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Analysis Of Exclusive Rights And Legal Protection For Copyright Owners Of Films Broadcast Through Live Tiktok

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Abstract

Nowadays many people use the live broadcast application on Tiktok to show movies illegally without regard to moral rights and economic rights for copyright owners, as well as legal protection. This study uses a normative juridical approach method and a conceptual approach. the results of this study show that understanding copyright is important in the entertainment industry in Indonesia. Law No. 28 of 2014 on Copyright (UUHC) explains copyright protection, including the economic rights and moral rights of the creator. Moral rights include the right to be recognized as the creator, the right to state one's name, the right to prevent harmful changes, and the right to withdraw the work. In addition, economic rights give the copyright owner the right to obtain economic benefits from the work. Unauthorized viewing of movies on TikTok constitutes copyright infringement. The copyright owner can take legal steps, such as civil and criminal lawsuits, and report to the Directorate General of Intellectual Property. In addition, TikTok also has rules to fight copyright infringement by blocking infringing users through other user reports.

Keywords: *Moral Rights, Economic Rights, Legal Protection, Tiktok.*

Abstrak

Saat ini banyak orang menggunakan aplikasi siaran langsung di Tiktok untuk menayangkan film secara ilegal tanpa memperhatikan hak moral dan hak ekonomi pemilik hak cipta, serta perlindungan hukum. Penelitian ini menggunakan metode pendekatan yuridis normatif dan pendekatan konseptual. Hasil penelitian ini menunjukkan bahwa pemahaman hak cipta merupakan hal penting dalam industri hiburan di Indonesia. Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta (UUHC) menjelaskan perlindungan hak cipta meliputi hak ekonomi dan hak moral pencipta. Hak moral meliputi hak untuk diakui sebagai pencipta, hak untuk menyebutkan nama seseorang, hak untuk mencegah perubahan yang merugikan, dan hak untuk menarik ciptaan. Selain itu, hak ekonomi memberikan hak kepada pemilik hak cipta untuk memperoleh manfaat ekonomi dari ciptaannya. Menonton film tanpa izin di TikTok merupakan pelanggaran hak cipta. Pemilik hak cipta dapat menempuh langkah hukum, seperti gugatan perdata dan pidana, serta melaporkannya ke Direktorat Jenderal Kekayaan Intelektual. Selain itu, TikTok juga memiliki aturan untuk melawan pelanggaran hak cipta dengan memblokir pengguna yang melanggar melalui laporan pengguna lain.

Kata Kunci: *Hak Moral, Hak Ekonomi, Perlindungan Hukum, Tiktok.*

INTRODUCTION

Copyright is an exclusive right granted to creators or owners of original works to protect their intellectual property from unauthorized use or theft by others. Copyright is usually granted to creative works such as songs, movies, books, pictures, and computer programs. The copyright owner has the right to the utilization and use of the work, as well as the right to grant permission or license to others to use the work, in exchange for royalties.

The creator has exclusive rights that are composed of moral rights and economic rights. Moral rights, as we can see in Article 5 paragraph (1) of the UUHC 2014, are rights that are eternally attached (cannot be erased / lost) to the Creator to continue to include or not include his name on copies in connection with the use of his Creation for the public; use his alias or pseudonym; change his Creation in accordance with the propriety in society; change the title and subtitle of the Creation; and defend his rights in the event of distortion of the Creation, mutilation of the Creation, modification of the Creation, or things that are detrimental to his personal honor or reputation.

While what is meant by economic rights is the exclusive right of the Creator or Copyright Holder to obtain economic benefits for the Creation, namely the Creator or Copyright Holder has the economic right to carry out, publishing the Creation, duplicating

the Creation in all its forms, translating the Creation, adapting, arranging, or transforming the Creation, distributing the Creation or its copies, performing the Creation, announcing the Creation, communicating the Creation and renting the Creation.

TikTok is a social media application that is currently popular with a wide range of people, from children to adults. The application, which has existed since 2016, has been trending since the end of 2019 and TikTok users continue to increase to date. Active TikTok users in Indonesia are second only to the United States. The TikTok application itself not only provides entertaining and informative videos, TikTok is also one of the places to promote small businesses. Through the live broadcast feature on TikTok, merchants or influencers on TikTok can promote their wares.

However, recently some Indonesian TikTok account users have used the live broadcast feature on TikTok to illegally watch Indonesian or foreign movies, the number of viewers has reached thousands of users. Of course, watching free movies broadcast through the TikTok application by users or account owners is a copyright violation that has a detrimental impact on film industry players. Therefore, we need to know more about what is meant by Moral Rights and Economic Rights and how to protect the creators of works or films that are circulated without permission. This film or cinematographic work itself is one of the copyrighted works protected by Article 40 letter m of Law Number 28 of 2014 concerning Copyright (UUHC) (Lalamentik, 2018).

RESEARCH METHOD

The method used in this research is normative juridical research method. Normative juridical research, namely research that is focused on conducting a study of norms or rules in positive law. This research is descriptive analytical, the problems are described first descriptively then a discussion and analysis of the problems that occur. The research approach is carried out with a statutory and conceptual approach. The data source used in this research is secondary data obtained from library research (field research).

RESULT AND DISCUSSION

Economic Rights and Moral Rights for copyright owners

An understanding of copyright from the rapid growth of the entertainment industry in Indonesia cannot be separated from copyright protection for creators. Article 1 paragraph (4) of Law No. 28 of 2014 on Copyright (hereinafter referred to as UUHC) describes the copyright holder is the creator as the owner of the copyright, the party who received the right legally from the creator, or other parties who receive further rights from the party who received the right legally. If there is an agreement indicating that the creator has decided another party as the copyright holder, then the designated party will be the copyright holder.

Although copyright is automatically established since the work is created and does not require an application to the Directorate General of Intellectual Property, the Act still regulates the process related to registering copyright (kaligis, 2012). This recording is done so that the copyright owner can claim that they are the owner of the copyright. Initially, Law No. 19 of 2002 used the term "copyright registration," but the term was later changed to "copyright registration" in the UUHC. Although copyright registration does not mean as an endorsement of the form, meaning, content of a work, but the registration of the work will facilitate the creator in proving the originality of his work compared to using unrecorded works and provide legal certainty for copyright holders of his work (Usman, 2003).

The movie industry is one sector of the economy that requires protection through the UUHC. Intellectual works in various fields can be created because there is a commitment in investing significant costs, energy and time. From this commitment, economic benefits are created that have value, in the form of recognition of individual creativity in the fields of technology, art and science. This encourages legal protection in order to promote individual creativity.

One of the criminal acts that violate copyright in the field of film is piracy, which is part of Intellectual Property Rights. The definition of film itself has been regulated in Article 1 paragraph (1) of Law 33 of 2009 concerning Film, that film is a work of art that reflects a system of social behavior and functions as a mass communication medium made based on cinematographic principles, both with and without sound.

Before the internet became an easily accessible platform, piracy often occurred by duplicating Compact Discs (CDs) or Digital Versatile Discs (DVDs) that were sold illegally. However, with the development of technology, the use of CDs and DVDs began to decrease because they were considered impractical. Currently, one of the characteristics of digital that poses a challenge to the protection of intellectual property rights is that creations in digital form are easy to be transmitted and used by many people, while creations in conventional

form are easy to know whether copies of the Creation have been made. In the case of book piracy and a pirated book is purchased by someone, the pirated book will only be used by one person at a time. Even if the pirated book is then given to another person, the pirated book will transfer its ownership from the first person to the next, without increasing its number (Vedanti & Indrawati, 2021).

Meanwhile, a work in digital form makes it easy to be reproduced and transferred repeatedly by multiple users. This can be seen in the number of illegal movie streaming and download sites that have sprung up and movie piracy has even reached TikTok (Diza, 2022). Some Indonesian TikTok account users use the live broadcast feature to illegally watch Indonesian or foreign movies together, the number of viewers reaches thousands of users.

Movie works are classified into the category of protected creations as stated in Article 40 paragraph (1) letter m of the UUHC. In Copyright is also attached to other rights, namely moral rights and economic rights. Moral Rights are rights that protect the personal interests of the creator as a form of safeguarding the reputation and good name of the creator as another form of recognition of one's intellectual work. Moral rights have three bases namely the right to publish, the right to integrity and patertini rights (Wiryawan, 2018). Copyright ownership can be transferred to other parties, but moral rights can not be separated from the creator. Moral rights are eternal rights owned by the creator of the work. Komen and Verkade stated that including the moral rights of the creator are (Djumhana & Djubaedillah, 2003):

- a. Prohibition to make changes in the creation
- b. Prohibition to change the title
- c. Prohibition to change the determination of the creator

The activity of showing movies live streaming without permission on the Tiktok platform, where the films are watched and shown illegally, copyright holders have moral rights that must be respected under Article 5 of the UUHC. These moral rights include:

- a. Right to be recognized as the creator: Copyright holders have the right to be recognized as the creator of the movies streamed through TikTok. This is important to maintain the integrity and reputation of the creator.
- b. Right to state name: Copyright holders have the right to state their name or use a pseudonym as the creator of the movie.
- c. Right to prevent adverse changes: The copyright holder has the right to prevent adverse changes to his movie work. This includes changes that may damage the artistic integrity or harm the reputation of the work.

- d. Right to withdraw the work: The copyright holder has the right to withdraw his film work from viewing in case of any infringement or unauthorized use. This gives the copyright holder complete control over the use of the work.

Atmadja (2015), As for economic rights, it is the right to obtain economic benefits for the work regulated in Article 9 of the UUHC, namely:

- a. Publishing of the work
- b. Reproduction of creation in all forms
- c. Translation of the work
- d. Adaptation, arrangement, or transformation of the work
- e. Distribution of the work or copies thereof
- f. Performance of the work
- g. Announcement of the work
- h. Communication of creation
- i. Leasing of work

The act of showing movies live streaming without permission on the Tiktok platform when referring to UUHC Article 9 in letter b is stated about "duplication". Reproduction that is done other than by the creator and copyright holder can be said to be piracy. Piracy is the act of duplicating something without the permission of the copyright owner listed in Article 1 number 23 of the UUHC, namely: "Piracy is the unauthorized duplication of Creation and/or Related Rights products and the distribution of goods resulting from such duplication widely for economic gain" (Khairil,2019). This action violates Article 9 paragraph (2) which states that a person must obtain permission from the creator to exercise the economic rights of the Copyright holder, as well as paragraph (3) which prohibits a person without the creator's permission from duplicating or commercially using the work.

Furthermore, what is meant by commercial use in information and communication technology media, namely Article 55 Paragraph (1) Explanation of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, which includes direct commercial use (paid) and the provision of free content services that obtain economic benefits from other parties who benefit from the use of Copyright and/or Related Rights (Arlandy & Purnamasari, 2022). In this case, unscrupulous streamers on Tiktok will get gifts which can later be converted in the form of money to followers, likes, and engagement levels for free.

By illegally broadcasting movies through the live broadcast feature on TikTok is a violation of intellectual property rights for copyright owners. Copyright gives the owner exclusive rights in the form of moral rights and economic rights. Moral rights that are

violated in viewing movies through the live broadcast feature on TikTok in the form of the right to protect the integrity of the copyright owner's work, in illegal viewing of movies, movies can be changed or edited without the permission of the original copyright holder. Such changes can damage the integrity of the original work, harming the moral rights of creators who have the right to protect the integrity of their work. Meanwhile, the Economic Rights that are violated in the broadcast of movies through the live broadcast feature on TikTok are distribution rights in the form of giving copyright holders the power to control and regulate the physical distribution or dissemination of copyrighted works to the public. This means that the copyright holder has the exclusive right to determine how, where, and by whom the copyrighted work is distributed. Distribution rights protect the economic interests of copyright holders by giving them control over the marketing, sale, and dissemination of their copyrighted work. In the context of movies, distribution rights allow movie copyright holders to regulate and control the distribution of movies through various channels, such as movie theaters, online distribution, DVDs, streaming, and other media platforms.

In addition to economic rights and moral rights, there are several other related rights that can be violated in the viewing of movies through the live streaming feature on TikTok in the form of:

1. Privacy Rights: Live movie views on TikTok may involve people who appear in the movie. If it involves people without their consent or without protecting their privacy in the necessary way, it may violate the privacy rights of those individuals.
2. Right of Publicity: The right of publicity involves using a person's name, image, or identity for commercial purposes without their permission. If the viewing of movies on TikTok unlawfully utilizes the faces, names, or identities of people who appear in the movies for commercial gain, this may violate their right of publicity.

It is important to keep in mind that the laws regarding these rights may vary by jurisdiction. Therefore, in concrete cases such as the live viewing of movies on TikTok, it is important to check the applicable laws in a particular country or jurisdiction to understand the related rights violations that may occur. The increase in cases of copyright infringement in Indonesia is motivated by several factors including economic factors, with good pressure from the situation and conditions that make people strive to increase income by improper means such as pirating other people's copyrighted works. Socio-cultural factors, people in buying products are still oriented to the price of goods rather than the quality of the original product creator made with hard work and intellectual ability. As well as educational factors, about the existence of UUHC which is still less promoted to the wider community resulting

in a lack of understanding of the importance of copyright protection (Panagarso & Bagas, 2019). So from the existence of these factors, it has an impact on the addition of cases of copyright infringement, including cases of live broadcasts of movies through the live broadcast feature on Tiktok.

Legal protection efforts for copyright owners

In order to address illegal actions against copyright owners' works that are broadcast without permission, there are several steps that copyright owners can take. This is important to ensure the fulfillment of the moral and economic rights that copyright owners have. Copyright owners here are creators and copyright holders. Copyright holders or creators can also resolve disputes through non-litigation or litigation for material losses suffered. Arbitration, conciliation, negotiation, and mediation are used to resolve copyright issues without resorting to legal channels. However, copyright holders and creators can pursue criminal or civil litigation if non-litigation dispute resolution does not provide a solution.

If a film creator feels aggrieved in terms of unauthorized use of his work, civilly, he has the right to sue for damages to the Commercial Court regarding copyright infringement in accordance with Article 99 paragraph (1) of the UUHC. The lawsuit can contain a request to benefit from the utilization of works that are infringed by copyright, either in whole or in part, according to with Article 99 paragraph (2) UUHC. Furthermore, Article 96 paragraphs (2) and (3) of the UUHC also explains that this compensation claim must be submitted and included in the ruling of the court regarding the Copyright criminal case, with the payment of compensation to the creator within a maximum of 6 (six) months after the issuance of a court decision that has permanent legal force. In addition, based on Article 38 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, the article states that anyone can file a lawsuit against a party that organizes an electronic system and/or uses information technology that causes harm. The content of Article 38 paragraph (2) of the ITE Law is that the public can file a lawsuit on a representative basis against a party that organizes an electronic system and / or uses information technology that results in harm to the public, in accordance with the provisions of laws and regulations. This means that the right to sue is owned by the owner or copyright holder who feels harmed by his work (Yuningsih, 2022).

Meanwhile, the resolution of copyright infringement through the criminal realm in the case of illegal duplication and distribution of copyrighted works in the Tiktok application, can refer to the provisions of Article 113 paragraph (3) of the Copyright Law which states:

"any person who without rights and/or without the authorization of the creator or copyright holder infringes the economic rights of the creator as referred to in Article 9 paragraph (l) letter a, letter b, letter e, and/or letter g for commercial use shall be punished with imprisonment of 4 (four) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)." The crime of copyright infringement is a complaint offense so that in law enforcement can be implemented if there is a complaint or report from the owner or copyright holder. Therefore, the active role of the creator or holder of the Copyright of the film work is needed because without a report or complaint from the creator or holder of the Copyright of the film work for copyright infringement committed by the Tiktok live person site, the Directorate General of Intellectual Property cannot provide protection efforts because what applies in the Copyright Law is a complaint offense. So that even though the live account has been closed, the creator or copyright holder must continue to be vigilant to monitor and be active to report back if a copyright violation is found by other Tiktok accounts (Yudianto, 2021).

Stefano explains in his book a number of processes that copyright owners can take to stop illegal acts against their work being broadcast without permission. Some of these steps include (Bagaskara & Sutrisno, 2022):

- a. Report stage: The copyright owner can make a report which is proof of copyright ownership of work. This report is given to the Directorate General of Intellectual Property.
- b. Verification stage: Once the report is filed, the authorized agency will verify the report. This verification is a follow-up step to examine the validity of the report and the existence of copyright infringement.
- c. Stages of recommendation: After verification, the next step is to make a recommendation to the relevant minister. This recommendation is given when there is evidence or signs that indicate copyright infringement. This recommendation aims to close access or content that violates copyright.

d. The stages of closing content/site/access as legislated in Articles 54 - 56 of the Copyright Law: After the recommendation is given, the Directorate General of Aptika Informatics on behalf of the Minister of Communication and Informatics (Kominfo) is responsible for closing the content, site, or access that violates copyright within 1x24 hours. The effort to close the content and/or access rights of users infringing copyright and/or related rights is a quick step to stop copyright infringement and greater material losses in the future. With this provision, the government has an active role in making efforts to eradicate copyright infringement in the digital realm.

Apart from through statutory provisions, TikTok also provides a statement regarding sanctions for violations of intellectual property rights in the terms of service that can be accessed on its official website, in provision number 6, TikTok requires users not to use its services to violate any intellectual property rights, where TikTok will block access to user accounts that are deemed to have violated copyright or other intellectual rights.

TikTok can only take action against a copyright infringer when other users report the video in question through the report feature that has been provided, by filling in a description of why the video is being reported, besides that in the application, TikTok has used artificial intelligence technology or commonly abbreviated as AI which is the latest technology capable of filtering user uploaded content, this artificial intelligence is defined as the ability of a machine to learn data so that it can perform the desired purpose. Through this system, users are given a big responsibility to jointly monitor movie piracy crimes, and report if they find content containing movie piracy violations.

With these measures, it is expected that copyright owners can protect their rights and overcome harmful illegal actions. As well as with the existence of moral rights and economic rights so the proof is that the state with the Copyright Law has provided legal protection to the party who created, especially the party who created the film work by allocating power and also providing restrictions to the interests of other parties, namely parties who are not creators and also copyright holders in this regard means individuals who distribute or distribute film works to TikTok live streaming illegally on the internet so that they can be watched for free by the public (Wiratama et al., 2022).

CONCLUSION

Understanding copyright in the entertainment industry in Indonesia is very important to protect the owner of the work. Law No. 28 of 2014 on Copyright (UUHC) explains that the owner of copyright is the creator or other parties who legally receive such rights. Although copyright is formed automatically, copyright registration procedures are still regulated for the benefit of copyright owners. The film industry is one sector that requires copyright protection. Film creators have moral rights and economic rights that need to be respected as part of copyright. Therefore, the act of live streaming movies without permission on TikTok constitutes copyright infringement. To overcome copyright infringement, copyright owners can take legal steps as a form of protection, namely by filing civil and criminal lawsuits, as well as reporting to the Directorate General of Intellectual Property which is responsible for closing content, sites, or access that violates copyright. Apart from the applicable statutory provisions, TikTok also provides rules for user uploads that violate intellectual property rights through the terms of service on its official website, the provisions of number 6 clearly regulate the legal consequences for copyright infringers, where TikTok can block users who violate the provisions through other user reports in the report feature that has been provided.

It is important to raise public awareness about the importance of respecting copyright and the negative impact of piracy on the creative industry. Through effective educational campaigns, seminars, workshops, and proper information dissemination, the public can be given a better understanding of the concept of copyright, its protection, and the consequences of copyright infringement. In addition, stronger and stricter law enforcement is needed against copyright infringement, including acts of piracy in the entertainment industry. The government and relevant agencies should increase supervision, conduct investigations, and take decisive action against copyright infringement.

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