

**PROTECTION OF CREATOR'S ECONOMIC RIGHTS
TO PORTRAIT COPYRIGHT
(A Case Study of Using Nyonya Meneer's Portrait)**

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This case started when PT. Bhumi Empon Mustiko (BEM) uses a portrait of the face of Lauw Ping Nio or known as Nyonya Meneer which is used on the packaging of a telon oil product used in commercial traffic. Nyonya Meneer is the founder of a factory that produces herbal medicine known as the brand logo or marked with a distinctive mark on its herbal medicine product, namely "Nyonya Meneer". This herbal medicine factory was very well known and was established long before independence, namely in 1919, under the company PT Perindustrian Njoja Meneer (PT Nyonya Meneer) however, this company was declared bankrupt by the Court in 2017 through the Supreme Court Cassation Decision Number 1397 K / Pdt .Sus-Bankruptcy / 2017. After being declared bankrupt, PT. Bhumi Empon Mustiko (BEM) then bought 72 Nyonya Meneer's trademarks. In their lawsuit, the party representing Nyonya Meneer as the Plaintiff said that, "the photo or portrait is a legacy of Nyonya Meneer's extended family" which was claimed under Law No. 28 of 2014 concerning Copyright. The problem is; First, does Nyonya Meneer or its heirs still have the rights to the Mark which has been transferred to a third party based on positive legal procedures and provisions under the Trademark Law regime? Second, if under the legal regime the brand no longer gives rights to Nyonya Meneer, Can the copyright law regime still protect its copyright on the portet used as a trademark for the product? By using the method of normative legal research which is followed by a quality analysis of the norms of positive legal law in effect in Indonesia, including the articles contained in Law No.28 of 2014 concerning Copyright and the articles contained in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Law No.37 of 2004 concerning Bankruptcy and the Civil Code, it can be concluded that Nyonya Mencera and Nyonya Meneer's Inheritance, no longer have economic rights over photographic works or copyrights on portraits. , both under the protection regime under the copyright law, and according to the regime of the Law on Trademarks and Geographical Indications.

Key Word: Nyonya Meneer, Portrait, Bhumi Empon Mustiko, Brand, Copyright

A. Introduction

Portrait copyright is one of the rights protected along with other works protected under Law No. 28 of 2014 concerning Copyright. The portrait itself is actually a photoraphic work whose object is human. In the Copyright Law, portraits and photographic works are protected for 50 (fifty years) from the time they were first announced. As an intangible capital right of wealth, then in the portrait there are moral and economic rights attached to the creator. Therefore, third parties who will use or exploit for commercial purposes must obtain permission from the right holder. Unlike if the one who uses it is the owner himself.

In the case of using Nyonya Meneer's Portraits, PT Njonja Meneer has been using the portrait of Nyonya Meneer as a brand since the beginning. The company was founded in 1919, but then in 2017 the company was declared bankrupt.

After being declared bankrupt, assets c including the Nyonya Meneer brand in the form of a combination of letters, colors and photos (poptret) are added to the bankruptcy budget and transferred through the asset sales mechanism according to the provisions of the Bankruptcy Law. PT. Bhumi Empon Mustika (BEM) is the party that purchased the 75 (seventy five) Marks belonging to PT Njonja Meneer which was declared bankrupt.

PT Njonja Meneer then objected when PT. Bhumi Empon Mustika (BEM) uses a portrait of Nyonya Meneer as a brand for the telon oil product he produces.

The problem is; First, does Nyonya Meneer or its heirs still have the rights to the Mark which has been transferred to a third party based on positive legal procedures and provisions under the Trademark Law regime? Second, if based on the legal regime the

trademark no longer gives rights to Nyonya Meneer, will the copyright legal regime still be able to protect the copyright of the portrait used as a trademark for the product?

By using the normative legal research method by tracing the positive legal norms that apply in Indonesia, this study attempts to provide answers to the problems posed.

B. Conception of Economics Rights in Copyright

In civil law terminology, copyright is a private right, a civil right. In the civil rights, there is a value that can be measured economically, namely in the form of material rights as well as objects of assets. By Copyright Law No. 28/2014, these rights are referred to as economic rights or economy rights which are differentiated from moral rights that do not have direct economic value. It is said directly, because that moral right can indirectly have economic value. The great name of a person as a creator, even if his economic rights expire, still creates an impression on society about that big name, so that the economic value of the creator's name, which was originally only a moral right, can affect the value of economic rights.

Economic rights are the exclusive rights of creators or copyright holders to obtain economic benefits for works.¹ Exclusive right means that only the creator can have that right, other people who are not or not the creator, exclusive rights cannot be attached. This exclusive right contains economic and moral rights. While economic rights can be obtained by everyone, for example through the transfer of rights, licenses and so on. Besides being the holder of immutable moral rights under any circumstances, the creator is also the holder of economic rights.

The Creator or Copyright Holder has the economic right to:

- a. publishing of works;
- b. Reproduction of works in all their forms;
- c. translation of Works;
- d. adapting, arranging, or transforming Works;
- e. Distribution of Works or copies thereof;
- f. performance of Creation;
- g. Announcement of Works;
- h. Communication of Creation; and
- i. leasing a work.

Every person exercising these economic rights must obtain permission from the Creator or Copyright Holder. Any person without permission from the creator or copyright holder is prohibited from reproducing and / or using the commercial work of the work.²

Managers of trading premises are prohibited from allowing the sale and / or duplication of goods

resulting from violations of Copyright and / or Related Rights in the trading place they manage.³

The economic right to distribute works or copies thereof does not apply to works or copies thereof that have been sold or whose ownership of the work has been transferred to anyone. The economic right to rent Works or copies thereof does not apply to Computer Programs in the event that the Computer Program is not an essential object of the lease.⁴

Everyone is prohibited from engaging in Commercial Use, Reproduction, Announcement, Distribution, and / or Communication of Portraits that he has made for commercial purposes of advertising or advertising without the written consent of the person portrayed or their heirs. Commercial Use, Reproduction, Announcement, Distribution, and / or Communication of the Portrait containing Portraits of 2 (two) people or more, must seek approval from the person in the Portrait or their heirs.⁵

Announcement, distribution or communication of portraits of one or more Performers in a public performance is not considered a copyright infringement, unless otherwise stated or given the approval by the Performers or the rights holder of the show before or during the performance.⁶

For the sake of security, public interest, and / or the needs of the criminal justice process, the authorized agency can carry out Publication, Distribution, or Portrait Communication without having to get the approval of one or more people in the Portrait.⁷

C. Validity Period of Economic Rights

The history of copyright development in Indonesia is the same as abroad, which is influenced by advances in science (sciences) and technology. However, its foundation is still influenced by the philosophical and legal cultural foundation of a country. Thus, if we look at Auteurswet 1912, the copyright is only limited to 50 years, but in UHC 1982, it is limited to 25 years. Then in UHC No. 7 of 1987 and UHC No. 12 of 1997 was again brought forward to be for the life of the creator and 50 years following the provisions of the Berne Convention (before being revised) in 1967 which we know was adopted by Auteurswet 1912. Changes in these provisions prove the strong influence of foreign legal culture into Indonesian legal culture. When UHC 1982 was born, There are many reasons put forward as long as it is related to the philosophical social function of property rights, and it is agreed that the period of copyright during the life of the creator is added with 25 years after the death of the creator. In the Copyright Law No. 19 of 2002, the term of copyright

ownership is set to be 50 years. Finally in Law No. 28 of 2014 specifically for creation:

- a. books, pamphlets, and all other written works;
- b. lectures, lectures, speeches, and other similar works;
- c. teaching aids made for the benefit of education and science;
- d. songs or music with or without subtitles;
- e. drama, musical drama, dance, choreography, puppetry, and pantomime;
- f. fine arts in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collage;
- g. architectural works;
- h. map; and
- i. batik artwork or other motif art,

economic rights to copyright are valid for the life of the Creator and continue for 70 (seventy) years after the Creator's death, starting from January 1 of the following year.

Especially in the case of a work owned by 2 (two) or more people, Copyright protection is valid for the life of the Creator who dies at the latest and lasts 70 (seventy) years thereafter, starting from January 1 of the following year. Likewise, works that are owned or held by a legal entity are valid for 50 (fifty) years from the first announcement.⁸

The idea of limiting the term of copyright is actually based on the philosophical basis of every material right, including copyright on social functions. So that with the limitation of the duration of copyright ownership, it is hoped that the copyright will not be controlled for a long period of time in the hands of the creator who is also the owner. So that it can be enjoyed by the people or the wider community as the embodiment of the principle that every right has a social function. Although the reality is not quite so. So far, copyright that has expired only benefits certain parties, especially the producer in the case of copyrighted songs and the publisher in the case of copyright works in the form of books or other scientific works.

Copyright if we look at a glance is the absolute copyright of the creator or the right holder. However, its absoluteness diminished after the limitations on copyright ownership.

In this case we can observe what Mahadi expressed, who stated:

"Copyrights, when compared to other property rights, are less powerful and less complete. This is because copyright is valid only for the life of the creator and is added several years after the creator's death according to the provisions in each country."⁹

The opinion expressed by the professor of Civil Law at the University of North Sumatra is actually quite reasonable, because only a few countries in the world do not limit the ownership of this copyright. Examples that we can put forward are Nicaragua and Guatemala.¹⁰

Another basis for consideration is that the result of a copyrighted work must at one time be enjoyed by everyone and not only by the person who created it with no restrictions. With the stipulation of certain limits where the rights of the creator ends, other people can enjoy these rights freely, meaning that they can publish or reproduce them without having to ask permission from the creator or the right holder, and this is not considered a copyright infringement.

With the expiration of the term of ownership, the copyrighted work becomes public property, a general power (public dominee). The limitation of copyright term stated in UHC Indonesia is not the only copyright regulation that provides a limitation. In other words, besides UHC Indonesia, the same restrictions are also known in Auteurswet 1912, the Bern Convention, the Universal Copy Rights Convention and various other Conventions and International Agreements.

In Auteurswet 1912 copyright was limited to 50 years after the death of the creator. Such provisions can be found in article 37 Auteurswet 1912 Staatblad No. 600, which is an acquisition of the provisions of the Berner Convention.

At first the Berner Convention set a period of 50 years, but after being revised in Stockholm in 1967 the period was reduced to 25 years, this was intended to provide opportunities for developing countries to enjoy the works of foreigners. On this basis also the Copyright Law (Indonesia at that time) No. 6 of 1982, provides a limit of 25 years, in accordance with Indonesia's intention to become a member of the Bern Convention in the future,

Actually, the limitation of the term of copyright is an incarnation of the view of the nature of ownership, in relation to the position of man as a private being as well as a social creature, in which property rights are considered to have a social function. This is what we mean by the philosophical foundation and legal culture adopted by a country in protecting copyright. To a certain extent, copyright is intended to pay attention to the balance between individual interests and those of the general public (society at large). These two interests cannot be separated. By the law of recognition, both private property and public property have a place in the legal system of every nation in this world, even though the philosophical basis of the country is different.

Therefore, it is understandable that the limitation of the term of copyright is a consideration of public property and property of individuals (individuals). For Indonesia, which adheres to the Pancasila Philosophy, placing a balance between these two poles, recognition of individual rights and public rights.

Between the interests of individuals and society is a two inseparable single. Pancasila brings these two views together. Even if we compare it to countries with materialist individualistic societies such as the United States, they also impose restrictions on copyright ownership in their laws. This means that at one time the copyright became public property as well.

Maybe for us in Indonesia this has another meaning. This is because if we look at the amendments to the 1982 Copyright Law, there again the copyright ownership period was extended to 50 years, previously only 25 years and in the Copyright Law No. 19 of 2002 the term of copyright is 50 years. Then in Law No. 28 of 2014 will be increased to 70 years after the author's death and for certain works to be 50 years from the time of publication. With this relatively long period of time, a balance between the interests of the individual and the community, known as the social function conception of property rights, can be realized.

There is an impression with the copyright ownership period during the life of the creator plus 70 years after the death of the copyright ownership, Copyright Law No.28 of 2014, Indonesia seems to want to highlight individual rights. But far from being considered all of these, apart from conforming to international conventions, more than that is to give maximum respect to the creators and their heirs. Thus it is hoped that the activities and creativity of the creators can grow and develop in the midst of people's lives. Even more than that, it should also be considered to provide incentives by the government to every creator who gives birth to new copyright works, as well as to discoveries in the field of industrial property rights.

Regarding the period of copyright protection, UHC Indonesia and International Conventions also distinguish between the period of copyright protection based on the form and nature of the work.

In Copyright Law No.28 of 2014, specifically for creation:

- a. photographic works;
- b. Portrait;
- c. cinematographic works;
- d. video games;
- e. Computer program;
- f. compilation of written works;

- g. translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation;
- h. translation, adaptation, arrangement, transformation or modification of traditional cultural expressions;
- i. compilation of Works or data, either in a format that can be read by a computer program or other media; and
- j. compilation of traditional cultural expressions during the compilation are original works

Valid for 50 (fifty) years from the first time the Announcement was made. Likewise, copyright protection of works in the form of applied works of art is valid for 25 (twenty five) years from the first time the Announcement is made.¹¹

The state can also become the copyright holder, specifically for copyright on traditional culture. The period of time for the state as the copyright holder of the traditional culture is granted indefinitely.

Particularly in the case of a work that has been Announced but the Creator is not known, or only the alias or pseudonym of the Creator is written, the copyright of the work is held by the party making the announcement for the benefit of the creator, the copyright is held by the state and is valid for 50 (fifty) years since the work is first made Announcement.¹²

D. Use Case Portrait of Nyonya Meneer.

The right holder of the Portrait of Nyonya Meneer (one of his current heirs is Charles Saerang), filed a lawsuit at the Commercial Court-Surabaya against PT. Bhumi Empon Mustiko (BEM), the Food and Drug Administration (BPPOM) and the Directorate General of Intellectual Property Rights. The case is sitting, starting when the PT. Bhumi Empon Mustiko (BEM) uses a portrait of the face of Lauw Ping Nio or known as Nyonya Meneer which is used on the packaging of a telon oil product used in commercial traffic. Nyonya Meneer is the founder of a factory that produces herbal medicine known as or with the Brand logo or marked with a distinctive mark on the herbal medicine product, namely "Nyonya Meneer". This herbal medicine factory is very well known and was established long before independence, namely in 1919, it will be safe but "luck cannot be achieved,

After being declared bankrupt, PT. Bhumi Empon Mustiko (BEM) then bought 72 Nyonya Meneer's trademarks.¹³

In his lawsuit, the party representing Nyonya Meneer as the Plaintiff said that, "the photo or portrait

is a legacy of Nyonya Meneer's extended family" which according to expert witness Suyud Margono, is a copyright protected under Law No. 28/2014. The viewpoint of this expert witness is correct, however in this case it must be related to the period of protection of economic rights over portrait copyrights provided by law. Referring to the use of portrait copyright works that are used commercially, this case must also be related to the Trademark Law and Geographical Indications, especially the article regulating the requirements for distinguishing marks that can be registered as a mark and articles relating to the transfer of trademark rights.

PT. Bhumi Empon Mustiko (BEM) said that he is the legal owner to use the Nyonya Meneer Portrait on the telon oil product, because his party has received the transfer of rights to 72 Nyonya Meneer's trademarks where as the distinguishing mark used as the Mark is, the letters- Nyonya Meneer's letters, colors, paintings and portraits which constitute an integral and inseparable part of the brand transfer. The question is, is a Mark that uses paintings, photographic works or portraits used as a Mark, and which has been transferred to another party with procedures and procedures that comply with positive legal provisions, is the copyright concerned still attached to it?

E. Case Analysis

In the author's opinion, when a copyrighted work in the form of a photographic work, painting or portrait is used as a Mark, then the copyright of the photographic work, painting or portrait can no longer be claimed for its economic right, as long as it concerns the use of the photographic work, painting, portrait for the brand concerned. . However, the moral rights to these copyright works cannot be transferred under any circumstances and remain attached to the creator as an exclusive right that continues to be attached to the creator even though the period of ownership of the copyright has expired (public domain).

Indeed, the concept of copyright protection is different from the concept of trademark protection, but both are rights protected under the legal regime of intellectual property rights.

If a copyrighted work is used as a trademark, for example a photographic work or a painting, including using a portrait or the name of a famous person, ideally (and according to a sense of legal justice it should be), then the party who will use the copyright as a distinguishing mark on the product used in trade traffic must first ask permission from the copyright holder or the owner of the portrait or the owner of the name concerned.

Article 9 paragraph (2) and (3), Law No. 28/2014 on Copyright, states that, "Every person who exercises economic rights, must obtain permission from the Creator or Copyright Holder." Furthermore, "Every person without permission from the Creator or Copyright Holder is prohibited from committing commercial reproduction and / or use of the work." Announcement¹⁴ or that commercial use includes using the copyright to be used as a Mark. If that is done, then the user of the Mark has committed a copyright infringement on the use of the Mark. In fact, when the portrait is used as a mark, registration is applied for, if it does not get permission from the person being photographed, the application will be rejected, as regulated in Article 21, Trademark Law No. 20 of 2016.

The application is rejected if the Mark is similar in substance or in its entirety to:

- a. A registered mark that belongs to another party or has been previously requested by another party for similar goods and / or services;
- b. Well-known trademarks owned by other parties for similar goods and / or services;
- c. A well-known mark belonging to another party for goods and / or services that are not of the same type that meet certain requirements; or
- d. Registered Geographical Indication.

The application is rejected if the Mark:

- a. constitutes or resembles the name or abbreviation of the name of a famous person, photograph, or the name of a legal entity owned by another person, except with the written consent of the authorized person;
- b. is an imitation or resembles the name or name abbreviation, flag, emblem or symbol or emblem of a country, or a national or international institution, except with the written consent of the competent authority; or
- c. is an imitation or resembles an official sign or seal or stamp used by the State or Government agency, except with a written approval from the competent authority.

This provision ensures that, if someone's portrait or photo is used as a mark, registration can be accepted or not rejected or in other words it is not an act of violation of the law, as long as it gets permission or approval from the rightful owner of the photo or portrait. It is different if the copyright owner himself, the owner of the portrait, or the owner of his own name uses it as a brand for the goods or services he uses in trade traffic, as in the case of using the Portrait of Nyonya Meneer, which he originally used himself. Of course he didn't need to ask permission of himself. That is why Mark registrations that use

letters, paintings, colors and portraits can be accepted (not rejected) for registration.

Likewise in the perspective of copyright protection based on Article 12 of Law No. 28 of 2014 at (1) it is emphasized that, "Everyone is prohibited from commercially reproducing, announcing, distributing and / or communicating on Porets which he has made for commercial purposes or commercial advertising without consent. written of the person in the photograph or his heirs. " Furthermore, in paragraph (2) it is also emphasized that, "Commercial use, duplication, announcement, distribution, and / or Portrait Communication as referred to in paragraph (1) containing Portraits of 2 (two) people or more, must seek approval from the person is in his portrait or his heir.

In this case the provisions of Article 12 are applicable. This means that commercial use of Nyonya Meneer's portrait cannot be carried out without the permission of the person in the portrait or its heirs. However, in this case the name and portrait of "Nyonya Meneer and Her Portrait or Photo" was originally used by Nyonya Meneer for her herbal products, so she did not need to ask herself for permission to use the portrait and her own name which she would use as a brand. on goods he produces himself. Commercial interests are commercial interests for his own company, for himself, not used by others. The other person then accepts the transfer of rights through a statutory manner that refers to the trademark law regime.

The provisions of the Civil Code regarding the methods of obtaining property rights as regulated in article 584 of the Civil Code remind us that the rules for obtaining property rights over an object are very strict. Article 584 which reads; "The right of ownership of an item is not obtained other than by means of confession (taking to be owned), by attachment, over time, by inheritance, either according to law or will and by appointment or delivery based on a civil event for the transfer of property rights. which is done by the person who has the right to act on the object ". Law No. 20 of 2016 has properly adopted the provisions of Article 584 of the Civil Code.

In the case of using the Portrait of Nyonya Meneer by parties PT. Bhumi Empon Mustiko (BEM) as a brand on its products, according to his statement, he received rights based on procedures and processes justified by law. PT. Bhumi Empon Mustiko (BEM) has received the rights after Nyonya Meneer's company was declared bankrupt. By declaring bankruptcy, the entire assets of the debtor (in this case Nyonya Meneer's company assets) including the Brand as intangible assets are under the supervision of the Curator. When referring to the Bankruptcy Law,

Law No.37 of 2004. Then it is certain that PT. Bhumi Empon Mustika (BEM) receives this right from the curator through a legal process, for example through a sale and purchase / auction or other legal instruments.

Transfer of Mark in this way is justified by Article 41 paragraph (1) of the Trademark Law No. 20 of 2016 provides that;

Rights to registered marks can be transferred or transferred because:

- a. inheritance;
- b. will;
- c. waqf;
- d. grant;
- e. agreement; or
- f. other reasons justified by statutory regulations.

It should be noted that, if the transfer of right to a mark is in the form referred to in items a, b and c, the provisions for that in Indonesia are currently still pluralistic in nature. There are no laws on inheritance, grants and wills that apply unification, it is still different for each group of population. Some are subject to customary law, some are subject to Islamic law, and some are subject to civil law contained in the Civil Code.

Therefore, if the transfer of right to a mark is by Article 41 paragraph (4) of Law no. 20 of 2016 is said to be equipped with documents that support it, so the first thing to pay attention to is that documents relating to the form of transfer must be related to the relinquishment of the right with various choices of legal principles and the various legal consequences it causes in accordance with the pluralistic nature of the rule of law. the. Includes documents related to Nyonya Meneer's bankruptcy declaration and methodsPT. Bhumi Empon Mustiko (BEM) obtained the rights to the Mark.

Whereas transfer through an agreement, because the principle of agreement law adheres to the principle of freedom of contract, it must be considered the conditions that must be met for the validity of an agreement (vide Article 1320 of the Civil Code) and other general conditions, as contained in Article 1319 of the Civil Code. Article 1339 of the Civil Code must also become a reference, if the transfer is carried out by means of an agreement, either as stated in a notary certificate or in an underhand form. Article 1339, reminds the parties not only to be bound by what is stated in the agreement, but also to bind everything according to the nature of the agreement required by propriety, custom and law. In contract law, this provision is derived from the principle or principle of decency and binding strength of an agreement.

Elucidation of Article 41 paragraph (1) of Law no. 20/2016 only states that what is meant by other

causes justified by laws and regulations as long as they do not contradict this law, for example, ownership of a mark due to the dissolution of a legal entity is of course included because the company is declared bankrupt. The documents referred to include, among other things, the Mark Certificate and other evidence supporting the ownership of these rights. The determination that the legal consequences take effect only after the transfer of rights to a mark is recorded at the Office of the Ministry of Law and Human Rights and announced in the Official Gazette of Marks is intended to facilitate supervision and create legal certainty.

Of all the series of processes for the completion of the transfer of a Mark, it must refer to positive legal rules and regulations. The most important thing is that all forms of transfer must be registered at the Office of the Ministry of Law and Human Rights and announced in the Official Gazette of Marks.

It is also important to remember that the law of matter also adheres to the principle of unity, it cannot be divided. If the Mark is, letters, numbers, paintings, colors, sounds and photographs or portraits, then it must be transferred to, cannot be broken down and then transferred in part. Likewise, if a registered mark is transferred, it must be transferred completely. The registered mark may not be partially transferred. There are two forms of this;

1. the brand is one, there are various goods and / or services but still in the same class of goods and / or services, then the transfer must be complete for all types of goods and / or services that are in the same class of goods. It may not be done for brands where shoe products are transferred, but bag products are not transferred. The transfer must be intact, not separated.
2. Registered trademarks that are owned by more than one, but have the same in essence or overall similarity to goods and / or services that are in the same class. When the owner of a registered mark is transferred, the owner of the registered mark only transfers one mark, that is not allowed. The registered mark must be transferred in its entirety and in its entirety.

Furthermore, this law also instructs that the transfer of rights to a mark must be filed with the Minister and notified in the Mark Gazette. If the transfer of the mark is not recorded, then the act will not have legal consequences for the third party. This is a consequence of not fulfilling the principle of publicity. Therefore, the legal consequences of the transfer of an unstated mark will only affect the party concerned, not the third party.¹⁵

Fulfilling the principle of publicity creates material rights, so it applies to everyone. In contrast, if the transfer is not recorded and not announced in the Official Gazette of Marks, then the material rights are not born, only individual rights exist. Consequently, this right can only be defended against certain people. This situation will also apply to unregistered marks.

A brand that is not only a distinguishing mark, but also inherently imparts in it the reputation and good name of its original owner. With the transfer of the brand to a third party, the reputation and good name in the eyes of consumers has also changed. Because of that, the photo of Nyonya Meneer attached to the brand became a symbol of prestige which had an economic value, and that was what the parties were buying. PT. Bhumi Empon Mustika (BEM), otherwise the transaction will probably not happen.

Back in the perspective of copyright law, the portrait is one of the protected copyrights. However, the protection is given to the photographer, not to the object being photographed, in this case "Nyonya Meneer". Because according to Article 1 number 12, Law no. 28 of 2014 concerning Copyright, "Portraits are photographic works with human objects." Nyonya Meneer herself kept the photographer's shots. It would be different, if the photographer had handed over the economic rights to the photography copy to Nyonya Meneer. In such a case, Nyonya Meneer, the holder of economic rights over the photographic work.

Likewise in this case, if one examines the portrait display of Nyonya Meneer who was born in 1895 in Sidoharjo, the portrait shown is estimated to have been between 25 and 35 years old. This means that the portrait was made between 1920 and 1930. So around when Nyonya Meneer's herbal medicine company was founded, it was 1919. Therefore, the age of the photo currently ranges from 90 to 100 years. Meanwhile, according to the copyright law, Law No.28 of 2014 concerning Copyright, Article 59, photographic or portrait works are only protected for 50 years from the first time the photographic or portrait work was announced. Announced means that it is published, introduced to the public.

Overall, the period of copyright protection according to Law No. 28 of 2014 is regulated in Article 58 and Article 59. Especially for works:

- a. books, pamphlets, and all other written works;
- b. lectures, lectures, speeches, and other similar works;
- c. teaching aids made for the benefit of education and science;
- d. songs or music with or without subtitles;
- e. drama, musical drama, dance, choreography, puppetry, and pantomime;

- f. fine arts in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collage;
 - g. architectural works;
 - h. map; and
 - i. batik artwork or other motif art,
- valid for the life of the Creator and continues for 70 (seventy) years after the Creator dies, starting from January 1 of the following year.

Especially in the case of a work owned by 2 (two) or more people, Copyright protection is valid for the life of the Creator who dies at the latest and lasts 70 (seventy) years thereafter, starting from January 1 of the following year. Likewise, works that are owned or held by a legal entity are valid for 50 (fifty) years from the first announcement.¹⁶ Whereas specifically for creation:

- a. photographic works;
- b. Portrait;
- c. cinematographic works;
- d. video games;
- e. Computer program;
- f. compilation of written works;
- g. translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation;
- h. translation, adaptation, arrangement, transformation or modification of traditional cultural expressions;
- i. compilation of Works or data, either in a format that can be read by a computer program or other media; and
- j. compilation of traditional cultural expressions during the compilation are original works

Valid for 50 (fifty) years from the first time the Announcement was made. Likewise, the protection of Copyright for works in the form of applied artworks is valid for 25 (twenty five) years from the first time the Announcement is made.¹⁷

Unless agreed otherwise, owners and / or holders of photographic works, paintings, drawings, architectural works, sculptures, or other works of art have the right to make an announcement of the work in a public exhibition or reproduction in a catalog produced for exhibition purposes without the author's consent. The provisions on the Announcement of Works also apply to Portraits as long as they do not conflict with the provisions referred to in Article 12 of Law No. 28 of 2014.¹⁸

F. Debt Collateral.

According to Article 1131 of the Civil Code, all movable and immovable property belonging to the

debtor, both existing and existing ones, becomes a guarantee for the debtor's individual engagements. If it is referred to in this article, if there is a copyright on a portrait which is the property of PT. Njonja Meneer then it will become an asset that is used as collateral to pay off his debts.

What if the debtor is declared bankrupt. The assets of a person or body that is declared bankrupt are controlled by the Heritage Hall and cleared or settled by the curator under the supervision of the supervisory judge, Article 16 No. 37 of 2004 concerning the Law on Bankruptcy and Postponement of Payment. In this context, the copyright of Nyonya Meneer's portrait is the property of PT. Njonja Meneer then in clearing the property by the curator was sold to PT. Bhumi Empon Mustiko (BEM). Therefore, if there will be more economic rights to the portrait of Mrs Meneer according to her heirs, then it is still a right that will be transferred to PT. Bhumi Empon Mustiko (BEM) at the time of settlement of the bankruptcy estate. This means that the heirs of Njonja Meneer can no longer claim economic rights over the portrait used as a Mark in the production of goods marketed by PT. Bhumi Empon Mustiko (BEM).

G. Conclusion

Law No.28 of 2014 concerning Copyright, provides a limit on the period of protection of portrait copyright works as photographic works, namely for 50 (fifty years) since it was first announced. According to the analysis in the description above, the current portrait of Nyionya Meneer is at least 90 (ninety) to 100 (one hundred) years old. Therefore, the portrait of Nyonya Meneer has lost protection of her economic rights, but her moral rights remain attached to its creator. Based on Law No. 20 of 2016 concerning Marks and Geographical Indications, the use of portraits to be used as Marks must be subject to the approval of the person photographed. In the case of using Nyonya Meneer's Portrait, PT Njonja Meneer, who was part of the company for the first time using the Nyonya Meneer Portrait which meant that when the portrait was used as a Brand he did not need to ask himself for permission. In other words, there is no violation of the mark in that case. Then the brand transferred to the hands of PT. Bhumi Empon Mustiko (BEM), through a rights transfer mechanism based on the provisions of Law No.37 of 2004 concerning Bankruptcy. Based on the provisions of Article 41 paragraph (1) of Law no. 20 of 2016, that Marks can be transferred based on other causes justified by the applicable regulations. The provisions of Article 584 of the Civil Code, ownership rights (including ownership rights to Marks) can be obtained by transfer, provided that the transfer is carried out by the

rightful person (beschikking bevoegheid). In this context it is carried out by the curator who has rights under the Bankruptcy Law. Therefore, PT. Bhumi Empon Mustiko (BEM) has the legal right to control the assets of PT. Njonja Meneer, because he gets rights in a manner justified by law and from the person who has the right to transfer those rights. These rights are not only rights that existed when he was declared bankrupt, but rights that will exist at a later date, according to Article 1131 of the Civil Code. The right that will later be held is the debtor's assets which are used as collateral for debt and later when declared bankrupt will transfer control to the Heritage Hall, which will be resolved by the Curator under the Supervisory Judge. When PT. Bhumi Empon Mustiko (BEM) obtains this right through the mechanism of obtaining rights according to the settlement of the debtor's assets in the settlement of bankruptcy assets, then the right is transferred to PT. Bhumi Empon Mustiko (BEM). Referring to all the ketantuan positive legal provisions as contained in the articles of Law No.28 of 2014 concerning Copyright and the articles contained in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Law no. 37 of 2004 concerning Bankruptcy and the articles contained in the Civil Code, it can be concluded that Nonya Menc and Nyonya Meneer Inheritance, no longer has economic rights over the photographic or portrait work, either under the protection regime according to the rights law. copyright, as well as according to the Trademark and Geographical Indication Law regime. then the right was transferred to PT. Bhumi Empon Mustiko (BEM). Referring to all the ketantuan positive legal provisions as contained in the articles of Law No.28 of 2014 concerning Copyright and the articles contained in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Law no. 37 of 2004 concerning Bankruptcy and the articles contained in the Civil Code, it can be concluded that Nonya Menc and Nyonya Meneer Inheritance, no longer has economic rights over the photographic or portrait work, either under the protection regime according to the rights law. copyright, as well as according to the Trademark and Geographical Indication Law regime. then the right was transferred to PT. Bhumi Empon Mustiko (BEM). Referring to all the ketantuan positive legal provisions as contained in the articles of Law No.28 of 2014 concerning Copyright and the articles contained in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Law no. 37 of 2004 concerning Bankruptcy and the articles contained in the Civil Code, it can be concluded that Nonya Menc and Nyonya Meneer Inheritance, no longer has economic rights over the photographic or portrait

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References

- ¹ Republic of Indonesia, Law no. 28 of 2014, Op. Cit, Article 8.
- ² Ibid, Article 9. Including the act of doubling including recording using a video camera (camcorder) in cinemas and live performance venues.
- ³ Ibid, Article 10.
- ⁴ Ibid, Article 11 What is meant by "essential object" is computer software which is the main object of the rental agreement.
- ⁵ Ibid, Article 12. What is meant by "advertising or advertising interests" is the loading of portraits, among others, clans, banners, billboards, calendars and pamphlets that are used commercially.
- ⁶ Ibid, Article 13. What is meant by "unless stated otherwise or given approval by Performers or the holder of the rights to the show" for example, a singer in a musical performance may object to being photographed to be published, distributed, or communicated to the public by others for use. commercially.
- ⁷ Ibid, Article 14. What is meant by "authorized agency" in this provision includes ministries that carry out government affairs in the field of communication and information, the Corruption Eradication Commission, or other law enforcement officials.

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- ⁸ Ibid, Article 58.
- ⁹ Mahadi, Op. Cit, p. 16.
- ¹⁰ BPHN, Op. Cit, p. 56-57. The two countries do not limit their copyright protection. After the creator dies, the copyright continues to be passed on to the heirs for an indefinite period until the next generation.
- ¹¹ Republic of Indonesia, Law no. 28 of 2014, Op.Cit, Article 59
- ¹² Ibid, Article 60 jo. Article 39 paragraph (1) and (3). jo. Article 39 paragraph (1) and (3).
- ¹³ Riska Farasonalia, Khairina. Polemeik Potret Nyonya Meneer di Kemasana Minyak Telon, Ini Kata Saksi *Dalam Sidang*, Kompas.com - 12/08/2020.
- ¹⁴ Announcement is reading, broadcasting, exhibiting, a work using any means, whether electronic or non-electronic or by doing it in any way so that a work can be read, heard or seen by others, Article 1 number 11, Law No. 28 of 2014.
- ¹⁵ In Law No.15 of 2001, the old law meant that the third party referred to by the law was the party receiving the license, even though it should have been everyone. It must bring legal consequences to everyone in order to achieve legal certainty.
- ¹⁶ Ibid, Article 58.
- ¹⁷ Republic of Indonesia, Law no. 28 of 2014, concerning Copyright, State Gazette of the Republic of Indonesia Number 266 of 2014, dated 16 October 2014 and Supplement to the State Gazette Number 5599, Article 59
- ¹⁸ Ibid, Article 15. What is meant by "owner" in this provision is a person who legally controls a Work, among others, a collector or a Copyright Holder.