to the rights of the subjects in the photos. This causes a legal loophole that can create uncertainty in the protection of individual rights in street photography.

Law Number 28 of 2014 concerning Copyright in Indonesia explicitly protects the moral and economic rights of creators. However, the arrangement does not include the protection of the rights of individuals who are an integral part of photographic works, particularly in the context of public documentation. This creates a legal vacuum that has the potential to lead to a violation of personal rights, especially when photos are used extensively without permission or without regard to the psychosocial impact on the subject. As stated by Tavani, *"Digital photography, particularly in public spaces, raises new ethical dilemmas because subjects may be recorded and distributed without meaningful consent"*.<sup>4</sup> The inequality of protection between the creator

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<sup>3</sup> DOSS, "Ini Dia Istilah-Istilah yang Ada di *Street Photography*," DOSS Camera & Gadget Store News, diakses 3 Oktober 2024, <https://www.doss.co.id/news/ini-dia-istilah-istilah-yang-ada-di-street-photography?amp=1>.

<sup>4</sup> Herman T. Tavani, *Informational Privacy: Concepts, Theories, and Controversies*, in *The Handbook of Information and Computer Ethics*, ed. Kenneth Einar Himma and Herman T. Tavani (Hoboken, NJ: Wiley, 2008), 131–164, <https://doi.org/10.1002/9780470281819.ch5>.

and the subject of the work is a legal dilemma that needs to be comprehensively reviewed.

As a member of the WTO (World Trade Organization), Indonesia has an obligation to comply with international regulations stipulated in the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights) which includes copyright protection and other related aspects.<sup>5</sup> Indonesia signed the Berne Convention for the Protection of Literary and Artistic Works as evidenced by Presidential Decree (Keppres) Number 18 of 1997.<sup>6</sup> The TRIPs Agreement, as affirmed in Article 9 paragraph (1), adopts the principles of the Berne Convention, including the moral rights of creators. However, the main focus of such international treaties remains on the protection of copyright rights, not the subject in the work. Although there has been harmonization of international norms, the implementation of the protection of the individual moral rights of the subject of the photograph remains dependent on the national regulations of each country.<sup>7</sup>

One of the important aspects of the copyright framework is moral rights which include the right to claim ownership of the work and the right to refuse distortion or degrading use of the work. In the Berne Convention (Article 6bis),

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<sup>5</sup> Christine S. T. Kansil dan Juan Joubert Immanuel Panelewen, "Menyeimbangkan Kewajiban Global Dan Kepentingan Nasional: Dampak Perjanjian Trips Terhadap Kebijakan Hak Paten di Indonesia", Jurnal Hukum Lex Generalis. Vol.5. No.4 (2024) Tema/Edisi: Hukum Perdata (Bulan Keempat) <https://jhlgr.rewangrencang.com/>

<sup>6</sup> Presiden Republik Indonesia, *Keputusan Presiden Republik Indonesia Nomor 18 Tahun 1997 tentang Pengesahan Berne Convention for the Protection of Literary and Artistic Works*, Lembaran Negara Republik Indonesia Tahun 1997.

<sup>7</sup> Hukumonline, "Peran *TRIPS Agreement* dalam Perlindungan Hak Kekayaan Intelektual", *Hukumonline*, diakses 24 Desember 2024, <https://www.hukumonline.com/klinik/a/peran-trips-iagreement-i-dalam-perlindungan-hak-kekayaan-intelektual-lt592407520f6f7/>.

moral rights are reserved for the creators of works of art, but they do not regulate the individual who is the subject of the work. This condition strengthens the notion that the current legal system is more in favor of the producer of the work than the human subject recorded in the work. The absence of explicit recognition of the moral rights of subjects in photographic works is a structural weakness in the intellectual property legal protection system in Indonesia.

The protection of moral rights in street photography in public spaces can also be studied through an Islamic perspective, especially in the concept of *Maslahah Mursalah*. Abdul Wahab Khallaf defines *maslahah mursalah* as everything that brings benefits, but does not have written evidence to support or reject it.<sup>8</sup> This concept provides the basis for the formulation of policies that are oriented towards the usefulness of the law as well as the protection of the moral rights of individuals. *Maslahah Mursalah* refers to the public interest that is not limited or not specifically regulated in the postulate. Referring to Imam Malik's theory, sharia aims to realize the common good, so that everything that provides benefits and prevents harm can become the source of Islamic law. Therefore, the principle of *maslahah mursalah* is very important in ensuring policies.<sup>9</sup> Although there are differences of opinion among scholars regarding *maslahah mursalah*, basically this concept refers to benefits that are in line with the purpose of the Shari'ah in general even though there is no specific evidence

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<sup>8</sup> Abdullah Wahab Khallaf, *Ilmu Ushulul Fiqh, terj. Noer Iskandar al-Bansany, Kaidah-Kaidah Hukum Islam*, Cet-8 (Jakarta: PT. Raja Grafindo Persada, 2002), 123.

<sup>9</sup> Moh. Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer*, 2nd ed. (Jakarta: Kencana, 2024).

that accepts or rejects it. The policy that is designed must consider the principle of *maslahah mursalah* in order to provide greater benefits to the community by minimizing the potential for harm.

Therefore, this research is very important to be conducted to understand how legislation in Indonesia can regulate the individual rights of subjects photographed in street photography activities in terms of legal vacuums.<sup>10</sup> Titled "Protection Of Individual Moral Rights From Street Photography Activities In Public Spaces: *Maslahah Mursalah* Perspective", this study aims to explore in depth existing legal regulations, evaluate the effectiveness of the protection of the moral rights of the photographed subjects, and provide recommendations for better regulatory improvements. This research is expected to make a significant contribution to the development of personal data protection laws and increase public awareness of the importance of privacy rights in the digital era.<sup>11</sup>

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<sup>10</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2022), 24.

<sup>11</sup> Rosadi, *Cyber Law Aspek Data Privasi Menurut Hukum Internasional, Regional dan Nasional* (Jakarta: Refika Aditama, 2015), 23.

## **B. Problem Formulation**

1. How is the legal protection of the moral rights of individuals in street photography activities in public spaces?
2. How does the legal protection of individual moral rights in street photography activities use the perspective of *maslahah mursalah*?

## **C. Research Objectives**

1. To find out the legal protection of the moral rights of individuals who are the subject of street photography in public spaces.
2. To find out the legal protection of the moral rights of individuals who are the subject of street photography in public spaces through the perspective of *maslahah mursalah*.

## **D. Research Benefits**

- a. Theoretical Benefits
  - a. This research can enrich the literature on the protection of a person's personal rights, especially in the context of *street photography*. It is important to understand how law and ethics interact in situations involving public spaces and individual privacy.
  - b. The results of the research can provide insight for policymakers in formulating or improving regulations related to the protection of



individual rights by taking into account the development of technology and the increasingly widespread practice of photography.

b. Practical Benefits

- a. This research can provide practical guidance for photographers, especially in understanding legal and ethical limitations when doing street photography in public spaces. This is important to prevent infringement of an individual's privacy rights.
- b. The results of the research can be used to increase public awareness of the importance of self-protection, as well as their privacy rights when photographed in public spaces. This education can help people better understand situations where their privacy may be threatened.

## E. Operational Definition

In order to be clearer and avoid misunderstandings and multiple interpretations, the author presents operational definitions to equalize the understanding used in this study, namely:

1. Individual Moral Right

The moral rights mentioned in Presidential Decree (Keppres) Number 18 of 1997 mentioned in Article 6bis are Moral Rights:<sup>12</sup>

- a. To claim authorship: to object to certain modifications and other derogatory actions.

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<sup>12</sup> Presiden Republik Indonesia, *Keputusan Presiden Nomor 18 Tahun 1997 tentang Pengesahan Berne Convention for the Protection of Literary and Artistic Works*, Lembaran Negara Tahun 1997 Nomor 29, 7 Mei 1997, <https://peraturan.bpk.go.id/Details/59571/keppres-no-18-tahun-1997>

b. After the author's death.

c. Means of redress.<sup>13</sup>

Moral rights in the legislation in Indonesia are specifically regulated in Law Number 28 of 2014 concerning Copyright (Copyright Law). Moral rights are rights that are eternally attached to the creator or creator of an intellectual work, which cannot be transferred even if the copyright to the work has been transferred or sold to another party. Moral rights provide protection for the integrity and reputation of the creator in relation to his or her work.

Based on Article 5 of the Copyright Law, moral rights include the right of the creator to keep his name on a copy of his work in the use of the work for the public. Prevent distortion, mutilation, or modification of his work that may harm the honor or reputation of the creator. Changing the title and content of the creation, in accordance with the provisions of laws and regulations. Maintains the right not to change or keep the name as it wishes.

## 2. Street Photography

Street photography is a type of photography that captures the moments of daily life in public spaces candidly or spontaneously. This activity aims to capture human interaction and the surrounding environment without any previous arrangements or scenarios. In this

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<sup>13</sup> Keputusan Presiden Republik Indonesia Nomor 18 Tahun 1997 tentang Pengesahan *Berne Convention for the Protection of Literary and Artistic Works* (Jakarta: Sekretariat Negara, 1997).

study, street photography will be understood as a practice that often involves human subjects who are unaware that they are being photographed, raising ethical questions about privacy and permission. Street photography activities in this study refer to the process of taking photos in public spaces that involve interaction with other individuals. This includes the techniques, approaches, and ethics used by photographers in capturing.

### 3. Publik Space

Public space is basically a forum that can accommodate community activities, both individually and in groups. According to Carr, public space is a space that is shared and accessible to all people, where people carry out their functional activities and rituals, both in daily life and in periodic celebrations. All people have the right to access public space, both physical and visual, because public space is a shared space that is used for the common good.<sup>14</sup> The judge in his research classified public spaces based on their nature, namely:

- a. Closed public spaces, which are public spaces that have a physical cover or are inside a building. Examples of closed public spaces are malls, museums, post offices and so on.
- b. Open public spaces, which are public spaces that do not have a physical covering or are outside the building, can also be referred to

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<sup>14</sup> Fifi Nur Afifah, *Juridical Review of the Use of CCTV as Evidence in the Criminal Investigation Process* (Thesis, Universitas Brawijaya, 2018), 16, <https://repository.ub.ac.id/162758>.

as open spaces. Examples of open public spaces are parks, squares and pedestrians.

## **F. Research Methods**

Research methodology is an effort to investigate and trace a problem by using scientific methods carefully and meticulously to collect, process, analyze data and draw conclusions systematically and objectively in order to solve a problem or test hypotheses to obtain knowledge that is useful for human life.<sup>15</sup>

What the author did in this study is as follows:

### **1. Type of Research**

This type of research is a type of normative juridical research. The normative juridical research method is literature law research conducted by examining literature materials or secondary data. This research was conducted to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject. In this study, we see the rampant violation of the fulfillment of the subjective rights of the photographed object to avoid unlawful acts on photographic works that are then used for commercial purposes without permission so as to make the person photographed disadvantaged in terms of economic rights and moral rights. In this case, it is studied through theories and laws relevant to this type of

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<sup>15</sup> Nazar Bakry, *Tuntunan Praktis Metodologi Penelitian* (Jakarta: Pedoman Ilmu Jaya, 1994).

research. This research can be used to draw legal principles in interpreting laws and regulations.<sup>16</sup>

## 2. Research Approach

In legal research, several approaches are included. The approaches used in this study are 2 (two) as follows:

### a. Statue Approach

This approach has the meaning of a research approach that is carried out by examining all laws and regulations related to the legal issues that are being handled by the researcher. The use of a legislative approach by reviewing Law Number 28 of 2014 concerning Copyright which regulates the protection of moral and economic rights for creators and owners of related rights. This law affirms that moral rights are eternally attached to the creator, including the right to be named and to prevent distortion, mutilation, or modification of his work that could harm his honor or reputation.

### b. Conceptual Approach

Legal research with this conceptual approach starts from the doctrines and views that have developed in legal science. By studying it, the researcher will find ideas and then he can give

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<sup>16</sup> M ukti Fajar Y Ahmad, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris* (Yogyakarta: Pustaka Belajar, 2010), 34.

birth to legal definitions, legal concepts, and legal principles that are relevant to the issue at hand.<sup>17</sup>

In this study, a conceptual approach is used to analyze how policies in Law Number 28 of 2014 concerning Copyright can be beneficial to society, especially for individuals involved in photographic works so that their moral rights are well protected. Using the theory of Legal Usefulness and Maslahah Mursalah, this study aims to ensure that the protection of moral rights in the Copyright Law can run in accordance with the expectations of the public, especially for the subjects contained in photographic works. In addition, this research also provides a deeper understanding of how legal principles and relevant concepts can increase the effectiveness of the protection of moral rights in accordance with the existing legal framework.

### 3. Legal Ingredients

The data sources in this study use legal materials or literature materials. The legal materials used in include:<sup>18</sup>

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<sup>17</sup> Annisa Fianni Sisma, "Menelaah 5 Macam Pendekatan dalam Penelitian Hukum," *Katadata*, diakses 18 Maret 2025, <https://katadata.co.id/berita/nasional/634ecdc698b51/menelaah-5-macam-pendekatan-dalam-penelitian-hukum>.

<sup>18</sup> Amiruddin Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 1 ed. (Jakarta: PT Raja Grafindo Persada, 2006), 31.

a. Primary Legal Material

Primary legal material is legal material that has authority (authoritative). The legal materials consist of: Laws and regulations, official records of minutes in the making of laws and regulations, judges' decisions. In this case, what is used as the main source is Law Number 19 of 2002 which was amended through Law Number 28 of 2014 concerning Copyright.

b. Secondary Legal Materials

It is all publications about law that are unofficial documents that are instructions or explanations of primary legal materials.<sup>19</sup> In this study, the secondary legal materials used are books, theses, legal dictionaries, and legal journals both at home and abroad.

c. Tertiary Legal Materials

It is a supporting material of primary and secondary legal materials or commonly referred to as non-legal materials. Non-legal materials can be in the form of books, journals and research reports on political science, economics and other disciplines, as long as they are relevant to the research object to be researched. In this study, what is used is a legal dictionary, encyclopedia, and large dictionary of the Indonesian language (KBBI).

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<sup>19</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2003). 23

#### 4. Legal Material Collection Techniques

The method of collecting legal materials used by the researcher is library research conducted by collecting primary, secondary, and tertiary materials related to the legal issues contained in this study. Next, it will be analyzed based on theories that can be used as guidelines. In addition, the author in this study also studies and cites legal materials from sources in the form of laws and regulations and literature related to this research. In addition, the author also conducts research by collecting legal materials through the internet, namely by accessing websites and journals published online related to legal issues in this research.

#### 5. Legal Material Analysis

The Legal Material Analysis Technique used by the author in managing legal materials is using a descriptive analysis method and is carried out with interpretation techniques. The interpretation used is a grammatical interpretation of laws and regulations. The use of descriptive legal material analysis techniques is due to the need for a comprehensive and in-depth depiction related to the protection of individual moral rights from street photography activities in public spaces.



## G. Previous Research

This research is not entirely new, as there have been various studies before. However, this study offers a different focus compared to previous studies, which are as follows:

1. Research by Uhu Suhaeruddin (2024) In his research entitled *"Intellectual Property Rights in the Digital Age: Legal and Ethical Challenges in the Protection of Creative Works and Innovation (Intellectual Property Right) "* states that creative and innovative works in the digital era need to be protected as intellectual property rights (IPR). This research explores key issues such as digital piracy, data privacy, and freedom of expression. With an interdisciplinary approach, it is hoped that this research can make a significant contribution in formulating innovative policies and solutions to maintain the sustainability of creativity and innovation in the midst of rapid technological advances.<sup>20</sup>
2. Research by Sahal Fahrian (2024) in his research entitled *"Juridical Analysis of Legal Protection of People Photographed in Photographic Works for Commercial Use According to Law Number 28 of 2014 concerning Copyright"* states that the regulation of photographic copyright according to Law Number 28 of 2014 concerning Copyright provides a strong foundation to provide comprehensive protection of

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<sup>20</sup> Uhu Suhaeruddin, "Hak Kekayaan Intelektual dalam Era Digital: Tantangan Hukum dan Etika dalam Perlindungan Karya Kreatif dan Inovasi (*Intellectual Property Right in The Digital Age: Legal and Ethical Challenges in The Protection of Creative Works and Innovations*)", Jurnal Hukum Indonesia <https://jhi.rivierapublishing.id/index.php/rp>

copyright in photography. The legal arrangement of photographic works for commercial use is that the photographer or person who uses the portrait with a human subject for commercial purposes must obtain prior permission from the person being photographed. This aims to ensure that the use of the portrait results does not violate the rights of the individual who is the subject of the portrait, so that there are no unlawful acts that can cause legal disputes in the future.<sup>21</sup>

3. Research by Ujang Badru Jaman, *et al.* (2021) in their research entitled "*The Urgency of Legal Protection for the Copyright of Digital Works*" states that in article 4 of the UUHC it states that copyright is an exclusive right which consists of moral rights and economic rights. Every individual exercising economic right must first obtain the approval of the creator or copyright holder. Legal protection efforts must be provided by law enforcement officials in accordance with applicable regulations.<sup>22</sup>
4. Research by Suci Rahmadani and Nuzul Rahmayani (2024) in their research entitled "*Legal Remedies Against Commercialization of Photographic Works Without Permission*" states that the protection of photography copyright that is uploaded on Instagram from the perspective of the UUHC must obtain written permission from the

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<sup>21</sup> Sahal Fahrian, "Analisis Yuridis Pelindungan Hukum Terhadap Orang yang Dipotret dalam Karya Fotografi untuk Penggunaan Komersial Menurut Undang - Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Undergraduate thesis, Universitas Sumatera Utara, <https://repositori.usu.ac.id/handle/123456789/94624>)

<sup>22</sup> Ujang Badru Jaman, *dkk*, "Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital", Jurnal Rechten, Vol 3, No.1 (2021)

copyright holder or certificate holder. There are 2 legal remedies, namely preventive and repressive. The legal provisions for resolving copyright disputes if commercialized without permission can be pursued through litigation (court) and non-litigation (negotiation) channels.<sup>23</sup>

5. Research by Putu Rahayu Purnamasari, et al. (2020) in their research entitled "*Legal Protection of Copyrights of Photographic Works Used Without Permission*" stated that infringement of copyrighted works often occurs, but there are still many photographers who do not understand copyright and even do not know about copyright and the legal provisions that govern and protect it and do not register their creations with the Directorate General of IPR. So, the problem that can be studied is how to protect the legal protection of the rights of the creators of photographic works and what legal remedies can be taken by the creator of photographic works that are used without permission by others.<sup>24</sup>

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<sup>23</sup> Suci Rahmadani dan Nuzul Rahmayani, "Upaya Hukum Terhadap Perbuatan Komersialisasi Karya Fotografi tanpa Izin", *Journal of Law Nation*, Vol.3 No.3 (2024)

<sup>24</sup> Putu Rahayu Purnamasari, dkk, "Perlindungan Hukum Terhadap Hak Cipta Karya Fotografi Yang Digunakan Tanpa Izin", *Jurnal Konstruksi Hukum*, Vol. 1, No. 1, September 2020, <https://doi.org/10.22225/jkh.1.1.2159.203-208>

**Tabel 1.1**

No	Researcher Name and Research Title	Research Results	Equation	Difference
1	Uhu Suhaeruddin  in his research  entitled  <i>Intellectual Property Rights in the Digital Era: Legal and Ethical Challenges in the Protection of Creative Works and Innovation (Intellectual Property Right) in The Digital Age: Legal and Ethical Challenges in The Protection of Creative Works and Innovations)</i>	Stating that creative and innovative works in the digital era need to be protected as intellectual property rights (IPR). This research explores key issues such as digital piracy, data privacy, and freedom of expression, and discusses their practical implications for innovation and creativity in an increasingly connected digital	The similarity of this research is that they both examine the development of intellectual property rights in the protection of works	The focus of this research is on the challenges of protecting Intellectual Property Rights (IPR) in the digital era, with an emphasis on legal and ethical issues related to creative works and innovations. This research explores the vulnerability of digital content, software, and new technologies to

		<p>society. With an interdisciplinary approach, it is hoped that this research can make a significant contribution in formulating innovative policies and solutions to maintain the sustainability of creativity and innovation in the midst of rapid technological advances.</p>		<p>copyright infringement, data theft, and patent infringement. In addition, the study adopts an interdisciplinary approach to highlight the need for adaptation within the legal framework to address issues such as digital piracy and privacy violations.</p>
2	<p>Sahal Fahrian in his research entitled <i>Juridical Analysis of Legal</i></p>	<p>Stating that the regulation of photography copyright according</p>	<p>The similarity of this research lies in its focus</p>	<p>The regulation of photography copyright according to</p>

	<i>Protection of People Photographed in Photographic Works for Commercial Use According to Law Number 28 of 2014 concerning Copyright</i>	to Law Number 28 of 2014 concerning Copyright is Law Number 28 of 2014 concerning Copyright in Indonesia provides a strong foundation to provide comprehensive protection of copyright in photography. The legal arrangement of photographic works for commercial use is that the photographer or person who uses the portrait with a human subject for commercial	which both discuss the development of intellectual property rights in the context of protecting these rights.	Law Number 28 of 2014 concerning Copyright is Law Number 28 of 2014 concerning Copyright in Indonesia provides a strong foundation to provide comprehensive protection of copyright in photography. The legal arrangement of photographic works for commercial use is that the
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		<p>purposes must obtain prior permission from the person being photographed. This aims to ensure that the use of the portrait results does not violate the rights of the individual who is the subject of the portrait, so that there are no unlawful acts that can cause legal disputes in the future.</p>		<p>photographer or person who uses the portrait with a human subject for commercial purposes must obtain prior permission from the person being photographed.</p>
3	<p>Ujang Badru Jaman, et al in his research entitled <i>The Urgency of Legal Protection of</i></p>	<p>Stating that in article 4 of the UUHC it states that copyright is an exclusive right</p>	<p>This research has similarities, namely both discuss the</p>	<p>This research explains that copyright is an exclusive right which consists</p>

	<i>Digital Works Copyright</i>	which consists of moral rights and economic rights. Every individual exercising economic right must first obtain the approval of the creator or copyright holder. Legal protection efforts must be provided by law enforcement officials in accordance with applicable regulations.	development and protection of intellectual property rights.	of moral rights and economic rights. Every individual exercising economic right must first obtain the approval of the creator or copyright holder. Legal protection efforts must be provided by law enforcement officials in accordance with applicable regulations.
4	Suci Rahmadani and Nuzul Rahmayani In his research entitled	Stating that the protection of photographic copyright that is up	The similarity of this research is that both discuss	This study explains that the protection of photography



	<p><i>Legal Remedies Against the Commercialization of Photographic Works without Permission</i></p>	<p>on Instagram from the perspective of the UUHC must obtain written permission from the copyright holder or certificate holder.</p> <p>There are 2 legal remedies, namely preventive and repressive. The legal provisions for resolving copyright disputes if commercialized without permission can be pursued through litigation (court) and non-litigation (negotiation) channels.</p>	<p>the development and protection in the realm of intellectual property rights.</p>	<p>copyrights that are uploaded on Instagram from the perspective of the UUHC must obtain written permission from the copyright holder or certificate holder. There are 2 legal remedies, namely preventive and repressive. The legal provisions for resolving copyright disputes if commercialized without</p>
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				<p>permission can be pursued through litigation (court) and non-litigation (negotiation) channels.</p>
5	<p>Putu Rahayu Purnamasari, et al.</p> <p>In his research entitled <i>Legal Protection of Copyrights of Photographic Works Used Without Permission</i></p>	<p>Stating that infringement of copyrighted works often occurs, but there are still many photographers who do not understand and do not even know about copyright and the legal provisions that govern and protect it and do not register their creations with the Directorate</p>	<p>The similarity of this research lies in the discussion of the development and protection of intellectual property rights.</p>	<p>This study states that infringement of copyrighted works often occurs, but there are still many photographers who do not understand or even do not know about copyright and the legal provisions that</p>

		<p>General of IPR. So, the problem that can be studied is how to protect the legal protection of the rights of the creators of photographic works and what legal remedies can be taken by the creator of photographic works that are used without permission by others.</p>		<p>govern and protect it and do not register their creations with the Directorate General of IPR. So the problem that can be studied is how to protect the legal protection of the rights of the creators of photographic works and what legal remedies can be taken by the creator of photographic works that are used without permission by others.</p>
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Based on the explanation above, the research that will be carried out is different from the previous research because the focus of this research is that the researcher sees a legal vacuum (vacuum of law) in the aspect of protecting moral rights in street photography activities, while the previous research focused more on legal protection for creators or copyright holders, so that it is expected to provide new results and perspectives that are more relevant to the current condition. The current condition sees an increasing violation of individual rights.

## **H. Discussion Systematics**

The systematic of discussion in research is needed to make easier to understand the content and direction of research entitled *Protection Of Individual Moral Rights From Street Photography Activities In Public Spaces: Maslahah Mursalah Perspective* to facilitate the discussion, the author will use the following writing systematics:

**CHAPTER I** Introduction, in this chapter contains the background of the problem, problem formulation, research objectives, research benefits, research methods, previous research and writing systematics that function to provide an overview of the research to be carried out.

**CHAPTER II** Literature Review, this chapter contains a description of concepts and theoretical frameworks that aim to study and analyze problems, especially those related to street photography activities in public spaces based

on copyright laws and related to other research themes. The foundation of these concepts and theories will later be used in analyzing every problem raised in the research.

**CHAPTER III** Research Results and Discussions, this chapter contains the results of research analysis obtained from the field through research methods. This chapter also describes the theory that is the basis for the analysis of the title *"Protection Of Individual Moral Rights From Street Photography Activities In Public Spaces: Maslahah Mursalah Perspective"*.

**CHAPTER IV** Closing, the last chapter contains conclusions, suggestions or recommendations. The conclusion presents in a concise manner all the research findings that are related to the research problem. Suggestions as proposals or recommendations to parties related to the research.

## CHAPTER II

### LITERATURE REVIEW

#### A. Intellectual Property Rights

Intellectual Property Rights (IPR) are exclusive rights granted to creators or inventors of their intellectual works. IPR provides legal protection for works produced from human thought, creativity, and innovation. In this study, it is used to analyze street photography. The explanation is as follows:

##### 1. Definition of Intellectual Property Rights

Intellectual Property Rights (IPRs) are economic rights granted by law to a creator or inventor of a work of human intellectual ability. WIPO (World Intellectual Property Organization), an international institution under the United Nations that focuses on IPR issues, provides the following definition: *"Intellectual property (IP) refers to creations of the mind. inventions, literary and artistic works, and symbols, names, images, and designs used in commerce"*.<sup>25</sup>

The definition explains that intellectual property is the result of creative thinking that includes: inventions, literary and artistic works, as well as symbols, names, images, and designs used in trading activities. IPR is a type of intangible movables that was first known in countries with an Anglo-Saxon legal system (common law system). IPR can be said to be an object (zaak in dutch) as it is known in civil law. According to L.J. Van

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<sup>25</sup> Khairul Hidayah, *Hukum Hak Kekayaan Intelektual*, (Malang: Setara Press, 2020), 65.

Apeldorn, objects in the juridical sense are legal objects.<sup>26</sup> An object of law is anything that a legal subject (a person or legal entity) can use and can be an object in a legal relationship, because that thing (object) can be controlled by a legal subject.<sup>27</sup>

Based on this definition, an object can be interpreted as anything that can be used as a legal object or can be owned by a person according to the law and has economic value. Therefore, IPR as an object is an asset that can be transferred to other parties either through buying and selling, inheritance, grants, or special agreements such as licenses. A license agreement that is often used in the transfer of IPR is an agreement to grant the right to use IPR such as information from a system or technology, the use of logos, trademarks, trade names, patents, or trade secrets. In return, the licensee provides payment in the form of royalties, fees, or premiums to the licensor. This Agreement generally gives the licensee the exclusive right to exploit the economic value of such IPR.

## 2. Intellectual Property Rights Branch

The IPR branch generally refers to TRIPs (Trade Related Aspects of Intellectual Property Organization), which is an agreement that regulates the provisions of IPR under the WTO (World Trade Organization). Some

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<sup>26</sup> Apeldoorn L.J. Van, *Pengantar Ilmu Hukum, Terjemahan Oetarid Sadino* (Jakarta: Pradnya Paramit, 1980).

<sup>27</sup> Tutik Titik Triwulan, *Hukum Perdata Dalam Sistem Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2008).

of the main elements of protection according to TRIPs have seven branches, including:<sup>28</sup>

- a. copyrights and related rights
- b. trade marks
- c. geographical indicators
- d. industrial design
- e. patents
- f. design of integrated circuits
- g. Protection of Undisclosed Information

The IPR branch generally refers to TRIPs (Trade Related Aspects of Intellectual Property Organization), which is an agreement that regulates the provisions of IPR under the WTO (World Trade Organization). Some of the main elements of protection according to TRIPs have seven branches, including:<sup>29</sup>

- a. Copyright

It is a branch of IPR that protects human creations in the fields of art, literature and science. Based on Law Number 28 of 2014 concerning Copyright, copyright is the exclusive right that the creator or copyright holder has to announce or reproduce his creation. This copyright arises automatically based on the declarative principle after a work is realized in a tangible form

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<sup>28</sup> Siti Munawaroh, "Peranan Trips (Trade Related Aspects of Intellectual Property Rights) terhadap Hak Atas Kekayaan Intelektual di Bidang Teknologi Informasi di Indonesia," no. 1 (2006).

<sup>29</sup> World Trade Organization, "Intellectual Property (TRIPS) – Overview: the TRIPS Agreement," diakses 28 Maret 2025, [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).



without reducing restrictions in accordance with the provisions of laws and regulations.<sup>30</sup>

b. Patent Industry Property Rights

According to Law Number 13 of 2016 concerning Patents, patents are exclusive rights granted by the state to inventors for the results of their inventions in the field of technology. This right applies for a certain period of time, during which the inventor can carry out his invention himself or give permission to another party to carry it out.

c. Brand

According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, a trademark is a mark that has a distinguishing power and is used in the trade of goods or services. A brand can be an image, name, word, letters, numbers, color scheme, or a combination of these elements.

d. Industrial design

According to Law Number 31 of 2000, industrial design is a creation consisting of shapes, configurations, line compositions, colors, or combinations that can be realized in the form of two or three dimensions. Industrial design can be used to produce products, industrial commodity goods, or handicrafts. Industrial

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<sup>30</sup> Direktorat Jenderal Kekayaan Intelektual. "Pengenal hak cipta". Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia. diakses 29 September 2024, <https://dgip.go.id/menu-utama/hak-cipta/pengenal>

design rights are exclusive rights given to designers over their creations. This right is valid for a certain period of time and can be exercised alone or granted to another party.

e. Integrated Circuits

According to Law Number 32 of 2000 concerning Integrated Circuit Layout Design, an integrated circuit is a product consisting of various elements, at least one of which is the active element. The elements are interconnected and formed in an integrated manner in the semiconductor material to produce electronic functions.

f. Layout Design

According to Law Number 32 of 2000 concerning Integrated Circuit Layout Design, layout design is a three-dimensional laying design of various elements in an integrated circuit. The element must be at least one of them an active element.

g. Trade Secrets

According to Law Number 30 of 2000 concerning Trade Secrets, trade secrets are information that is unknown to the general public, of economic value, useful in business activities, and maintained confidential by the owner of the scope of trade secrets which includes production methods, processing methods, sales methods, other information in the field of technology and/or business.

#### h. Plant Varieties

According to Law Number 29 of 2000 concerning the Protection of Plant Varieties, plant varieties are a group of plants that have certain characteristics that distinguish them from the same type or species of plant. These characteristics include plant shape, growth, leaves, flowers, seeds, and genotype expression. Plant Variety Protection (PVP) is an intellectual property right granted to plant breeders. This right gives plant breeders exclusive control over propagation materials and harvested material from new crop varieties.

#### B. Maslahah Mursalah

Maslahah etymologically is the singular word from *al-masalih* which is the same as the wrong word which is to bring goodness. Sometimes another term is also used, namely *al-islilah* which means to seek goodness. It is not uncommon for the word maslahah or istislah to be accompanied by the word *al-munasib* which means things that are suitable, appropriate, and appropriate for use.<sup>31</sup> From some of these meanings, it can be taken that everything that contains benefits in it is either to obtain benefits, goodness, or to reject harm, then all of them are called maslahah. Because all the goodness in this case is also associated with maqasid sharia.<sup>32</sup>

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<sup>31</sup> H.M.Hasbi Umar, *Nalar Fiqh Kontemporer* (Cet. I; Jakarta: Gaung Persada Press, 2007), 112.

<sup>32</sup> Faishal Agil Al Munawar, “‘*Abd Al-Majīd Al-Najjār’s Perspective on Maqāṣid Al-Sharī’ah*”, *Jurnal Ilmiah Syari’ah* 20, no. 2 (Juli–Desember 2021): 215.

In the context of the study of ushul fiqh, the word has become a technical term that means the various benefits intended by sharia in the determination of law for His servants which include the purpose of maintaining religion, soul, intellect, descent, and wealth, as well as preventing things that can cause a person to escape from these five interests. Maslahah is one of the methods of analysis used by ushul fiqh scholars in determining laws whose problems are not explicitly regulated in the Qur'an and al-Hadith. It's just that this method emphasizes more on the direct benefit aspect.<sup>33</sup>

According to Mustafa asy-Syalabi maslahah is divided into three types, namely:<sup>34</sup>

1. Maslahah Mu'tabarah

Maslahah mu'tabarah refers to a form of benefit that is explicitly recognized and supported by the sharia, both in terms of type and form. This recognition is usually based on the existence of special postulates that are the basis for the legitimacy of the benefit. For example, in terms of sanctioning the perpetrators of drinking alcohol, there is a difference in understanding among fiqh scholars regarding the form of punishment set by the Prophet Muhammad SAW. In one narration, it is stated that the Prophet used sandals or footwear to hit 40 times (HR. Ahmad bin Hanbal and al-Baihaqi), while other

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<sup>33</sup> Zulfaqar Muhammad, "Maslahah dalam Perspektif Hukum Islam," *Qawainijih: Jurnal Syariah dan Hukum* 1, no. 2 (Desember 2023): 137, <https://jurnal.fh.umi.ac.id/index.php/qawainijih/article/download/406/145/>.

<sup>34</sup> Ali Topan Lubis and Tuti Anggraini, "Penerapan Konsep Maslahah dalam Kegiatan Ekonomi Islam," *Jurnal Ilmiah Ekonomi Islam dan Bisnis (JIBF)* 2, no. 1 (Februari 2022): 130–145, <https://jurnal.stain-madina.ac.id/index.php/jibf/article/download/683/661/>.

narrations mention the use of date fronds in equal quantities (HR. Bukhari and Muslim).<sup>35</sup>

As time went by, Caliph Umar bin Khattab held deliberations with the companions to adjust the more appropriate form of sanctions. The results of the deliberations determined that the perpetrators of drinking liquor were punished 80 times. This adjustment is based on qiyas, which is by equating a liquor perpetrator with a person who accuses adultery without evidence. The reason is that people who are drunk tend to lose control over their speech and behavior, so they are more likely to accuse others of adultery. This is explained in QS An-Nur (24):4 which reads:

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

Meaning: *"And those who accuse good women of adultery and they do not bring four witnesses, then they (accuse them) eighty times, and do not accept their testimony forever. And they are the wicked ones."* (QS An-Nur 24:4)

This verse describes the punishment of a person who accuses a woman of adultery without the support of four legitimate witnesses. This concept was then analogized by Umar bin Khattab and Ali bin

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<sup>35</sup> Maskur Rosyid dan Anwar Hafidzi, "Paradigma dan Alienasi Konsep Maslahat Al-Tufi sebagai Legalitas Sumber Syariah," Al-Banjari: *Jurnal Ilmiah Ilmu-Ilmu Keislaman* 19, no. 2 (15 Desember 2020): 170–185, <https://doi.org/10.18592/al-banjari.v19i2.3823>.

Abi Talib in determining the punishment for people who drink liquor. They both argue that the punishment for a drinker should be equivalent to that for a person who accuses adultery without valid evidence, based on the assumption that a drunk person is likely to lose control over his speech and behavior, which can lead him to accuse others of adultery.<sup>36</sup>

The scholars of the fiqh proposal view the application of qiyas like this as a form of benefit supported by the sharia. According to scholars, the benefits that are recognized and supported by sharia can be used as a basis for establishing the law.

## 2. Maslahah Mulgah

Maslahah mulgah refers to a form of benefit that is rejected by the shari'a because it is contrary to the stronger provisions of sharia'. One example that can be explained is the punishment applied to people who have sexual intercourse during the day during the month of Ramadan. In the hadith of the Prophet Muhammad SAW, there is a provision that a person who violates the fast in this way must serve punishment in the form of freeing slaves, fasting for two consecutive months, or feeding 60 poor people (HR. Bukhari and Muslim).

Al-Lais bin Sa'ad, a scholar of Maliki jurisprudence in Spain, proposed a punishment of fasting for two consecutive months for a

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<sup>36</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, (Jakarta: Yayasan Penyelenggara Penterjemah Al-Qur'an, 1984), h. 543 544.

ruler who had sexual intercourse with his wife during the day of Ramadan. This opinion has received criticism from scholars, because it contradicts the order of punishment that has been established in the sharia. The punishment must be applied sequentially, where if a person is unable to free a slave, then he is obliged to fast for two months in a row. Therefore, the opinion that prioritizes the punishment of fasting for two consecutive months over freeing slaves is considered incompatible with the principles of sharia', and is therefore considered to be a benefit that is rejected by the sharia.

### 3. Maslahah Mursalah

Maslahah mursalah is a method of ijtiḥad used in determining the law. This concept is related to maqasid shari'ah, which aims to realize a fundamental law (daruri).<sup>37</sup> Meanwhile, the concepts of maṣlahah and mafsadat in Islam as studied by Akbar Sarif and Ridzwan bin Ahmad are interesting topics to be studied further, because they can be applied in various contemporary problems.<sup>38</sup>

There are different views among scholars regarding the validity of Maslahah Mursalah as a source of law. The Maliki school accepts and uses it as a stand-alone method of ijtiḥad, arguing that the sharia aims to realize the benefits of humans. On the other hand, the Shafi'i school argues that Maslahah

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<sup>37</sup> Muhammad Agung Ilham Affarudin, "Implementasi Peraturan Bupati Gunungkidul Nomor 36 Tahun 2015 tentang Pencegahan Perkawinan pada Usia Anak dalam Perspektif Maslahah Mursalah," *Al-Hukama'* 9, no. 1 (2019): 122, <https://doi.org/10.15642/alhukama.2019.9.1.103-129>.

<sup>38</sup> Aji Baskoro, "Presidential Threshold di Indonesia dalam Perspektif Maslahah Mursalah," *Legislatif*, no. 2 (2019): 41, <https://journal.unhas.ac.id/index.php/jhl/article/view/10218>.

Mursalah can be used as a legal postulate, but it cannot stand alone and must be supported by other postulates such as *nash* or *ijma'*.<sup>39</sup>

Maslahah Mursalah has several main conditions in order to be accepted as a legal basis in Islam. The conditions are:

1. The benefits in question must be real and acceptable to common sense, and really provide benefits to society.
2. Maslahah Mursalah should not contradict the shari'i evidence that already exists in the Qur'an and Hadith. If a benefit is contrary to the principles of the Shari'a, then it cannot be used as a legal basis.
3. These benefits must be universal, not only for the benefit of certain groups, but applicable to all Muslims in general.

These conditions are the basis for scholars to consider whether a law taken based on Maslahah Mursalah is acceptable in the Islamic legal system.<sup>40</sup>

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<sup>39</sup> Tjut Intan, "Kontroversi Maslahah Mursalah dalam Hukum Islam," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 1 (2022): 45-60, <https://aljamiah.or.id/index.php/AJIS/article/view/3362>[(<https://aljamiah.or.id/index.php/AJIS/article/view/3362>)]

<sup>40</sup> Siti Aminah Najmudin dan Muhajirin, "Implementasi Maslahah Mursalah dalam Ekonomi Syariah," *Taraadin: Jurnal Ekonomi Islam* 7, no. 1 (2023): 98-112, <https://jurnal.umj.ac.id/index.php/taraadin/article/view/20785>[(<https://jurnal.umj.ac.id/index.php/taraadin/article/view/20785>)]



## CHAPTER III

### RESULTS OF RESEARCH AND DISCUSSION

#### A. Analysis of Legal Protection of Individual Moral Rights in *Street Photography* in Indonesia

Street photography is the art of capturing moments of everyday life. It is an art form of photography that focuses on capturing spontaneous moments in public spaces, generally without the explicit consent of the individual who is the subject of the photograph. The main characteristic of this practice is its candid nature, where images are taken without deliberate posing and often without the subject being aware of it.<sup>41</sup> In addition, street photography has a contextual nature as it captures various aspects of daily life, social interactions, and the dynamics of the urban environment as it is.<sup>42</sup> The artistic value in this genre is also quite prominent through the use of visual composition and strong narrative as a means to convey messages, stories, or emotional expressions.<sup>43</sup> As everything happens spontaneously on the streets, this is what attracts photographers to pursue making each shoot an exciting adventure.<sup>44</sup>

In Indonesia, the development of street photography has increased rapidly along with the widespread use of social media platforms such as Instagram

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<sup>41</sup> John Hadley, "Street photography Ethics," *Ethical Theory and Moral Practice* 25, no. 4 (September 1, 2022): 529–40, <https://doi.org/10.1007/s10677-022-10316-6>.

<sup>42</sup> International Center of Photography, "What Is *Street photography*?" 2020, diakses 2 Mei 2025, <https://www.icp.org/browse/archive/constituents/what-is-street-photography>.

<sup>43</sup> John Smith, *Seni Fotografi Jalanan* (Jakarta: Penerbit Gramedia, 2020), 45.

<sup>44</sup> Eraspace. "Ketahui Apa Itu *Street Photography* dan Bagaimana Menggunakannya." Diakses pada 10 April 2025. <https://eraspace.com/artikel/post/ketahui-apa-itu-street-photography-dan-bagaimana-menggunakannya>.

which makes it easier for photographers to share their work with a wide audience.<sup>45</sup> However, this practice often raises legal problems due to the absence of regulations that explicitly regulate the limits of shooting in public spaces. In general, the act of taking a photo of someone without their consent can be considered problematic because it violates the individual's right to control how they are represented. As Bell once said, representations that don't conform to one's will are not just about aesthetics or privacy, but also about who they are in the eyes of themselves and others.<sup>46</sup> In addition, the dissemination of photos without consent has the potential to have psychological and social impacts on the subject such as stigmatization or violations of personal dignity.<sup>47</sup>

Copyright includes several types of rights including economic rights and moral rights. Economic rights in article 8 of the Copyright Law are the exclusive rights of the Creator or Copyright Holder for the Work. Article 12 also explains that everyone is prohibited from commercially using, reproducing, announcing distribution, and/or communicating the portrait he or she has made for the purpose of advertising or commercial advertising without the written consent of the person being photographed or his/her heirs. For commercial use, the reproduction, announcement, distribution, and/or

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<sup>45</sup> Kementerian Komunikasi dan Informatika Republik Indonesia, *Laporan Survei Internet APJII 2023* (Jakarta: Kominfo, 2023), 23, diakses 2 Mei 2025, <https://apjii.or.id/>

<sup>46</sup> Bell, M., "Respecting Photographic Subjects," in *Portraits and Philosophy*, ed. Hans Maes (London: Routledge, 2019), 287–301.

<sup>47</sup> Hz, Evi D. "Perlindungan Hukum terhadap Anak dari Konten Berbahaya dalam Media Cetak dan Elektronik." *Jurnal Ilmu Hukum Riau*, vol. 3, no. 2, 2012.

communication of portraits must require the consent of the person in the portrait or his heirs.

Therefore, legal protection is indispensable to ensure that the rights of creators are protected and can be a tool to resolve disputes that may arise between copyright owners and infringing parties. Meanwhile, moral rights refer to rights that cannot be revoked or erased even if the copyright or its connection has been transferred to another party and this right remains attached to the creator.<sup>48</sup>

According to Lovelly Dwina Dahren in her research entitled *"Legal Protection of Copyright Holders Based on Law Number 28 of 2014 concerning Copyright"*, explained that one of the purposes of copyright protection is to protect the moral and economic rights of creators over the works they produce.<sup>49</sup> Based on this research, copyright protection must be seen not only as a legal tool to enforce the ownership of works. As an important foundation in maintaining a balance between economic incentives and respect for the integrity of the work and the identity of the creator. Economic rights serve as a driver of creativity through the protection of financial benefits, while moral rights guarantee recognition of work and prevent abuse that can damage one's reputation. Therefore, effective copyright regulation must integrate these two

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<sup>48</sup> Luh Mas Putri Pricillia and I Made Subawa, "Akibat Hukum Pengungkapan Karya Cipta Film Tanpa Izin Pencipta Di Media Sosial," *Kertha Semaya: Journal Ilmu Hukum*, 6, no. 11 (2018): 1–15.

<sup>49</sup> Lovelly Dwina Dahren, "Perlindungan Hukum Terhadap Pemegang Hak Cipta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" *Eksekusi*, Vol. 3 No. 2 Desember 2021

aspects simultaneously to create an innovation ecosystem that is fair, sustainable, and respects the rights of creators.

Moral rights are rights that are personally inherent in the creator and the subject in the work, are non-transferable and irrevocable. This right includes recognition of the authorship of the work as well as the protection of the integrity of the work and the reputation of the subject recorded in it. In the practice of street photography, moral rights are very important because they involve respect for the dignity and honor of the individual who is the object of the photo. Meanwhile, economic rights give photographers exclusive rights to financially utilize works such as commercial and reproduction uses. This right encourages the sustainability of the photography profession and art innovation. Therefore, legal protection of these two rights must be balanced so as not to harm both the creator and the subject of the photo.

Law Number 24 of 2014 concerning Copyright is expected to be present to protect violations and the rights of creators which is in accordance with the theory of legal protection according to Fitzgerald, as quoted by Satjipto Raharjo, legal protection is to provide protection for Human Rights that are harmed by others and that protection is given to the public so that they can enjoy all the rights provided by law.<sup>50</sup> The Copyright Law should be a correction to the weaknesses of the legal system to protect creators, copyright

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<sup>50</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: PT. Citra Aditya Bakti, Bandung, 2000), 54.

holders, and related rights owners. Copyright law must be a pro-justice law, that is, a law that provides justice.<sup>51</sup>

The regulation of privacy in international human rights law is first regulated in the Universal Declaration of Human Rights (DUHAM) in article 12 which states: *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attack.”*<sup>52</sup>

In the practice of street photography, the resulting works often record individuals spontaneously in public spaces without obtaining the direct consent of the subject being photographed. This condition has the potential to cause violations of the moral rights and privacy rights of individuals who are the object of photography. Moral rights as stipulated in Law Number 28 of 2014 concerning Copyright and based on the principles of the Berne Convention, demand recognition of the authorship of the work while guaranteeing the protection of the integrity of the work and the reputation of both the creator and the subject of photography. The unauthorized use of photographs, adverse dissemination, or modifications that remove the original context of the work can degrade the dignity and reputation of the subject, potentially violating the

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<sup>51</sup> Karina Putri and Nahrowi Nahrowi, “Pelanggaran Hak Cipta Karya Fotografi di Media Daring Menurut Hak Kekayaan Intelektual,” *Journal of Legal Research* 2, no. 1 (June 25, 2020), <https://doi.org/10.15408/jlr.v2i1.16174>.

<sup>52</sup> United Nations, Universal Declaration of Human Rights, art. 12, <https://www.un.org/en/universal-declaration-human-rights/>.

rights of privacy and honor guaranteed by the Universal Declaration of Human Rights.

A study conducted by Kevin J. O'Connor emphasized that advances in digital technology and ease of distribution through social media platforms increase the risk of violating privacy rights and moral rights in the field of photography, especially street photography.<sup>53</sup> They emphasized the need for the development of comprehensive regulations to strike a balance between freedom of expression and protection of human rights. In the context of Indonesian law, there is a vacuum or ambiguity of regulations that specifically regulate the protection of the moral rights and privacy of subjects in street photography which ultimately poses significant challenges in law enforcement in this area.

More binding arrangements are outlined in the International Covenant on Civil and Political Rights (*Sipol Convention*) which is regulated in Article 17 which states:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.<sup>54</sup>

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<sup>53</sup> Kevin J. O'Connor and Emma K. Thompson, "Photography, Privacy, and the Law," in *Legal and Ethical Issues in Photography*, ed. Sarah M. Collins (San Diego: Academic Press, 2013), 123–145, <https://doi.org/10.1016/B978-0-12-386543-4.00007-9>.

<sup>54</sup> United Nations, International Covenant on Civil and Political Rights, art. 17, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

The protection of the right to privacy through laws and regulations provides an opportunity for every individual to regulate the collection, access, and use of their personal data by both government agencies and private companies. The application of legal protection to business aspects, especially brands, must also be touched by legal protection theories that directly protect human rights. The adherents of this school view that law and morality are internal and external reflections and rules of human life that are manifested through law and morality.<sup>55</sup>

Economic rights in practice refer to the exclusive right held by photographers to derive financial benefits from the photographic work produced, including through utilization in commercial contexts such as advertising or promotion.<sup>56</sup> Based on the provisions of Article 12 of Law Number 28 of 2014 concerning Copyright, any commercial use of photographic works that depicts individuals as subjects must be accompanied by written permission from the subject concerned.<sup>57</sup> Violation of these provisions may have legal consequences in the form of an obligation to compensate materially, as stipulated in Article 96 of the Copyright Law.

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<sup>55</sup> Muhammad Thariq Zaen Sembiring, Tri Reni Novita, dan Zamalludin Sembiring, "Perlindungan Hukum Bagi Karya Fotografi (Berdasarkan Undang-Undang Hak Cipta No 28 Tahun 2014) Kementerian Hukum dan Hak Asasi Manusia," *Jurnal Ilmu Hukum* 3, no. 1 (2022): 1–11.

<sup>56</sup> Wendelina Ernatudera, Arief Syahrul Alam dan Andy Usmina Wijaya, "Tinjauan Yuridis Perlindungan Hak Moral Pencipta Berdasarkan Undang-Undang No.28 Tahun 2014," *Jurnal Ilmu Hukum Wijaya Putra*, Vol 1 No.2, September (2023).

<sup>57</sup> Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta, Pasal 12, Lembaran Negara Republik Indonesia Tahun 2014 Nomor 298.

Copyright Law.<sup>58</sup> The case experienced by Edi Santoso highlights the weakness of the legal system in protecting the moral rights of photo subjects which also has an impact on the enforcement of the economic rights of photographers. Inadequate protection of moral rights can interfere with the continuity of economic rights because the subject may reject the use of works that are detrimental to him. Therefore, strengthening regulations that integrate the protection of moral and economic rights in a balanced manner is crucial to ensure legal protection, legal certainty and justice for all parties involved in the practice of street photography.

Legal protection is a universal concept in the rule of law. Fundamentally, legal protection is divided into two main forms, namely preventive and repressive legal protection. Preventive legal protection refers to preventive efforts aimed at avoiding the occurrence of violations. In this context, preventive legal protection has an important role, especially in government actions that are based on freedom of action, because its existence encourages the government to be more careful in making decisions. The implementation of this form of protection is reflected in laws and regulations that function as a mechanism to prevent violations and set limits on the implementation of obligations. Meanwhile, repressive legal protection functions as a mechanism for resolving disputes arising from violations, where the protection is

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<sup>58</sup> Subroto Dwi Nugroho, "Masih Ingat dengan Sosok Pria yang Gendong Bayi Sambil Merokok Jadi Foto Sampul? Kini Keadilan, Laporannya Tak Digubris," Disway.id, 5 Februari 2023, <https://disway.id/read/682662/masih-ingat-dengan-sosok-pria-yang-gendong-bayi-sambil-merokok-jadi-foto-sampul-kini-ia-menuntut-keadilan-laporannya-tak-digubris>.



manifested in the form of sanctioning violators as the last law enforcement action.

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<sup>59</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: PT. Citra Aditya Bakti, 2000), 54.

<sup>60</sup> C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1989), 102.

<sup>61</sup> Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gajah Mada University Press, 2011), 10.

Preventive legal protection is an effort provided by the government proactively before a violation occurs with the aim of preventing both material and non-material losses that may arise due to the actions of one person against another party. This form of preventive protection is realized through the rules listed in the applicable laws. In the realm of street photography, the protection of copyright of photographic works is regulated in Law Number 28 of 2014 concerning Copyright. In particular, preventive protection of the moral rights of creators is regulated in Article 5 and Article 9 paragraph (1) juncto paragraphs (2) and (3) which give the authority to the creator to manage the moral rights and economic rights of his work, while prohibiting other parties from modifying or utilizing the work without the consent of the creator.

In this context, the protection provided by the Copyright Law is limited to the protection of the creator. The protection of the moral rights of the individual to the photograph produced by his or her role as the subject of the photograph has not been regulated. This creates a vacuum of law that has the potential to not be able to resolve cases like the case above. According to Fachrizza Sidi Pratama in his research entitled *"The Phenomenon of Rechtsvacuum in Government Regulation of the Republic of Indonesia Number 51 of 2020 Related to the Passport Extension Period to 10 Years"* explained that legal vacuums can occur because the things or circumstances that occur cannot be

regulated in a law and regulation, or even if they have been regulated in a law and regulation but are not clear or even incomplete.<sup>62</sup>

Meanwhile, repressive legal protection is where a protection is implemented after the occurrence of a violation committed on a matter. According to S. Brodjo Soedjono, repressive law is a law as a tool of repressive power from the ruler of the state or regime that is in power in the government. Repressive laws were developed as part of an absolute power system that aimed to maintain the *status quo* (the current state of affairs).<sup>63</sup> Generally, the way repressive laws work is harsh and detailed against the people, and otherwise lenient on the legislators and rulers of the state because the law is subject to the politics of power. The purpose of repressive law is to impose the people's obedience and full submission to the ruler.

Repressive protection is provided to restore the condition of the aggrieved party and to seek a legal settlement to overcome the losses experienced. In the context of street photography, protection against copyright infringement, including plagiarism or unauthorized use of photographic works, is formally regulated by Law Number 28 of 2014 concerning Copyright. However, in practice, the existing rules have not specifically and adequately accommodated the unique characteristics of street photography, especially related to the moral rights of photo subjects and the mechanisms of protection against the abuse of

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<sup>62</sup> Fachrizza Sidi Pratama, "Fenomena Rechtsvacuum Dalam Peraturan Pemerintah Republik Indonesia Nomor 51 Tahun 2020 Terkait Masa Perpanjangan Paspor Menjadi 10 Tahun" *Journal of Law and Border Protection*, Vol 1 No. 1 2019

<sup>63</sup> S. Brodjo Soedjono, "Hukum Represif dan Sistem Produksi Hukum yang Tidak Demokratis" *Jurnal Hukum*, No. 13 Vol. 7. April 2000: 157- 169

works involving the individuals photographed. This poses a significant challenge in repressive law enforcement, where it is often difficult to effectively crack down on violations due to the lack of clear provisions and strict sanctions for violations in the realm of street photography. Therefore, it is necessary to study and revise regulations so that the protection of repressive laws can be more optimal in protecting the rights of photographers and photo subjects, as well as providing legal certainty in resolving disputes that arise.

The protection contained in Article 12 of the Copyright Law requires the permission of the subject for commercial use, but does not protect the subject from the use of photographs that damage his dignity. This shows the legal uncertainty in the context of protecting the rights of the individual subject being photographed. In the future, such cases can occur in the absence of related regulations. As a WTO member that ratifies the regulations contained in the TRIPs, Indonesia can adjust the existing rules in international law to revise the Copyright Law in this regard.

As a country based on the law and to realize the country's goals as stated in the Preamble to the Constitution of the Republic of Indonesia, namely to participate in creating a world order based on independence, lasting peace, and social justice. Indonesia participates in ratifying various international agreements.<sup>64</sup> One of them is Indonesia's membership in the World Trade Organization (WTO). As part of this commitment, Indonesia must comply with

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<sup>64</sup> Pasal 1 Undang- Undang Dasar Tahun 1945 tentang Bentuk dan Kedaulatan Negara

all trade-related regulations set by the WTO and GATT, including in terms of the regulation of Intellectual Property Rights which are also regulated therein.<sup>65</sup>

Indonesia's participation in the TRIPs (Trade Related Aspects of Intellectual Property Rights) agreement is a legal consequence of its status as a member of the WTO (World Trade Organization) since 1994 after signing the agreement in Marrakesh, Morocco. By ratifying the membership, Indonesia is officially bound to carry out its international obligations in providing protection of Intellectual Property Rights (IPR) in accordance with the standards set out in the TRIPs agreement.<sup>66</sup>

The TRIPs Agreement not only obliges member states to recognize three important conventions in the field of Intellectual Property Rights (IPR), namely the Berne Convention, the Paris Convention, and the Washington Treaty, but also regulates three basic principles that are the basis for the protection of all types of IPR:<sup>67</sup>

1. The principle of National Treatment, as stipulated in Article 3 of the TRIPs, requires each member state to provide equal treatment and protection of IPR both to its own citizens and to foreign nationals of other member countries.
2. The Most Favoured Nation Principle (Article 4 of the TRIPs) guarantees that any preferential treatment, relief, or rights granted by

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<sup>65</sup> Alif Firdausa, "Pelanggaran Hak Cipta Sinematografi Di Indonesia: Kajian Hukum Perspektif Bern Convention Dan Undang-Undang Hak Cipta," vol. 1, 2021, <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/acta-v3n1a4/acta.v3n1a4>.

<sup>66</sup> Hidayah, *Hukum Hak Kekayaan Intelektual*, 19.

<sup>67</sup> Yulianti, *Artikel Tinjauan Hukum dan Pelanggaran Hak Cipta dalam Karya Ilmiah di Indonesia*, Lokakarya Technological & Professional Skills Sector Project (TPSDP), Malang, 28 Agustus 2004.

one member state to another country must also automatically be granted to all other member states unconditionally.

3. The Minimum Standard Principles, as set out in Part II of the TRIPs, set out minimum standards that all member states must apply in their IPR protection systems. This includes the scope of protection, duration of protection, as well as the procedure for obtaining and utilizing such intellectual property rights.

Related to the existing cases, basically the Bern Convention has provided a guarantee of protection of copyright rights. This can be seen from one of the provisions in Article 5 Paragraphs 1 and 2 which lists three basic principles adopted by countries that ratify the Berne Convention.<sup>68</sup> These principles are:

1. National treatment principle, a work originating in one of the contracting States, the creation of a citizen, a contracting country, or a work first published in one of the contracting countries must have the same copyright legal protection as that obtained by a citizen creator himself.
2. Automatic protection principle, the provision of legal protection must be given directly without having to meet any conditions (must not be conditional upon compliance with any formality).
3. Independence of protection principle, A legal protection is provided without having to depend on the legal protection arrangements of the creator's country of origin.

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<sup>68</sup> Paris Act, "Berne Convention for the Protection of Literary and Artistic Works," 1886.

The principle in National Treatment forms the basis for the obligation of countries that have signed the convention to protect the copyright of the works of creators of other countries that are also signatories to the convention, as if the work were the property of the state that provides protection. However, since each member country has a different legal system and culture, further arrangements are needed to ensure legal protection of copyright in each country. In Indonesia, this is realized through the issuance of the Copyright Law. So based on these basic principles, Indonesia must provide a legal umbrella related to the moral rights of subjects photographed in street photography. Indonesia as a ratifying country of the Bern Convention is obliged to protect and provide the same legal protection as protecting copyrighted works from the thoughts of its citizens through the Copyright Law.

In the context of street photography, the principles of the Bern Convention have very important implications. Street photography as a work of art that often records people's lives in public spaces, including the individuals who are the subject of the photo, presents special challenges in the protection of copyright and moral rights. For example, taking a photograph without the explicit permission of the subject may create a conflict between the photographer's freedom of expression and the privacy or moral rights of the individual being photographed. Therefore, Indonesia as a ratifying country of the Bern Convention must ensure that the national legal umbrella not only recognizes the economic rights of photographers as creators of works, but also protects the moral rights of the subject of photographs, especially in terms of recognition

of the use of images as well as protection against uses that may harm the reputation or dignity of the subject.

Furthermore, the application of the principle of Automatic Protection in the context of street photography means that photographic works produced by Indonesian citizens or works of foreign photographers recognized by Indonesia must automatically receive protection without having to go through complicated administrative processes. This is important so that photographers can immediately acquire their rights to their work and the subject of the photo also receives effective legal protection.

The principle of Independence of Protection also underlines that the protection of street photography works in Indonesia does not depend on how the creator's country of origin regulates copyright, so that the work still receives strong legal protection even though it comes from abroad. On the other hand, the work of Indonesian photographers must also receive equal protection when published abroad.

Thus, Indonesia must continue to harmonize and update regulations related to copyright to strengthen the protection of moral and economic rights in street photography. This includes setting up permission to use photos, dispute resolution mechanisms, and strict law enforcement against violations. Adequate legal protection not only supports the rights of photo creators and subjects, but also promotes the sustainable growth of the creative photography industry and upholds the values of justice and respect for human rights.



Article 6bis of the Berne Convention also mentions moral rights, namely:

“Moral Rights:

1. To claim authorship; to object to certain modifications and other derogatory actions;
2. After the author’s death;
3. Means of redress.”

To provide protection against actions that can degrade a person, especially in moral rights, it is important to review the existing rules in copyright law. Copyright in the digital realm has its own uniqueness in legal protection because it uses the help of technology and information.<sup>69</sup>

Currently copyright law gives exclusive rights to photographers as creators, but the moral rights of individuals in photos do not. Policy reforms that align with international standards can be the first step toward balancing the freedom of expression of photographers with the moral rights of the individual being photographed. With clearer regulations, it is hoped that not only photographers will get legal protection, but also individuals in photos who may be affected by commercial use or the dissemination of their images without consent.

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<sup>69</sup> Agustianto dan Yeny Sartika, "Analisis Yuridis Terhadap Penerapan Hak Cipta Sebagai Objek Jaminan Fidusia Dalam Pemberian Fasilitas Kredit Pada Perbankan di Kota Batam," *Journal of Judicial Review* 21, no. 2 (2019): 129-144, <https://doi.org/10.37253/jjr.v21i2.674>.

## **B. Legal Protection of Individual Moral Rights Using the Perspective of Maslahah Mursalah**

Maslahah is one of the methods of analysis used by ushul scholars in establishing the law (*istinbat*) whose problems are not explicitly regulated in the Qur'an and al-Hadith. It's just that this method emphasizes more on the direct benefit aspect. In the context of the study of ushul fiqh, the word becomes a technical term, which means the various benefits intended by shari'a in determining the law for His servants which include the purpose of maintaining religion, soul, intellect, descent, and wealth, as well as preventing things that can cause a person to escape from these five interests.<sup>70</sup>

Maslahah that is in line with the principles of Islamic law can be used as a consideration in establishing Islamic law. Obligations in sharia must pay attention to sharia maqasid which aims to protect human benefits. One of them is that according to Imam Al-Ghazali, *maṣlahah mursalah* is an effort to seek benefits and avoid evil in order to maintain the goals of the Shari'a. In his view, the benefits must be in line with the purpose of the sharia and in accordance with the rules that have been set by Allah SWT. Al-Ghazali identified the five main aspects that must be maintained in the purpose of shari'a, namely *hifdz al-din* (preserving religion), *hifdz al-nafs* (preserving the soul), *hifdz al-aql*

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<sup>70</sup> Zulfaqar Muhammad, "Maslahah dalam Perspektif Hukum Islam," *Qawāninjīh: Jurnal Syariah dan Hukum* 1, no. 2 (Desember 2023): 137, <https://jurnal.fh.umi.ac.id/index.php/qawananjih/article/download/406/145/>.

(preserving the intellect), *hifdz al-nasl* (preserving posterity), *hifdz al-mal* (preserving property).<sup>71</sup>

These five things that must be protected or maintained are known as *al-kulliyyat al-khamsah* or *al-daruriyyat al-khamsah*. In the view of *the maqashid shari'ah*, any action that supports the effort to maintain these five aspects is called *maslahah*. In addition, all efforts to prevent evil related to the five elements of sharia maqashid are also categorized as *maslahah*.

In the seventh century of the Hijri, al-Imam Tajuddin al-Subki introduced the concept of *hifz al-ird* as an important part of *maqasid al-shariah*. *Ird* which means honor or reputation is seen as an aspect that must be maintained and maintained. According to al-Subki, the real implementation of *hifz al-ird* in the classical tradition is realized through the sanction of the perpetrator of *qazf*, that is, a person who accuses someone of adultery without clear evidence. These sanctions are intended to prevent the spread of indiscriminate accusations that can damage a person's reputation.

To provide legal protection for the moral rights of individuals in street photography activities, the analysis used by the author uses 2 indicators of *maslahah*, namely *hifdz al-mal* and *hifdz al-ird* in accordance with the opinion of Imam ghazali which was later developed in the seventh century hijri by al-Imam Tajuddin al-Subki. This is the same as the conventional discussion of moral rights and economic rights.

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<sup>71</sup> Aam Ridwan Mustopa et al., *Ushul Fiqih*, 1st ed. (Bandung: Widina Bhakti Persada Bandung, 2023), 59.

The economic right that in the context of *maslahah mursalah* is *hifdz al-mal* is to protect property from all forms of unlawful or dubious actions (*syubhat*). In Islam, to take care of *the property of hifz al-mal* is to acquire property in a halal way and not to use the property for purposes that are prohibited by religion.<sup>72</sup> In other words, the property obtained must come from a halal source and be used for things that are permissible and not misused for purposes that are contrary to Islamic principles. Therefore, Islam encourages its people to maintain the blessings of wealth through wise and responsible management.

Research conducted by Luqman Nurhisam and Dimas Aprilianto states that Islam requires people to know the knowledge used to find, protect, use, and maintain their property.<sup>73</sup> They stated that a Muslim should have a good understanding of the concept of sharia economics in order to avoid practices that are not in accordance with sharia such as usury, fraud, and harmful business. In addition, this knowledge is also important so that a person can manage assets effectively which is not only for personal interests but also for social benefit.

In the context of street photography, the principle of property protection can be implemented through the practice of commercialization of photographic works. A photographer who wants to share or sell his work must ensure that

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<sup>72</sup> Shafta. "Al-Kulliyat Al-Khamsah: Lima Prinsip Dasar Hukum Islam." Shafta, diakses 19 Mei 2025. <https://shafta.sch.id/al-kulliyat-al-khamsah-lima-prinsip-dasar-hukum-islam/>.

<sup>73</sup> Luqman Nurhisam and Dimas Aprilianto, "Hifdz Al-Maal dalam Regulasi Rahasia Perbankan," *Tawazun: Journal of Sharia Economic Law* 3, no. 2 (2020): 217-228, <https://doi.org/10.21043/tawazun.v3i2.8269>.

the shooting process is done with the consent of the person who is the subject of the photo. This step is in accordance with Islamic principles that emphasize the importance of openness and honesty in economic transactions. Commercializing photos without permission not only violates the rights of the subject, but also goes against the principle of *hifdz al-mal* because the profits obtained can be considered illegitimate under sharia. Therefore, photographers must be careful that their photographic work does not violate the rights of others.

Overall, *hifdz al-mal* in *maslahah mursalah* not only focuses on the protection of physical property but also includes the protection of intellectual property rights. In Islam, works of art including photographs are considered assets that must be guarded from misuse or exploitation without permission. Thus, safeguarding property in the context of Islamic economics means ensuring that all forms of transactions and commercialization are carried out in a halal, transparent, and fair manner. In the end, the main goal of *maslahah mursalah* is to create benefits for all parties through the application of fair sharia economic principles.

Moral rights in the context of *maslahah mursalah* are *hifdz irdz* developed by al-Imam Tajuddin al-Subki. One of the manifestations of *hifdz al-ird* in the current context is the protection of individual moral rights. With the development of technology, it has led to easy access in the dissemination of photos which in this study uses street photography. This protection can protect a person from false news or hoaxes about him. In religious terms, this hoax can

be equated with slander because both convey false news. Islam affirms that slander is more violent than murder.<sup>74</sup>

Basically, the concept of moral rights in the study of Islamic law is rooted in the goal of maintaining one's honor and self-esteem. In the perspective of *maslahah mursalah*, which is the public good that is not explicitly mentioned in the Qur'an and hadith, *hifdz al-irdz* (protection of honor) becomes very relevant especially in today's digital era. The ease of communication technology and the dissemination of information, including street photography activities, which is the practice of taking photos of daily life spontaneously in public spaces, opens up the potential for abuse that can harm individual moral rights. Therefore, the protection of this moral right is very important to prevent the spread of false information that has the potential to cause slander or hoaxes.

Social media is currently a practical, transparent, and efficient communication tool that plays an important role in reform and change. The emergence of the abuse of moral rights cannot be separated from the development of media technology. The media has changed the way of communication to be faster to the point of forming what is often referred to as a global village. The speed of communication tools affects the growth of social media. Social media has significantly changed the way people communicate. The impact of the irresponsible dissemination of photos in street photography and the disregard for the moral rights of the subject being photographed can

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<sup>74</sup> Al-fitnatu ashaddu min al-qaṣl (Q.s. Al-Baqarah (2): 191 dan al-fitnatu akbaru min alqail (Q.s Al-Baqarah (2): 217).

cause serious problems. This problem can trigger a person's bad image or interfere with their life. This is anticipated and if there is a violation, it can be equalized as the punishment given to the perpetrator of *qadhf*.

The development of social media as a communication platform has brought significant changes in social interaction. Social media's fast and easily accessible nature allows information to spread massively, but it also poses a risk of spreading content that violates moral rights, especially through photos taken spontaneously and disseminated without the consent of the subject being photographed. The negative impact that arises can be in the form of reputational damage and psychological disorders are serious problems that must be faced by modern society. Within the framework of Islamic law, this kind of violation is likened to *qadhf* (accusation of adultery without evidence) which is strictly sanctioned as a form of protection for individual honor.

The prohibition of spreading hoaxes, which in the context of this study is the protection of individual rights, is an effort to maintain self-honor through controlling the consequences produced by disseminated photos. If not used wisely, photos in street photography can be a means of spreading false information that damages a person's reputation. In the hadith, the Prophet also emphasized this by advocating to maintain his honor, namely:

حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ، حَدَّثَنَا عُمَرُ بْنُ عَلِيٍّ، سَمِعَ أَبَا حَازِمٍ، عَنْ سَهْلِ بْنِ سَعْدٍ

عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " مَنْ يَضْمَنْ لِي مَا بَيْنَ حَيْيِهِ وَمَا بَيْنَ رِجْلَيْهِ أَضْمَنْ لَهُ

الْجَنَّةَ "

Meaning: "Whoever guards (the limbs) between his mustache and his beard, that is, his mouth, and guards what is between his thighs, then he is guaranteed to enter Paradise."

This hadith is narrated by al-Hakim and al-Tirmidhi from the hadith of Abu Hurairah, with the degree of sahih collected through two paths of narration.<sup>75</sup> In this hadith, the protection of something that can damage one's honor is important. Therefore, these two things must be well maintained so that the goals of sharia (*maqashid sharia*) are maintained. Protecting honor is an important step, as is the importance of safeguarding the other five key aspects. Safeguarding religion means avoiding apostasy, safeguarding one's soul means forbidding murder without a legitimate reason, safeguarding one's offspring means preventing adultery, safeguarding one's mind requires a prohibition on drinking liquor, and safeguarding one's property requires a prohibition on stealing.

Maintaining honor as an important part of *hifz al-ird* also means avoiding the act of *qadhf* (accusing adultery without evidence). This protection can also

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<sup>75</sup> Al-Tirmidhi. *Jami' at-Tirmidhi*. Hadis no. 2409. Riyad as-Salihin 1513. Diakses dari <https://sunnah.com/riyadussalihin/17>.



be said to protect against hoax news. In Islam, hoaxes are classified as actions that harm others and can be punished with *hudud*. However, *hudud* is specifically applied to the act of *qadhf*, which is accusing someone of committing adultery without valid evidence. Meanwhile, according to the Islamic perspective *ta'zir* can be applied to all forms of accusations that are forbidden for every Muslim. These include accusations of stealing, accusing others of drinking, or spreading fake news against individuals.

In Islamic law, the division of sanctions between *hudud* and *ta'zir* shows how violations of individual honor are treated seriously. *Hudud* is a fixed punishment given for certain violations such as *qadhf*, while *ta'zir* is a discretionary punishment (adjusted by the judge) for other violations including the spread of false news that does not meet the requirements of *hudud*. This shows the importance of protecting moral rights to avoid all forms of slander and false accusations. This protection can regulate the community to avoid social damage arising from the spread of hoaxes.

The prohibition of spreading hoaxes and *qadhf* shows the consistency of Islam in maintaining the honor of individuals and groups for the sake of creating the benefit of the ummah in this world and the hereafter. The sanctions given to the perpetrators of these violations affirm Islam's concern for the protection of the moral rights of every individual, so as to maintain human dignity from defamatory acts, false accusations, and fake news.<sup>76</sup>

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<sup>76</sup> Asmuni Mth, "Studi Pemikiran Al-Maqashid: Upaya Menemukan Fondasi Ijtihad Akademik yang Dinamis," *Al-Mawarid* Edisi XLIV Tahun 2025: 1-15.

Islam expressly prohibits the dissemination of information that is detrimental to honor, which in the context of this study is the dissemination of photos that are distorted from street photography activities. This prohibition is not only aimed at maintaining social order, but also as an effort to maintain moral rights which are part of the sharia maqashid. With regulations that later support strict sanctions for violators, Islam shows how important it is to protect moral rights.

Overall, the concepts of *hifdz al-mal* and *hifdz al-ird* are not only limited to the protection of property and honor in traditional contexts but are also relevant in the modern situation influenced by the development of digital media. Today, the practice of *street photography* is an art form that is shared on social media and commercialized. However, this activity also has the potential to cause violations of moral rights and economic rights if it is not carried out with the permission of the photo subject or is not carried out ethically. In Islam, maintaining honor (*hifdz al-ird*) means managing information wisely so as not to cause slander or damage one's reputation. Similarly, asset security (*hifdz al-mal*) includes ensuring that every transaction is carried out legally, transparently, and does not violate sharia principles.

## CHAPTER IV

### CLOSING

#### A. Conclusion

Based on the analysis that has been carried out on the protection of individual moral rights in street photography activities in public spaces, several conclusions can be drawn, namely:

1. Regarding legal protection based on national law, especially Law Number 28 of 2014 concerning Copyright, it was found that the main focus of moral rights protection is currently more inclined to the interests of creators or photographers. Although the Copyright Act regulates the moral rights of creators such as the right to be named, and the right to refuse distortion of the work, specific protections for the individuals who are the subject of the photograph, especially in the context of street photography that are spontaneous and without explicit permission, are still very limited. This legal vacuum leads to uncertainty and potential infringement of the rights of the individual photographed, especially when the work is used for commercial purposes or disseminated without regard to the impact on the subject. In the perspective of international standards, especially the TRIPS (*Trade-Related Aspects of Intellectual Property Rights*) Agreement that has been ratified by Indonesia, the state's obligation is to harmonize its intellectual property rights protection system. Although TRIPS and the Bern Convention recognize the moral rights of creators, the focus remains on the protection of creators of works. This indicates that although

international standards provide a general framework, the implementation of comprehensive protection for photographic subjects remains dependent on the national initiatives and regulations of each country. The legal system in Indonesia has not fully adopted a balanced approach between protecting photographers' freedom of expression and the privacy and dignity rights of the individuals photographed.

2. Analysis through the perspective of *maslahah mursalah* in Islamic law offers a constructive alternative approach in formulating a more just and balanced legal protection. The concept of *maslahah mursalah*, which emphasizes the achievement of the public good and the avoidance of harm, can be the basis for balancing the rights of photographers in expression and work with the moral rights of the individual who is the subject of the photo. This approach is relevant to fill the existing legal gap, considering the aspects of *hifz al-ird* (safeguarding honor) and *hifdz al-mal* (safeguarding property) as one of the goals of sharia. Thus, *maslahah mursalah* can guide the formulation of policies that not only protect the economic rights of creators but also proportionately protect the honor, privacy, and dignity of individuals recorded in street photography works thereby preventing potential abuse or unauthorized exploitation that could harm the subject of the photo.

Overall, this study confirms that although street photography is a form of artistic expression for the protection of the moral rights of individuals who are the subject of this practice in Indonesia, it still needs attention and refinement

of regulations. The balance between freedom of expression, photographer copyright, and the moral rights of the subject of the photo needs to be realized through a more comprehensive and equitable legal framework by taking into account both positive legal norms, international standards, and religious values as contained in the *maslahah mursalah*.

## **B. Suggestion**

Based on the discussion of the research conducted by the author, there are several suggestions or recommendations, namely:

### **a. For Governments and Legislators**

Revision or Improvement of the Copyright Law In view of the findings that Law No. 28 of 2014 on Copyright has not specifically provided adequate protection for individuals who are the subject of photographs in street photography, it is recommended that the government consider revising or adding articles that explicitly regulate the moral rights of photo subjects. These arrangements may include the right to privacy, the right not to be misinterpreted, and consent mechanisms (in particular for commercial use).

Increasing the ethical awareness of photographers, both professional and amateur, is expected to continue to increase their ethical awareness in carrying out street photography activities. This includes considering the potential impact of the photo on the subject, requesting permission where

possible (especially for commercial use or sensitive situations), and avoiding exploitation of vulnerable individuals.

b. For Academics and Subsequent Researchers

Furthermore, it is possible to conduct follow-up research with a different approach, encouraging follow-up research with an empirical approach (sociological or case study) to delve deeper into people's perceptions, the experience of photo subjects, and the practice of photographers in the field. A broader comparative study to conduct a broader comparative study of law with other countries that already have more mature regulations related to *the right to portrait* or the right to self-image in public spaces.

Increased awareness of privacy rights where people are urged to be more aware of their privacy rights including rights related to taking and using photos of themselves in public spaces. Understand the legal remedies available to them or legal remedies that can be taken if they feel their rights have been violated as a result of irresponsible photography practices.

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