

Legal Protection of Film Copyright Holders' Rights Against Media Piracy Through Illegal Streaming Websites

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Abstract

Protection against creation and inventions is necessary as it protects one's ideas and intellectual creation in their work. For this, the government has arranged laws and regulations governing intellectual property rights. Intellectual property rights refer to a right that is obtained by a person or legal entity that results in innovation in creativity. Covering human work that is derived from intellectual thought in science, art, literature, technology, design, and other forms of work that can be utilized economically. Even w copyright holders' rights are protected under the Copyright Law No. 28 of 2014. However, it is still common to see people pirating creative economics like movies, TV shows, music, and other protected creations. Technological developments in the realm of the film industry have detrimental consequences, particularly media piracy by irresponsible individuals. Society thinks that watching or downloading movies through illegal streaming websites for free without having to pay is not a significant offense. This research aims to analyze the reason for the violation of the copyright holder's rights and emphasize the significance of the government's role in order to guarantee that the copyright holders will receive their reserved rights.

Keywords: Media Piracy; Copyright Holder's Rights; Illegal Streaming Websites

A. Introduction

Indonesia is a state based on the rule of law as affirmed in the 1945 Constitution Article 1 (3) "The State of Indonesia shall be a state based on the rule of law".¹ Whereby, every state's activities and power must be exercised based on the law.² The state has an obligation to protect its citizens according to laws and the constitution. Moreover, Indonesia has a welfare state governing system, hence, the state is responsible for its citizens. It can be seen under the fourth paragraph of the preamble of 1945 constitution which states that "to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on Pancasila".³ Then, in Articles 26, 27, 28, and 29, the concept of the welfare of the people is further elaborated. The government is responsible to protect the public welfare, both including economic and social welfare of its citizens through creating institutions, laws, and regulation to protect it.⁴ The state must actively pursue prosperity and conduct itself in a way that is fair to all citizens and balanced. Hence, the laws and regulations are a set of rules that plays a major part which are designed to protect basic rights, freedom, justice, and fairness in the society. One of the government efforts in

¹ Article 3 of the 1945 Constitution

² Nikodemus Thomas Martoredjo, "Indonesia Sebagai Negara Hukum," Character Building, December 17, 2020, <https://binus.ac.id/character-building/2020/12/indonesia-sebagai-negara-hukum/>.

³ Preamble of the 1945 Constitution

⁴ Will Kenton, "Understanding the Welfare State and Its History." Investopedia. Investopedia, April 07, 2022. <https://www.investopedia.com/terms/w/welfare-state.asp>.

protecting economic welfare and commercial activity in Indonesia is through enacting laws and regulations on intellectual property rights.

In general, Intellectual property is the result of thought in the form of ideas which are realized or expressed. It can be an invention, works of science and art, designs, certain symbols/signs, layouts of semiconductor components and other varieties. The expression will become a legal product and be attached to what is called Intellectual Property Rights if it goes through the applicable procedures in the provisions.⁵ Ultimately, it's used in the world of trade, generating moral and economic value for the creator of the creation. Every creator would want their creation to be legally protected. Humans are God-created creatures with the ability to create things creatively in their daily lives to fulfill their needs. Making a creation is a difficult task as it is the result of the creator's creativity. Creators are to create their creation by involving their own intellectual process out of their own creative expression of ideas. The obstacle that the creator needs to face when employing their creativity makes creating a creation a complex process that requires time and effort. Therefore, each creator has the right to the result of their own work, with each step of thinking or creativity taken into consideration in order to honor and protect the creators' hard work.

Intellectual property rights (“IPR”) or *Hak Kekayaan Intellektual* in Indonesian (“**HAKI**”) is defined as the rights to obtain legal protection of intellectual property. The World Intellectual Property Organization (“**WIPO**”) has defined intellectual Property as the

⁵ Tim Redaksi. 2018. *Himpunan Lengkap undang-Undang Hak Cipta, paten, Merek, Dan Indikasi geografis, Serta Hak Kekayaan intelektual (Hki)*. Laksana.

creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names, and images used in commerce.⁶ Intellectual property is protected under the law which allows people to earn recognition or financial benefit from what they create. It includes several aspects, including copyrights, patents, trademarks, geographical indications, etc. Each is governed under its own laws. In essence, Intellectual property rights enable creators to be creative to make new innovations or inventions without worrying that their ideas will be stolen. Nations have collaborated in creating conventions to tackle IPR protection issues, such as the TRIPS agreement and the Berne Convention which are all administered by the WIPO. However, intellectual property still has its issue, commonly involving infringements by others. According to the United States Trade Representative (USTR) in 2016, Indonesia is the fourth largest country in terms of high rates of IPR.⁷

With this age of globalization, technological development has made it simpler for people to obtain information. People are increasingly accessing the internet for education, social networking, or entertainment purposes. Technology has facilitated people in all areas of life providing a better quality of life for human beings. However, as it continues to evolve, more legal issues continue to emerge. Internet sites or websites that increase over time present more potential for copyright infringement. For instance, to watch movies/films where people back then needed to queue at the cinema

⁶ "What Is Intellectual Property (IP)?" WIPO. Accessed December 14, 2022.
[https://www.wipo.int/about-ip/en/.](https://www.wipo.int/about-ip/en/)

⁷ Pramita Tristiawati, "Pembajakan Hak Intelektual Di Indonesia Masuk 4 Besar Dunia." *liputan6.com*. *Liputan6*, June 10, 2016.
<https://www.liputan6.com/news/read/2527345/pembajakan-hak-intelektual-di-indonesia-masuk-4-besar-dunia>.

to see a new film, nowadays people prefer to stream it through illegal websites available on the internet or download it from torrent sites. There is the urgency to increase legal protection efforts in protecting copyrighted work from being infringed arbitrarily. One aspect of copyrights that must get protection and legal certainty is towards films. The presence of digital platforms and streaming services increases unauthorized streaming services which fostered film piracy. Especially due to the recent COVID-19 social restriction, tempt several Indonesians to seek free watching film by visiting illegal streaming sites that offer films.⁸

Film, as a work of creation, is a form of intellectual property rights that are attached to the creator. As defined in Law No. 33 of 2009 on Film, is "Film is a work of art and culture in social institutions and media communication media which is made based on cinematographic rules that use sound or without sound which can then be shown". Film is therefore a form of media communication that conveys important concepts to the general public or audience. There are various advantages that can be obtained from movies/film, which were first used solely for entertainment but are now extensively employed as a method of education, knowledge, and promotion of creative works. As protected works, Article 40 letter m of the Law no 28 of 2014 concerning Copyright governed film as cinematographic works. Which elucidates that cinematographic works means a "Work in the form of moving images, including documentary films, advertising

⁸ Reska K. Nistanto, "Di Balik Layar: Bagaimana Pembajakan Digital Melukai Industri Film Indonesia Halaman All." KOMPAS.com. Kompas.com, March 9, 2022, <https://tekno.kompas.com/read/2022/03/09/10020057/di-balik-layar-bagaimana-pembajakan-digital-melukai-industri-film-indonesia?page=all>.

films, reportage or feature films made with a scenario, and cartoons. Cinematographic work may be made on celluloid tape, videotape, video discs, optical discs and/or other media that allow for screening in cinemas, on wide screen, television, or other media”.

In this sense, film is a byproduct of cinematographic processes. Films derived from cinematic works are the result of a person's or a group's ability in mastering technology, art communication, and organizational management. Hence, as a creation that comes as a result of human's intellectual process in the form of ideas that are expressed in the form of creation is protected under intellectual property rights, specifically copyrights. This is because it is created by the creator's creative expression of ideas involving their own intellectual process which is expressed in a tangible form which is the creation of the film itself. Film creators have the copyright of the creation of their film and have exclusive rights. Film creators have the right to monopolize their creation to protect their copyrighted works from other parties or rights to release and distribute their work to gain economic benefit.

Copyright laws should protect films that already hold the copyright. However, cases of piracy of copyrighted films continue to be common, with little respect for the copyright itself. Film piracy on online streaming websites is often carried out by downloading or accessing websites that offer illegal streaming of original films. Some websites broadcast illegally free of charge. The ease with which individuals may access or search for anything on the internet—including film—has both detrimental and beneficial effects on the film industry. The existence of movie or film piracy activities is certainly detrimental to film creators since their expensive and labor-

intensive creations are shared without their permission in order to profit from those that are not their creations. Even though there are laws and regulations that protect film copyright which is Law no 28 of 2014 regarding Copyright but this is not a significant barrier for film pirates.

There are still many pirated films being circulated in Indonesia, which means the use of the internet provides illegal websites that can be accessed free by the public without considering the right of the creator of the film rights being harmed. In 2020, Kominfo blocked pirated or illegal movie streaming websites such as IndoXXI and other illegal websites because it harms intellectual property rights. However, unscrupulous website makers which provide film pirates alter their way by changing their name or website domain to deceive the authorities who enforce the law. Whilst people who have seen pirated films are continually looking for ways to watch pirated films by illegally accessing websites. This might cause Indonesia a slew of legal and economic issues, particularly in relation to copyright. Society still thinks that actions that violate copyright, especially in the context of streaming illegal movies is not something serious. Unlike other crimes, there is almost little publishing and no legal enforcement activities to address piracy, which does not enhance public awareness. Although it violates the moral rights and economic rights of the creator and copyright holder.

In this regard, this research analyzes the following formulation of issues:

1. How is the implementation of Indonesian Copyright law protecting the exclusive rights of Film copyright holders

- against digital piracy through online streaming?
2. Whether the Indonesian Copyright law has effectively provided legal protection for the exclusive rights of Film copyright holders?

B. Discussion

B. 1. Moral and Economic Rights of An Author or A Copyright Holder

A copyright owner is entitled to exclusive rights, namely the moral right and the economic right. The moral rights that are rights that are eternally inherent to the Author to: a. continue to include or to exclude their name on the copy with respect to the public use of their Works; b. use an alias or pseudonym; c. change their works to comply with appropriateness in society; d. change the title and subtitle of their works; and e. defend their rights in the event of a distortion of works, mutilation of works, modification of works, or other acts which will be prejudicial to their honour or reputation.⁹ Further, the moral rights can't be transferred as long as the author is still alive but the exercise of these rights is transferable by testament or other reasons in accordance with the provisions of laws and regulations after their death. To protect their moral rights, the Author may obtain copyright management information and/or copyright electronic information.

Economic rights of the Author or Copyright Holder are the exclusive right of the Author or the Copyright Holder in order to gain

⁹ Article 5 of Law No. 28 of 2014

economic benefits from the Works.¹⁰ The economic rights allows the Author or the Copyright Holder to a. publication of the Works; b. Reproduction of the Works in all its forms; c. translation of the Works; d. adaptation, arrangement, or transformation of the Works; e. Distribution of the Works or their copies; f. performance of the Works; g. Publication of the Works; h. Communication of the Works; and i. rental of the Works.¹¹

B. 2. The Core of the Problem

In this modern era, the vast technological advances could assist filmmakers to create better movies that are closer to what they imagined. However, the advantages brought by technology comes with negative impacts like allowing people to commit copyright infringement easier than before. Irresponsible people utilize their phones to be used to access streaming sites like Amazon, Netflix, and Disney+, then proceeded to screen record the premium content effortlessly. Although some streaming sites have anticipated these crimes, those irresponsible individuals could also record movies in cinemas and post them on their personal websites, group chats like telegram and even sell the copies in the form of discs for the sake of their commercial interest. It is common in Indonesia to find people selling movies in malls without the permission of the copyright owners.

The Association of Film Producers of Indonesia (“APROFI”) claimed that each year, film piracy costs the industry Rp. 5 trillion. The Head of APROFI, Edwin Nair, said that piracy is equal to theft,

¹⁰ Article 8, op. cit.

¹¹ Article 9, op. cit.

and in this case, the object that is being stolen is the intellectual property rights. Filmmaker and the supervisor for APROFI, Mira Lesmana, mentioned that film piracy should be acknowledged to be more serious because this problem puts producers, directors, actors, and other workers at the film industry at a disadvantage. Adding on, she realized that the film pirates and the general public lack respect for intellectual property rights.¹² They emphasized that it's time for all filmmakers to have a voice and they suggested that the rule of law must be upheld to protect intellectual property rights from the creative works of all Indonesians which have been Indonesian cultural heritage.

The serious economic loss suffered by the laborers working in this industry needs to be acknowledged by the government and they should maintain the effort at protecting the exclusive rights of the Author or the Copyright Holder of a work. The problem is not the positive law, the Indonesian government has enacted laws that are protecting such rights however, the implementation is where the government needs to improve.

B. 3. Copyright Law No. 28 of 2014

Even though the general public might think that copyright infringement is only a misdemeanour, the Copyright Law regulates that those types of action are deemed as criminal actions. The perpetrators of these actions can be sentenced to prison and/or given fines. Articles that govern copyright infringement that many are still

¹² Dwi Murdaningsih, "Industri Film Rugi RP 5 Triliun Gara-Gara Pembajakan," *Republika Online*, November 10, 2020, <https://republika.co.id/berita/qjzkl368/industri-film-rugi-rp-5-triliun-garagara-pembajakan>.

committing are:

- a. Article 113(4) explicitly states that anyone who commits copyright piracy shall be subject to a maximum imprisonment of ten years and/or a maximum fine of Rp. 4 billion.
- b. Article 115 states that the commercial use of a portrait without the consent of the person being photographed or their heirs for the purposes of billboards or advertising in electronic or non-electronic media is punishable by a maximum fine of Rp. 500 million.
- c. Article 119 states that any collective management institution that does not have an operational permit from the minister in carrying out royalty collection activities shall be subject to imprisonment for a maximum of four years and/or a maximum fine of Rp. 1 billion.

Although the Copyright Law has already attempted to protect the exclusive rights of the Author or Copyright Holder, there are still irresponsible people who are selling pirated movies online and in stores in Indonesia. Article 10 of a quo law stipulates that managers of business premises are prohibited from allowing the sale and/or reproduction of goods resulting from Copyrights and/or Related Rights infringements in the location under their management. This article explains that even the managers of these market premises should also be responsible to prohibit the sale and/or reproduction of goods resulting from Copyrights and/or Related Rights infringements. However, what is idealized isn't always what is realized. The law enforcers in Indonesia lack the effort to enforce the law that is protecting these exclusive rights. Compared to the law enforcers that are responsible for PPKM, they will approach and

remind people to wear their masks properly and conduct social distancing. The small but noticeable behaviour of the law enforcers shows that the government doesn't think that copyright infringement crimes are as serious as it seems.

The United States is one of the countries that is best at respecting the intellectual property rights of its citizens. If anyone gets caught violating the intellectual property rights of an Author, they could be sentenced up to 5 years in prison and/or be given a fine of \$ 25,000. Infringing on a third party's intellectual property may result in civil lawsuits (in which case the third party's rights holders sue the downloader directly) or criminal prosecution in the United States (where individuals involved in illegal file sharing can face fines and jail terms).

One person was fined \$220,000 for stealing music and video files, according to a Forbes report.¹³ Indonesia should learn from other countries like the United States on how as a state, they can guarantee the protection of the exclusive rights possessed by their citizens. In the United States, federal agencies could use the perpetrator's internet protocol ("IP") address, to track the perpetrator down. If that is not enough, the internet provider is obligated to inform the law enforcers what kind of device was used for illegal streaming and your location, this information could be subpoenaed.¹⁴ In August 2019, two individuals pleaded guilty after eight of them were accused by the FBI of a number of offenses, including copyright infringement and

¹³ Pritam Banik, "What Happens If You Get Caught Downloading Movies Illegally?" *StrictlyLegal*, December 21, 2021, <https://strictlylegal.in/what-happens-if-you-get-caught-downloading-movies-illegally/>.

¹⁴ Dalvin Brown, "Is Streaming Video from Sketchy Websites Illegal?" *USA Today*. Gannett Satellite Information Network, December 17, 2019, <https://www.usatoday.com/story/tech/2019/12/16/can-get-arrested-streaming-illicit-movies-its-complicated/2662072001/>.

conspiring to break the law by unlawfully reproducing and disseminating footage obtained through multiple pirate networks. The US Copyright Office emphasized that distributing and/or reproducing copyrighted work is a crime.

Until the time of the writing of this paper, popular websites like LK21 and IndoXXI are still up and accessible on the internet. These websites provide free streams of movies that they fill up with excessive advertisements for their financial interest. Although the government's effort in 2020 to ban these types of sites, the owner of these websites could easily just rename their domain. The Indonesian government has not taken significant action to prevent these times of crimes, only some cases are processed by law enforcers.

C. Conclusion

In conclusion, in terms of enacting the law to protect the rights of the Author or a Copyright Holder, Law No. 28 of 2014 has encapsulated all aspects to protect the Copyright Holder. However, the implementation of the law needs to be further improved, hence, it is undoubtedly that film piracy still occurs in Indonesia. Articles 113(4), 115, and 119 of Law No. 28 of 2014 explicitly prohibit the commercial use of pirated works; however, the government has yet to take further actions to guarantee the protection of the moral right and the economic right of the Author and the Copyright Holder. Furthermore, society is still unaware that film piracy is actually destructive to filmmakers, leading one culture to assume that film piracy is normal. Especially when people feel that watching films through illegal streaming sites is favorable because it is free and

conveniently accessible. The general public needs to fix their mindset and realize that intellectual property cannot be created in just a split second. Creating intellectual property requires hard work and a difficult process. The government needs to intervene to tackle the problem of intellectual piracy. They aren't taking this issue as seriously as other problems like PPKM where the law enforcers pay attention and try with their full effort to prevent the problem from becoming worse.

Our suggestion would be to increase the awareness of the general public about the negative impact of film piracy in order that the society would perceive film piracy as illegal and not the right thing to do. This could be done by having an open organized educational events such as seminars regarding copyright infringements. Further, we suggest that the Indonesian government takes intellectual property rights violations as seriously as the United States government where people are genuinely scared of getting caught by law enforcers that they are selling pirated or copyrighted works without the permission or consent of the original Author or the Copyright Holders. We believe that the government should encourage law enforcers to take legal action in markets or malls where their managers neglect their duties to prohibit the selling or reproduction of copyrighted works without the consent of the Author, as regulated in Article 10 of the *a quo* law. Also, they need to be stricter against these types of irresponsible sellers because their crimes put laborers who work in the entertainment industry at a disadvantage.

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