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The Urgency of Establishing a Legal Regime for the Right of Publicity in Indonesia: A Study of Legal Politics and International Comparison

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ABSTRACT
Objective This study investigates the urgency of establishing a dedicated legal regime for the Right of Publicity in Indonesia. It explores how the country's fragmented regulatory landscape fails to adequately protect personal identity attributes such as name, image, and voice, especially in the face of AI, deepfakes, and the global digital economy. The primary research question is: How should Indonesia respond to the digital commercialization of identity through legal reform?
Methodology This research employs a normative legal method supported by a legal-political framework, human rights theory, law and economics, and comparative legal analysis. It examines Indonesian laws, international instruments, and comparative frameworks from the United States and the European Union.
Findings The study finds that Indonesia lacks a coherent legal regime to protect the commercial use of personal identity. The existing protections across the Copyright Law, the Electronic Information and Transactions Law, and the Personal Data Protection Law are fragmented and insufficient. Comparative analysis reveals that while the U.S. treats the Right of Publicity as an economic right, the EU embeds it in personality and data protection laws. The paper advocates for regulatory reform to fill the legal vacuum.
Novelty This paper provides a novel interdisciplinary approach by integrating legal politics and comparative law with human rights and economic theories. It uniquely proposes a hybrid model for Indonesia's legal reform—drawing from both the U.S. and EU—while recommending a dedicated statute or integration into IP or PDP laws, supported by ethical guidelines, digital literacy campaigns, and a semi-independent regulatory body.
Keywords*: right of publicity, legal politics, identity protection, law and technology, digital economy, comparative law, Indonesia*

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I. INTRODUCTION

In today's digital landscape, an individual face, name, voice, even manner of speaking can be recorded, duplicated and widely disseminated by individuals or corporate entities for commercial purposes without the consent of the identity owner. This phenomenon becomes increasingly complex with the advent of

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technologies such as deepfake and AI cloning, which enable the creation of digital replicas of public figures, both living and deceased, for advertising, entertainment content, or even political campaigns. A notable example is the use of actor Bruce Willis's face through deepfake technology in an European advertisement without his direct involvement, highlighting the urgent need for legal protection of image rights in the age of artificial intelligence (Greenberg, 2022).

Meanwhile, Indonesian Law has yet to explicitly recognize the Right of Publicity, which refers to an individual's right to control, commercialize and protect the use of their visual identity and personal characteristics. Existing legal provisions remains scattered across sectoral regulations such as the Copyright Law, The Electronic Information, and Transactions Law and The Personal Data Protection Law. Unfortunately, none of these laws comprehensively regulate the economic exploitation of a person's identity. This regulatory fragmentation has led to legal uncertainty and enforcement difficulties, especially when violations occur across digital platforms operating transnationally. In response, many countries have expanded their legislative approaches to digital identity protection by incorporating aspects of the Right of Publicity into data protection, consumer protection, and media laws. In contrast, Indonesia has yet to develop an integrated legal framework to address challenges such as the commercial use of influencer's faces in advertisements without explicit contracts, or AI-generated content mimicking public figures for the economic benefit of digital platforms.

In line with this, Ramli's (2021) study on digital disruption and intellectual property rights emphasized the urgent need for regulatory reform to respond to the use of personal identity in the digital ecosystem. He argues that the protection of identity in cyberspace involves not only personal data buat also visual and auditory expressions that hold high economic value in the digital and creative industries.Given this background, an in-depth study is required on the urgency of establishing a legal regime for the Right of Publicity in Indonesia. This study not only focuses on the regulatory gap at the national level but also analyzes international practises and explores the direction of national legal policy needed to respond to current social, economic, and contemporary technological challenges.

Furthermore, this study seeks to explore the urgent need for establishing a Right of Publicity legal regime in Indonesia, especially in the context of rapid social and technological transformations. As digital platforms increasingly shape identity, commerce, and expression, there is a pressing question about how Indonesia can respond to these developments with appropriate legal measures. To inform this inquiry, the study examines how other jurisdictions, particularly the United States and the European Union, have addressed and implemented protections for the Right of Publicity. Their comparative legal frameworks provide valuable insights into possible approaches and standards. Ultimately, the study aims to identify the most suitable legal policy direction for Indonesia to adopt in formulating its own Right of Publicity regime, ensuring it is responsive to both national values and international trends.

II. LITERATURE REVIEW

The Concept of the Right of Publicity and Its Legal Status

The Right of Publicity is the right of an individual to control and derive economic benefits from the use of their name, image, voice, signature, or other personal identifiers used commercially. This concept has primarily developed in the United States as a form of legal recognition of the economic value of personal identity (Rothman, 2018). Unlike the right to privacy, which emphasizes protection from intrusions into one's private life, the Right of Publicity focuses more on control and exclusive commercial use of a person's identity. Splagounias (2024) explores the evolving tensions between identity control and generative AI tools, offering a crucial framework for legal reform discussions in the context of AI-powered commercial uses of personality.

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In the Indonesian legal context, this term is not yet recognized as a distinct legal regime. Protection of personal identity remains scattered across several laws, such as the Copyright Law, the Electronic Information and Transactions Law, and the Personal Data Protection Law. However, there is no legal instrument that directly regulates an individual's exclusive right to commercialize their identity. A similar view is expressed by Ramli (2021), who emphasizes that national intellectual property law must respond swiftly to the use of visual personal data in the creative and digital industries.

Legal Politics in the Protection of Individual Rights

Legal politics plays a central role in shaping a legal system that is responsive to social needs and technological developments. In the context of the Right of Publicity, Indonesian legal politics has not yet explicitly prioritized identity protection as a legislative agenda. This is evident from the absence of specific provisions protecting image rights in sectoral laws or national legislative policies. The theory of legal politics, as articulated by Mahfud MD (2009), defines legal politics as the direction of state policy in the formulation of laws that align with national objectives. In this regard, the development of a Right of Publicity legal regime is a realization of constitutional protection for the dignity and identity of citizens, as guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

International Practice: The United States and the European Union

The United States recognizes the Right of Publicity through both common law and state legislation, such as California Civil Code §3344. This right is inheritable and transferable, and offers protection against the unauthorized commercial use of one's identity. A landmark case, Zacchini v. Scripps-Howard Broadcasting Co. (1977), established that infringement of this right constitutes a violation of a legitimate economic interest. Meanwhile, the European Union adopts a more protective approach to image and identity rights through the concept of personality rights and personal data protection. The General Data Protection Regulation (GDPR) provides a strong legal foundation for restricting the use of biometric data, including facial images and voice without consent (European Union, 2016). Michalkiewicz-Kadziela and Milczarek (2022) provide a comparative overview of digital identity regulations across the EU, which strengthens the argument for integrating identity protection into national legal reforms through the Right of Publicity.

The comparison of these two systems highlights two main approaches: the economic rights approach (United States) and the human rights and data protection approach (European Union). Both provide valuable frameworks for designing contextual and adaptive regulation in Indonesia.

This research is built on the foundation of legal theories relevant to examining the urgency of establishing a Right of Publicity legal regime in Indonesia. This approach is essential to ensure that the arguments developed do not merely emerge from normative gaps, but also derive from sound juridical and multidisciplinary reasoning. These legal theories are as follows.

Legal Political Theory

Legal political theory serves as the primary framework for analyzing the role of the state and the direction of legal development that reflects societal needs. Mahfud MD (2009) states that legal politics is an instrument of the state to direct national legal development in accordance with the core values of ideology and constitutional principles, while also serving as a tool for social engineering. In this context, the development of a Right of Publicity legal regime reflects the state's response to technological developments, the digital economy, and the need for individual rights protection.

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Human Rights Theory

The Right of Publicity is closely related to the right to dignity, personal autonomy, and recognition of identity. The right to one's image, voice, and name as part of individual expression has long been recognized within the framework of human rights, as guaranteed in Article 28G(1) of the 1945 Constitution of the Republic of Indonesia, and also in international instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Constitution of the Republic of Indonesia 1945, 1966).

Law and Economics Theory

According to Posner (2014), law should be structured to maximize efficiency and social welfare. A person's identity, particularly that of public figures and celebrities, is not just a symbol but also an economic commodity. The Right of Publicity reflects the economic value of personal identity, and its legal protection aims to prevent the appropriation of that commercial value without fair compensation. In line with this, Prof. Ahmad M. Ramli emphasizes that intellectual property law in Indonesia must be adaptive to the use of personal visual identity in the creative industry, as such use carries significant economic value and is vulnerable to misuse in the digital environment (Ramli, 2021).

Legal Protection Theory (Roscoe Pound)

Roscoe Pound argues that law serves as a tool to balance social interests (Pound, 1922). In the context of the Right of Publicity, the law should act as a mechanism to protect individuals from the exploitation of personal identity with economic value. The law should not only preserve order but also uphold social justice by recognizing commercially relevant personal rights.

Comparative Legal Method

This approach is used to understand how jurisdictions such as the United States and the European Union have structured their legal frameworks on this issue. It allows the identification of effective legal models and universal principles that can serve as inspiration for Indonesia's legal framework while preserving the uniqueness of its national legal system.

III. METHODOLOGY

Type of Research

This research uses a normative legal method, emphasizing the study of laws, doctrines, and legal principles to find solutions to legal issues that are not yet explicitly regulated (Marzuki, 2010).

Research Approaches

This study applies multiple approaches: (1) Statute approach, to analyze the normative limitations in Indonesian law regarding the protection of publicity rights; (2) Conceptual approach, to explain the meaning and characteristics of the Right of Publicity as a legal entity. Ramli's perspective demonstrates the importance of this approach in aligning legal responses with digital developments and the commercial exploitation of visual identity Ramli (2021); and (3) Comparative approach, to examine how other countries regulate this right and use them as references for Indonesian reform.

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Sources of Legal Material

Primary legal sources including Indonesian statutes (Copyright Law, EIT Law, PDP Law), international jurisprudence such as Zacchini v. Scripps-Howard Broadcasting Co. (1977), and international instruments like the GDPR.

Secondary legal sources including academic literature, national and international law journals, reports from government bodies and professional organizations.

Tertiary legal sources including legal encyclopedias, legal dictionaries, and supporting data such as statistics or institutional studies.

Analysis Technique

The analysis technique used is normative qualitative analysis, involving the interpretation of legal texts, theories, and court decisions to build a logical and systematic legal argument. The arguments are developed deductively, from general theory to specific proposals regarding the ideal format of a Right of Publicity legal regime in Indonesia.

IV. ANALYSIS AND DISCUSSION

Regulatory Issues of the Right of Publicity in Indonesia

To date, the Indonesian legal system has not recognized the Right of Publicity as a standalone legal right with a structured normative framework. None of the current statutes explicitly define or regulate the commercial protection of image, voice, or name (Rothman, 2018)

Although there is no explicit regulation on the Right of Publicity, several Indonesian laws address aspects related to personal identity protection, such as the Copyright Law, the Electronic Information and Transactions Law (ITE), and the Personal Data Protection Law (PDP) (Law No. 28, 2014; Law No. 11, 2008; Law No. 27, 2022). However, these laws reveal a normative fragmentation that creates legal uncertainty and enforcement difficulties, especially when violations are committed through cross-border digital platforms. The misuse of identity through deepfake is not an entirely new phenomenon, as legal history has faced similar challenges during the emergence of photography and video, which raised legal questions regarding visual manipulation (Hartzog & Selinger, 2019).

The lack of jurisprudence and the absence of a specialized authority for publicity rights further exacerbate the problem. In the United States, lawsuits involving image rights violations are a common practice, as in the landmark case of Zacchini v. Scripps-Howard Broadcasting Co., which recognized the individual's exclusive right over their professional performance (Scripps, 1977). The absence of similar precedents in Indonesia underscores the urgency of establishing clear legal rules. This view is supported by Prof. Ahmad M. Ramli, who asserts that legal protection of visual and voice expressions in digital spaces must be an integral part of intellectual property reform that is responsive to current developments (Ramli, 2021).

International Comparative Study: Practices in the United States and the European Union

The United States is a pioneer jurisdiction in recognizing and developing the Right of Publicity. This right is acknowledged through both common law and specific statutes such as California Civil Code §3344. It is inheritable and licensable, and protects against unauthorized commercial use of personal identity. The approach aligns with law and economics theory, which argues that legal protection should maximize welfare by providing incentives for personal investments with economic value (Posner, 2014).

On the other hand, countries in the European Union, such as Germany and France, approach this issue through personality rights and personal data protection. The General Data Protection Regulation (GDPR)

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offers a robust legal basis for restricting the processing of biometric data, including facial images and voices, unless consent is given (European Union, 2016). The European model emphasizes the protection of dignity and individual control over personal information, consistent with personality theory, which views identity as a moral and spiritual manifestation of the individual (Habermas, 1998).

This comparison illustrates two dominant legal approaches: the U.S. economic-value model and the EU's human dignity and data protection model. Both offer valuable frameworks for Indonesia to design a hybrid and contextually appropriate regulatory system.

The Urgency and Direction of Indonesia's Legal Policy

The Urgency of Regulatory Development

The absence of recognition for the Right of Publicity creates a legal vacuum that opens opportunities for exploitation of personal identity without control or compensation. Progressive legal politics require the state to develop a legal system capable of anticipating risks, providing explicit protection, and empowering citizens to control their digital identity. As stated by Prof. Ahmad M. Ramli, digital disruption has created a new economic space based on identity and visual expression that demands an active and responsive legal presence (Ramli, 2021). Low awareness among creative industry actors to register intellectual property rights in Indonesia is partly caused by the lack of public education and absence of effective visual media to explain IP registration procedures (Jakarta: D JKI, 2023).

Direction of Legal Policy: Adaptive and Contextual Legal Regime

The Right of Publicity must be recognized as a civil right with dual characteristics: personal and economic. Regulation may take the form of a standalone law or amendments to existing IP or PDP laws. Its implementation may involve establishing a semi-independent institution to act as a protection authority and dispute mediator. This approach aligns with Pound's (1922) theory of law as a tool of social engineering, protecting individual and public interests amidst dynamic social change. Studies show that legal education delivered through 3D animation can improve public understanding by up to 21.7%, making visual methods a promising alternative for socializing publicity rights (Kemendikbudristek, 2022).

Inclusive Legal Pillars: Human Rights, Economics, and Digital Culture

The development of a Right of Publicity regime in Indonesia must be thoughtfully integrated into the national legal framework to reflect three essential pillars. First, it must uphold sovereignty, ensuring alignment with the nation's constitutional values and existing legal system. Second, it should be equitable, providing protection that is accessible and fair for all segments of society. Third, it needs to be globally relevant, harmonizing with international data protection standards such as the General Data Protection Regulation (GDPR).

By embracing this comprehensive approach, Indonesia has the opportunity not only to address the current legal vacuum surrounding the Right of Publicity but also to establish itself as a progressive and forward-looking legal state—one that is prepared to navigate the complexities of the digital age and the evolving global economy.

V. CONCLUSION

The Right of Publicity is a legal right that grants individuals control over the use of their personal identity, including name, image, voice, and other expressions, particularly in commercial contexts. This right has a dual dimension, functioning both as a personality right and as an economic object that can be lawfully exploited (Rothman, 2018).

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Indonesia's legal system has not yet recognized the Right of Publicity as a standalone legal regime. Protection of image rights remains scattered across sectoral laws such as the Copyright Law, the Electronic Information and Transactions Law, and the Personal Data Protection Law, which do not provide comprehensive or consistent legal certainty (Law No. 28, 2014; Law No. 11, 2008; Law No. 27, 2022)

A comparative study of the United States and the European Union reveals two major approaches. The U.S. emphasizes the economic value and commercial nature of personal identity, while the EU frames it within the protection of personality rights and personal data (European Union, 2016).

Indonesia needs to establish a dedicated legal regime for the Right of Publicity in response to the rapid development of digital technology and the creative economy. This effort must be grounded in human rights principles, legal efficiency, and normative certainty. As emphasized by Prof. Ahmad M. Ramli, Indonesia's intellectual property system must prioritize the protection of digital personal expression as a response to the disruptive nature of technological advancements in the creative industries (Ramli, 2021).

Recommendations

Formulation of a Specific Regulation – The government and the House of Representatives (DPR) should draft specific legislation or amend the Copyright Law or PDP Law to explicitly protect image rights, including their economic and inheritable aspects. This recommendation is not merely based on technical needs but also stems from the theoretical understanding that law functions as a tool of social engineering, as proposed by Mahfud MD (2009) and Rahardjo (2000).

Establishment of a Semi-Independent Protection Body – The government may form a new institution or a specialized unit under the Directorate General of Intellectual Property (DJKI) or the Ministry of Communications (Kominfo) to manage registration, dispute resolution, mediation, and oversight of digital identity use.

Development of Ethical Guidelines and Commercial Practice Standards – A national code of ethics should be developed for the commercial use of one's face, voice, and other identity attributes in advertising, entertainment, and digital media. This can help prevent violations and provide guidance for creative industry actors.

Enhancement of Digital Legal Literacy – Public education and training on digital rights, particularly the Right of Publicity, must be promoted to raise awareness and empower individuals to protect their identities online. This aligns with the progressive legal paradigm of Rahardjo (2009), which posits that law must evolve with the needs of society and address contemporary challenges.

International Collaboration – Indonesia should strengthen cooperation with countries that recognize the Right of Publicity, and harmonize national policies with international frameworks such as the GDPR to ensure cross-border protection of identity rights.

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