

Legal Protection of Runners' Portrait Rights Against Commercialization on the FotoYu Application Under Indonesian *Ius Constitutum*

Made Rosa Anastasya Tirandika¹, Made Aditya Pramana Putra²

¹²Fakultas Hukum Universitas Udayana

Email: rosaanastasya02@gmail.com¹, adityapramanaputra@unud.ac.id²

ABSTRACT

This study examines the legal implications of capturing, uploading, and commercially exploiting runners' photographs through digital platforms without prior authorization from the persons depicted, from the perspective of Indonesian *ius constitutum*. The analysis focuses on the normative intersection among copyright, portrait rights, and personal data protection. The study employs normative legal research using statutory, conceptual, and analytical approaches. Primary, secondary, and tertiary legal materials are examined qualitatively through descriptive-analytical reasoning. The findings indicate that photographers' exclusive economic rights over photographic works are not absolute and must be interpreted together with statutory limitations concerning portraits and with personal data protection obligations when photographs identify, or are technologically processed to identify, individuals. Under the Personal Data Protection Law, personal data processing must have a lawful basis, of which explicit consent is one; in the context of commercial portrait use, written consent is also specifically relevant under the Copyright Law. Accordingly, the principal legal issue is not merely ownership of the photograph, but the lawful limits of its commercialization and subsequent digital processing. Resolving this normative tension requires harmonious statutory construction, appropriate legal preference, proportionate allocation of responsibility, and privacy-oriented technical safeguards to balance the interests of runners, photographers, and digital platform providers.

Keywords:

Commercialization, FotoYu, *Ius Constitutum*, Norm Conflict, Personal Data Protection.

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INTRODUCTION

Rapid advances in digital technology have transformed numerous sectors, including the creative economy and sports-related services. One manifestation of this transformation is the emergence of digital photography platforms such as FotoYu, which facilitate the capture, upload, search, and purchase of photographs taken during public sporting activities. The platform-based model enables runners to locate and purchase images of themselves while creating new commercial opportunities for photographers and platform providers (Ulya Qinvi et al., 2026). At the same time, the use of runners' portraits as digitally searchable and monetized content raises legal questions concerning authorization, privacy, and the allocation of responsibility among the actors involved (Syafri & Prawira Buana, 2025).

From the perspective of business law and intellectual property law, photographs constitute copyright-protected works under Law Number 28 of 2014 on Copyright (Copyright Law). Articles 8 and 9 recognize the creator's exclusive economic rights, including rights of reproduction and distribution. These rights provide the legal foundation for photographers to obtain economic benefits from their works (Saidin et al., 2021). Nevertheless, the exercise of copyright is subject to statutory limitations,

particularly where a photograph constitutes a portrait and is used for commercial purposes (Carmelia Gelora Agustina & Arinto Nurcahyono, 2024). Accordingly, ownership of copyright in a photograph cannot, by itself, be treated as an unlimited authorization to commercialize the identity of the person depicted.

The exercise of photographers' economic rights must therefore be considered together with the legal regimes governing privacy, personal data, and electronic systems. Photographs uploaded to digital platforms may reveal facial features, body characteristics, and other attributes that make an individual directly or indirectly identifiable. Where an image is capable of identifying a person, its digital use may fall within the scope of personal data protection, particularly when the image is indexed, searched, matched, or otherwise processed technologically (Amelia et al., 2025). This legal characterization reflects the broader understanding of personal data protection as part of the protection of individual autonomy and privacy (U. Mutiara & Maulana, 2020).

The regulatory framework was strengthened by Law Number 27 of 2022 on Personal Data Protection (PDP Law). Article 20 requires every Personal Data Controller to have a lawful basis for processing personal data. Explicit consent is one of the lawful bases recognized by the statute, alongside contractual necessity, legal obligations, vital interests, public tasks, and other legitimate interests subject to statutory conditions. Thus, consent should not be described as the only possible legal basis; however, it becomes especially important where a person's portrait is commercially exploited and no alternative lawful basis can be demonstrated (Rufaidin Syifa & Adam, 2024). In the FotoYu context, the roles of photographers and platform operators must therefore be assessed according to their actual control over the collection, upload, identification, and commercialization of runners' images (Rahmabilla Alvaroneta et al., 2026).

The misuse of visual personal data and facial recognition technology without meaningful user control has also become an international concern. In 2019, the United States-based photo-storage service Ever attracted public scrutiny after reports that user photographs had been used to develop facial recognition technology that was subsequently offered to external entities. The episode illustrates how photographs initially collected for one purpose may later be repurposed for materially different forms of data processing. Such secondary use demonstrates that the legal risk is not limited to ordinary commercial privacy concerns but may extend to the exploitation of biometric or identity-related information for purposes that were not anticipated by the individual concerned (Yahya, 2025).

These developments reveal a significant normative tension within Indonesian positive law. Copyright law protects the economic interests of creators, whereas portrait, privacy, personal data, and electronic-information rules protect the interests of the persons depicted. The tension becomes particularly visible when a photograph lawfully created in a public space is later transformed into a commercial and technologically processed digital asset. The relevant legal question is therefore not whether one statutory regime completely excludes the other, but how their overlapping norms should be interpreted coherently so that copyright exploitation remains within the limits imposed by personal rights and data protection (Hayati et al., 2021). Similar difficulties in reconciling electronic activities with individual rights have long been discussed in the context of Indonesian electronic-information law (Supriyati, 2019).

Characterizing the problem as a norm conflict does not necessarily imply a legal vacuum or an absence of applicable rules. Rather, the difficulty arises from the concurrent application of several legal norms to the same factual event. Economic rights may authorize the exploitation of a photographic work, while portrait and data-protection rules may restrict the manner in which that work is commercially used. Consequently, systematic interpretation and legal construction are required to determine the proper scope of each norm (R. Mutiara & Triadi, 2025). The fact that a runner is photographed in a public place is relevant to the lawfulness of taking the photograph, but it does not automatically establish consent to subsequent commercial use, digital profiling, or facial-data processing (Sugianti et al., 2026).

The practical consequences of this normative overlap are significant. Runners may face uncontrolled online exposure and the loss of meaningful control over the commercial use of their identity, whereas photographers and platform operators may face civil, administrative, or other legal exposure if processing and commercialization are conducted without an adequate legal basis. Digital business models that depend on personal data also create security and consumer-protection concerns because the risks do not end at the point of initial upload (Benuf et al., 2019). Where personal images are disseminated without adequate authorization, the resulting harm may affect privacy, dignity, and the ability of individuals to control the circulation of their personal information (Septian et al., 2025).

Previous studies have examined different dimensions of this problem. Research has addressed copyright protection for photographic works (Saidin et al., 2021), the unauthorized commercial use of portraits (Dewanti & Tektona, 2021), copyright protection in digital marketplaces (Carmelia Gelora Agustina & Arinto Nurcahyono, 2024), and the legal protection of photography on e-commerce platforms (Rahmabilla Alvaroneta et al., 2026). More recent scholarship has directly considered unauthorized portraits and FotoYu-related digital practices (Syafri & Prawira Buana, 2025) and the personal-data implications of AI-based photo marketplaces (Ulya Qinvi et al., 2026). Nevertheless, the specific interaction among copyright economic rights, portrait limitations, lawful-basis requirements for data processing, and platform responsibility still requires a more integrated normative analysis.

Against this background, this study focuses on the legal status of the commercialization of runners' photographs and on the normative mechanisms required to reconcile the relevant legal regimes. Its academic contribution lies in analyzing the interaction between copyright, portrait rights, and personal data protection within an on-demand digital photography platform without altering the basic structure of the applicable legal framework. The study aims to critically assess the legal boundaries of commercializing runners' photographs, formulate a proportionate model of responsibility among photographers and platform providers, and identify interpretive principles capable of producing greater legal certainty. The findings are expected to provide a normative reference for policymakers and actors in Indonesia's digital creative industry.

METHOD

This study employs normative legal research (*yuridis normatif*) to examine the interaction between photographers' economic rights under the Copyright Law and the legal requirements governing portraits and personal data under the PDP Law and the

Electronic Information and Transactions Law (EIT Law). Normative legal research is appropriate for examining the coherence, hierarchy, interpretation, and application of legal norms to a defined legal problem (Zainuddin & Dinda Karina, 2023). Three principal approaches are applied: the statutory approach, the conceptual approach, and the analytical approach. The statutory approach is used to identify and compare the relevant provisions, while the conceptual and analytical approaches are used to examine copyright, portrait rights, lawful bases for personal data processing, consent, privacy, and digital-platform liability. The legal materials comprise primary legal materials in the form of relevant legislation, secondary materials consisting of books and scholarly legal literature, and tertiary materials such as legal dictionaries. The analysis is conducted qualitatively through descriptive-analytical reasoning and systematic legal interpretation (Hayati et al., 2021). Where provisions appear to overlap or conflict, the analysis applies legal preference, harmonious construction, and legal discovery to determine an interpretation that maintains coherence among the relevant statutory regimes (R. Mutiara & Triadi, 2025). This approach is consistent with the broader function of harmonization in preventing fragmented application of legal norms (Sri et al., 2025).

RESULTS AND DISCUSSION

1. Legal Standing of Commercializing Runners' Photographs: Analysis of Norm Conflict Between Copyright and Portrait Rights

The practice of uploading and commercializing runners' photographs through the FotoYu application illustrates a legal intersection between copyright in the photographic work and the personal rights of the person depicted. Articles 8 and 9 of the Copyright Law grant creators exclusive economic rights to reproduce, distribute, and commercially exploit their works. However, those rights operate within the broader structure of the Copyright Law, which also contains specific rules on portraits and commercial use. Consequently, copyright ownership does not eliminate the need to respect the rights attached to the subject's image (Suprana, 2020). This distinction is consistent with scholarship emphasizing that the commercial use of a portrait may require legal authorization separate from the copyright held in the underlying photograph (Dewanti & Tektana, 2021).

The legal analysis becomes more complex when the photograph is taken in a public space. As a general matter, the act of taking photographs in public may fall within legitimate creative and documentary activity. Nevertheless, the subsequent transformation of a public-space photograph into a commercial digital product constitutes a legally distinct use. The subject's physical presence in public does not necessarily amount to a waiver of rights relating to portrait commercialization, privacy, or personal data (Sugianti et al., 2026). This distinction is particularly important for application-based services in which images are systematically uploaded, indexed, searched, and sold rather than merely retained as documentary or artistic works (Syafri & Prawira Buana, 2025).

Within FotoYu's operational model, the overlap of these legal regimes may generate uncertainty concerning the conditions under which photographs may lawfully be marketed. Photographers may rely on copyright as the legal basis for exploiting their works, whereas runners may rely on statutory protections against unauthorized commercial use of their portraits and against unlawful processing of identifiable

personal data. The Copyright Law should therefore be read as recognizing economic rights while simultaneously limiting their exercise where portrait-specific restrictions apply (Suprana, 2020). In digital commerce, this issue is further complicated by the platform's role in facilitating the upload, search, transaction, and dissemination of photographic content (Rahmabilla Alvaroneta et al., 2026).

The use of facial recognition or similar image-matching technologies further changes the legal character of the activity. Once a photograph is processed through algorithms that extract or compare identifying facial characteristics, the image no longer functions solely as a visual work; it also becomes part of a data-processing operation. This technological transformation strengthens the relevance of the PDP Law because the processing may involve identifiable or biometric information, depending on the specific technological method used (Ulya Qinvi et al., 2026). Accordingly, the legal assessment must distinguish between the mere creation of a photograph and the subsequent collection, indexing, matching, storage, and commercialization of information derived from that photograph (Amelia et al., 2025).

Principles of legal interpretation, including *lex specialis derogat legi generali* and harmonious construction, are therefore relevant to determining the relationship among these norms. The Copyright Law's recognition of economic rights should be read together with its more specific portrait provisions, while the PDP Law governs the lawful processing of personal data within the digital ecosystem. The economic rights of photographers are consequently not unlimited but are exercised subject to statutory restrictions protecting personal interests (Rufaidin Syifa & Adam, 2024). Harmonization is preferable to treating the statutes as mutually exclusive, because each regulates a different legal dimension of the same transaction (Hayati et al., 2021).

From a normative legal perspective, the commercialization of runners' photographs through FotoYu becomes legally problematic when the relevant requirements concerning portrait authorization and personal-data processing are not satisfied. The legal validity of the business model cannot be assessed solely by asking whether the photographer owns copyright in the image. It must also be determined whether the subsequent commercial use and digital processing comply with the limitations imposed by portrait and data-protection law. Accordingly, clearer contractual, technical, and regulatory boundaries are required to provide legal certainty for runners, photographers, and platform operators while preserving legitimate creative and commercial activity.

Table 1. Comparison of Juridical Characteristics: Copyright Regime vs. PDP & EIT Regimes

Legal Aspect	Copyright Law Regime (Law No. 28/2014)	PDP Law Regime (Law No. 27/2022) & EIT Law	Normative Intersection / Conflict
Legal Basis / Authority	Creators hold exclusive economic rights, including rights to reproduce and distribute protected works (Arts. 8–9).	Data subjects are entitled to personal data protection; processing must have a lawful basis under the PDP Law, while electronic use of personal information is subject to applicable EIT rules.	Copyright-based exploitation must be reconciled with the runner's rights concerning portraits, privacy, and control over personal data.
Processing / Distribution Requirements	Photographic works may be reproduced and distributed subject to the limitations and	Personal data processing requires a lawful basis; explicit consent is one recognized basis and may be particularly	Commercial exploitation of a copyrighted photograph does not automatically satisfy personal-data and portrait-right requirements.

	conditions established by the Copyright Law.	relevant to commercial portrait use.	
Public Space Status	Taking photographs in public spaces may constitute lawful creative or documentary activity.	A publicly captured image may still constitute identifiable personal data when it enables identification or is processed for that purpose.	The lawfulness of taking a photograph is distinct from the lawfulness of its subsequent commercialization and data processing.

2. Legality of Public Photography vs. Prohibition of Unauthorized Data Commercialization

The normative tension becomes most apparent when the commercialization of photographs is examined under the PDP Law. Article 20 requires every personal data processing activity to rest on a lawful basis. Explicit consent is one such basis, but it is not the only basis recognized by the statute. Accordingly, the legal issue is whether the processing undertaken by photographers and the platform can be justified by an applicable lawful basis and whether the conditions attached to that basis are actually satisfied (Aufaa et al., 2026). In commercial portrait transactions, consent remains particularly significant because the subject's identity is itself part of the economic value of the transaction and because the Copyright Law contains specific portrait-related limitations (Rufaiddin Syifa & Adam, 2024). A business model that immediately uploads and offers identifiable photographs for sale without a clearly established legal basis therefore creates substantial compliance risk.

The EIT Law further reinforces the legal significance of personal information used through electronic systems. Its privacy-related provisions must now be read as part of an evolving statutory framework that includes the PDP Law and subsequent amendments to electronic-information legislation. Earlier scholarship has identified continuing difficulties in applying electronic-information rules consistently where individual rights and online conduct intersect (Supriyati, 2019). In the context of AI-assisted photography marketplaces, these issues are intensified because platforms may perform automated identification, matching, storage, and distribution functions rather than merely hosting passive photographic files (Ulya Qinvi et al., 2026). Legal compliance therefore requires an integrated reading of copyright, portrait, privacy, and data-protection obligations.

The allocation of legal responsibility is equally important. Photographers participate in the initial collection and upload of images, while digital platforms may determine the technological architecture through which photographs are stored, indexed, matched, displayed, and sold. Responsibility should therefore be assessed according to the actual role and degree of control exercised by each actor rather than shifted unilaterally through contractual labels. Research on unauthorized portraits in the FotoYu context similarly emphasizes the need to clarify responsibility within the platform ecosystem (Syafri & Prawira Buana, 2025). Where a platform determines the purposes and means of personal data processing, its obligations must be assessed in accordance with the statutory concept of the Personal Data Controller (U. Mutiara & Maulana, 2020).

To resolve the normative overlap, harmonious construction should be applied in a manner that gives effective protection to both copyright and personal rights. Personal data protection and privacy are closely connected to the protection of individual dignity and autonomy and therefore warrant substantial weight in interpreting the scope of economic exploitation (Septian et al., 2025). At the same time, copyright remains a

legally protected property right rather than a right that can simply be disregarded. The more coherent interpretation is therefore to recognize copyright while requiring its exercise to comply with specific portrait restrictions and applicable data-protection standards. Such an approach is consistent with the objective of harmonizing overlapping legal norms rather than allowing one regime to nullify the other (Sri et al., 2025).

At the operational level, this interpretation has direct implications for the design of the FotoYu application. Consent-management mechanisms, transparent notices, accessible objection procedures, and privacy-by-design safeguards may reduce the risk of unauthorized commercialization and unlawful data processing. Where a platform relies on facial recognition or image matching, technical safeguards such as limiting visibility before a lawful basis is established, applying appropriate blurring where necessary, and enabling prompt removal requests can support compliance. These measures are consistent with concerns identified in research on personal data protection in AI-based photo marketplaces (Ulya Qinvi et al., 2026). Technical design, however, should complement rather than replace the legal assessment of the appropriate processing basis.

In summary, the commercialization of runners' photographs should be governed by an integrated legal framework in which copyright ownership, portrait authorization, data-processing lawfulness, and platform responsibility are assessed together. Where unauthorized processing or commercial use causes legally cognizable harm, responsibility may attach to photographers, platform providers, or both according to their respective conduct and statutory roles. Runners, as the persons depicted and potentially as personal data subjects, should have effective mechanisms to object to unlawful use and to exercise the rights available under the applicable legal framework. Consistent regulatory interpretation and responsible platform governance are therefore essential to reduce legal uncertainty and support a fair, secure, and sustainable digital photography ecosystem.

Table 2. Legal Liability and Harmonization of Norm Conflict Among Parties

Related Party	Legal Qualification	Norm Conflict Resolution & Liability
Photographer	Creator / Data Collector	Economic rights over the photograph must be exercised consistently with portrait restrictions and any applicable duty to establish a lawful basis before commercial uploading or processing.
Digital Platform (FotoYu)	Potential Personal Data Controller, depending on its actual role	Must implement appropriate governance and technical safeguards, including transparent consent or lawful-basis mechanisms, objection/removal procedures, and privacy-oriented processing controls.
Runner (Photo Subject)	Portrait Subject / Potential Personal Data Subject	Holds legally protected interests in portrait use and personal data and may exercise applicable rights to object to, restrict, or seek termination of unlawful processing and commercialization.

CONCLUSION

Based on the normative legal analysis, the commercialization of runners' photographs on the FotoYu digital platform must be understood as an intersection of several legal regimes rather than as a question of copyright ownership alone. The Copyright Law grants photographers exclusive economic rights over their

photographic works, but those rights are subject to statutory limitations concerning portraits and must be exercised consistently with the legal requirements governing personal data and electronic processing. The PDP Law requires personal data processing to have a lawful basis, while explicit consent is one legally recognized basis and is particularly relevant where a person's portrait is commercially exploited. Accordingly, the commercialization and digital processing of runners' photographs without an adequate legal basis may be legally defective and may expose photographers and platform providers to responsibility according to their respective roles. A coherent resolution requires harmonious statutory construction, clear allocation of responsibility, and application design that supports transparency, lawful processing, objection and removal mechanisms, and appropriate privacy safeguards. Such an approach provides a more balanced basis for protecting runners' rights while preserving legitimate copyright-based economic activity in Indonesia's digital creative economy.

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