



Legal Protection for *Tiktok Content Creators* From the Act of Re-Uploading Other Parties Without Permission Based on Law Number 28 of 2014 Concerning Copyright

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Abstract

Protection of creative video copyrights of Tiktok content creators that are taken without permission through social media for commercial purposes based on Law Number 28 of 2014 concerning Copyright. Copyright is the exclusive right of the creator that arises automatically based on the principle of declarative after a work is realized in real form without reducing restrictions in accordance with the provisions of laws and regulations. Moral rights are rights that must remain permanently attached to the work born by the creator, which is basically done to respect the creator's creativity by including his name in the copyrighted work. Economic rights are the exclusive rights of the creator or copyright holder to obtain economic benefits for their creations. In practice, there are many violations committed by Instagram account users by re-uploading creative videos of Tiktok content creators without permission to the creator. The rise of copyright infringement on Tiktok content creators' creative videos committed by other parties has hindered the development of creativity in the field of cinematography and decreased income to creators. The results of the study show that all creative video works created are protected by Law Number 28 of 2014 concerning Copyright, as long as the party concerned can prove that the work is his creation. In terms of service on Tiktok, there is already copyright protection by providing non-exclusive licenses to works uploaded by the creator. This research was conducted to find out the truth and legal reality that occurs in society. The legal relationship between Tiktok content creators and Instagram account users will be born if there is an agreement based on a contract as stipulated in the Civil Code. The sanctions contained in Law Number 28 of 2014 have regulated sanctions for copyright infringement. Dispute resolution can be through litigation or non-litigation. Copyright lawsuits can be filed with the Commercial Court. It is better to file a lawsuit after a criminal verdict that has permanent legal force. In taking creative videos of Tiktok content creators, Instagram users should first ask permission from Tiktok content creators.

Keywords: *Hak Cipta; Content Creator; Tiktok*

Introduction

The times have developed rapidly and are followed by the development of technology and information systems. The development of technology and information systems itself is marked by the rise

of social media that has emerged. Where, all people in various parts of the world can access and use it in their daily activities and have even become a necessity of people's lives, including the people of Indonesia. Based on a survey conducted by the Indonesian Internet Service Providers Association (APJII) on July 27, 2022, there were 210.03 million (two hundred and ten point zero three million) social media users from within the country during the period 2021 to 2022. It is known that this figure increased by 6.7% (six point seven percent) from the previous year's period, which was 196.7 million (one hundred and ninety-six point seven) million social media users. This figure is certainly a very large number considering that Indonesia has a population of 273,879,750 (two hundred and seventy-three million, eight hundred and seventy-nine thousand, seven hundred and fifty) people in 2022. What this means is, that almost all Indonesian people access and use social media, of course, to make this happen requires all Tiktok users to be more creative in producing some content on the Tiktok application. The amount of creativity a person has made through the Tiktok application, where a creativity must be protected. Creative videos are widely spread not only in the Tiktok application itself but also in other applications, namely in the Instagram, Twitter and Youtube applications. The creative video is a content that contains several ideas that are poured out by the video creator, which can be said to be a content creator.¹

A creative video uploaded in the Tiktok application is the work of a content creator, where the creator of the work pours out his ideas in a video made in the Tiktok application. The increasing popularity of this application has caused many content creators to use Tiktok to channel their creative ideas in order to gain fame, profit and even become a new profession. The creative videos created are the result of creation, taste, and karsa, so the content creator makes the Tiktok application a place to make money from the creative videos he produces, where he gets a profit from the video. The emergence of several phenomena in society where many Indonesian people have made content creators a new profession. Many creative videos that are downloaded from the Tiktok application and rebroadcast without permission on other social media applications, namely the Instagram application, Youtube, Twitter, and even television stations also rebroadcast creative videos without the consent of the content creator, it can be declared a copyright violation.²

The above is not without reason, but Indonesia is one of the countries that recognizes the essence of intellectual property. Intellectual Property here has a meaning as the result of thought in the form of ideas or ideas that are realized or expressed in the form of inventions, works of literary and artistic science, designs, certain symbols/signs, creations of the layout of semiconductor components or varieties of breeding results. This expression will become a legal product and be attached to an Intellectual Property Right, Intellectual Property Rights (IPR) if processed through applicable procedures and provisions, so that it can be said that Intellectual Property Rights are legal products in the form of rights arising from the intellectual property produced.³ The results of Intellectual Property are then used in the world of commerce, thus producing economic value for the inventor/creator of the creation concerned. Where, one of the types of Intellectual Property Rights is Copyright. Copyright itself has a definition as a right that regulates intellectual works in the fields of science, art and literature that are expressed in a distinctive form and have been expressed in a permanent form, or in other words, copyright is the exclusive right for the creator or recipient of the right to announce or reproduce his work or give permission for it without reducing the restrictions according to laws and regulations.

¹ Mely, "Survey Results Reveal the Most Popular Social Media in Indonesia", available at: <https://www.gatra.com/news-548811-nasional-hasil-survei-mengungkapkan-media-sosial-paling-digemari-di-indonesia-.html>, accessed November 12, 2024.

² Deddy Setiawan, "Indonesia's Population of 272 Million People, Dominated by Generation Z", available at: <https://www.viva.co.id/berita/bisnis/1508347-jumlah-penduduk-indonesia>, accessed on November 12, 2022

³ Khoirul Anam, "Instagram & TikTok Minggir, This is the King of Social Media Platforms RI", available at: <https://www.cnbcindonesia.com/tech/20220612115314-37-346302/instagram-TikTok-minggir-ini-raja-platform-social-media-ri>, accessed on November 12, 2024

Discussion

1. Legal Consequences of Uploading Movie Trailers on *TikTok*

In the Great Dictionary of the Indonesian Language (KBBI), the meaning of consequence is the result, result, impact, or influence of an action. By relying on the definition above, it can be understood that legal consequences are the same as legal consequences. Legal consequences according to R. Soeroso itself have a definition as the result of an action taken to obtain an effect desired by the perpetrator and regulated by law. According to R. Soeroso, legal consequences are the consequences of a legal action. The legal action referred to here is an action that creates rights and obligations between the parties involved.⁴

Then uploading movie trailers on TikTok referred to here is an action when an account on the short video platform, TikTok, uploads movie trailers with the intention of providing spoilers or leaking the content of the film so that other people who see it do not need to watch the film in its entirety. Then why does the act of uploading movie footage on TikTok with the intention of providing spoilers then cause legal consequences? As explained in the previous paragraph, legal consequences are the consequences arising from a legal action, where legal actions are actions that create rights and obligations between the parties involved.

Uploading movie trailers on TikTok with the intention of providing spoilers certainly gives rise to rights for the uploader, such as gaining popularity and earning income in the form of money. The popularity acquisition referred to here is that when the upload of the film footage receives a lot of support from other accounts that watch it, usually support can be in the form of comments, views, likes, and shares. Furthermore, the income in question is when the uploader of the film footage monetizes the video he uploads to TikTok. In economics, monetization is turning an asset into money.⁵⁶ Monetization on TikTok itself is based on the interaction of four parties, namely the TikTok platform, advertisers, creators, and viewers. Payments originate from advertisers and are distributed between channel owners and the TikTok platform for any interaction between viewers and creatives such as clicks, site views, and video views.

Based on the above statement, it can be understood that the uploader who uploads footage of the film on TikTok with the intention of spreading spoilers of the film in question obtains moral rights (gaining popularity) and economic rights (money earned from the monetization process on TikTok) not from his own creation but from the creation of someone else.

2. Analysis of Creators' Legal Protection for Uploading Movie Trailers on TikTok

It can be known now that uploaders who upload movie trailers on *TikTok* with the intention of spreading *spoilers* for the film in question obtain moral rights (gaining popularity and support) and economic rights (money earned from the monetization process on *TikTok*) not from their own creations but from other people's creations. After discussing the rights obtained from the uploader of the film footage on *TikTok* with the intention of spreading *spoilers* for the film in question, the next thing will be discussed about the obligations that should be carried out by the uploader of the film footage. Where these obligations arise not only from the legal action that has been taken by the uploader, but also because Indonesia has Law Number 28 of 2014 concerning Copyright which aims to provide legal protection for the rights to a work made through the creation process.

The obligations that should be carried out by uploaders of movie footage on *TikTok* with the intention of spreading *spoilers* are as follows:

⁴ R. Soeroso, Introduction to Law, (Jakarta: Sinar Grafika, 2007), p. 295.

1. Obtaining Permission from the Filmmaker

This obligation arises from Article 9 paragraph (2) of Law Number 28 of 2014 concerning Copyright which reads as follows:

"Every person who exercises economic rights as referred to in paragraph (1) is obliged to obtain permission from the Creator or Copyright Holder."

As explained in the previous sub-chapter, an uploader who uploads movie trailers on *TikTok* with the intention of spreading *spoilers* if he activates monetization on *TikTok*, then he will earn a certain amount of money from the videos he uploads on the *platform* short video, so it can be said that the uploader obtains economic rights from a work that does not belong to him. Therefore, the uploader of the film footage should have asked the original film creator for permission in advance because the original film creator did not obtain the economic rights. If this obligation is not carried out by him, then the act of uploading footage to *TikTok* with the intention of spreading the *spoiler* can be said to be a copyright violation. Uploading movie footage on *TikTok* without direct permission from the filmmaker is included in creative exploitation activities. According to Henry Soelistyo, in general, exploitation is in the form of multiplying or announcing creations. Normatively, multiplying here means that by increasing the number of creations, either in whole or in part, which is very substantial by using the same or unequal materials, including permanent or temporary transformation. While what is meant by announcing includes but not limited to the reading, broadcasting, exhibition, sale, distribution, or dissemination of a work by using any tool including internet media or doing in any way so that a work can be read, heard, or seen by others⁵.

In addition, in the event that someone owns and distributes a copyrighted film trailer, especially for a film that should only be enjoyed by paid subscribers on a digital *streaming platform* such as *Netflix*, *We Tv*, and so on, it should be suspected that the person concerned has committed piracy. Piracy in accordance with Article 1 number 23 of Law Number 28 of 2014 concerning Copyright itself has the following definition:

"Piracy is the unauthorized reproduction of Works and/or Related Rights products and the distribution of goods resulting from duplication is widely intended to obtain economic benefits."

This act of piracy is criminally threatened as stated in Article 113 paragraph (4) of Law Number 28 of 2014 concerning Copyright which states:

"Every person who meets the elements as intended in paragraph (3) committed in the form of piracy, shall be sentenced to imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp 4,000,000,000.00 (four billion rupiah)."

It should be noted that the act of uploading movie trailers on *TikTok* with the intention of spreading *spoilers* is different from uploading movie trailers carried out by digital *streaming platforms* such as *Netflix*, for example. *Netflix* produces or acquires exclusive rights to many television shows and movies. *Netflix* also partners with content providers and studios to license rights to other titles, which are only available in certain countries or for a limited time⁶.

Netflix has opted for a business model that relies solely on subscription revenue. It offers three pricing tiers that give customers access to exclusive and non-exclusive television shows and movies that are produced in-house by the company or licensed from the content owner. The fees collected from subscribers, coupled with the capital increase through new debt issues, allow *Netflix* to invest in content,

⁵ Henry Soelistyo, *Copyright Without Moral Rights*, (Jakarta: Rajagrafindo Persada, 2011), p. 95.

⁶ Netflix, "How Netflix Licenses TV Shows and Movies", available at : help.netflix.com, accessed January 20, 2025.

either through *in-house* production or licensing agreements with content providers. To continue growing its subscriber base, *Netflix* is constantly negotiating new licensing deals with television shows, networks, and film producers, or investing in its own content production^{7,59} Licensing content involves acquiring the rights from the owner of a television show or movie to stream content through a service like *Netflix*. A license agreement is established between the content owner and *Netflix*. Each agreement is different based on the needs of both parties. For example, a television show owner can agree to allow *Netflix* to *stream* all seasons of its shows for one, three, or five years. Licensing agreements may restrict *Netflix*, or exclude it from certain geographic regions. UK crime shows may be available for *online* distribution anywhere globally except the UK, the domestic market of the manufacturer. When the licensing agreement expires, both parties can negotiate a renewal, or *Netflix* can cancel the show from its library if viewer interest does not guarantee the cost.

Content owners can license programming to several other *streaming platforms* besides *Netflix*, such as *Hulu* or *Amazon Prime Video*, making licensing agreements between the parties non-exclusive. Non-exclusive license agreements are generally cheaper to obtain because non-exclusivity reduces the value of the content. As competition continues to fill the market, streaming service providers *are* realizing the importance of exclusive content. Under an exclusive licensing agreement, a streaming distribution *channel* (sometimes referred to as a distribution window) is reserved for a single *platform*. The agreement can be for a specific period of time or for eternity. Exclusive licensing agreements are much more expensive compared to non-exclusive agreements, although they have the potential to drive more customers over time

2. Include the Name of the Film's Creator

This obligation arises because Law Number 28 of 2014 concerning Copyright recognizes the existence of the doctrine of *fair use* or reasonable interest. The concept of *fair use* in the context of copyright law in Indonesia is that if there is a person who takes someone else's work within the framework of educational, research, and scientific interests as long as it is not for commercial and ethical purposes by including the source of the work, then this is considered not a violation of copyright.

The doctrine of *fair use* or natural interest is regulated in Articles 43 to 49 of Law Number 28 of 2014 concerning Copyright. Based on these provisions, acts that are not considered copyright infringement must meet the following conditions:

- a. It is non-commercial, and has permission from the creator.
- b. In the event that the use, retrieval, reproduction, and/or alteration of a work and/or related right product in whole or in part substantially is not considered copyright infringement if the source is mentioned or listed in full without prejudice.

When referring to the official website *TikTok*, then it was found that *TikTok* will follow all forms of rules that apply in their position. Even in Indonesia itself *TikTok* does not have a legal team, however *TikTok* will continue to follow the applicable laws in Indonesia and in this case it is about copyright contained in Law Number 28 of 2014 concerning Copyright. Doctrinal provisions *fair use* or the legitimate interests in Indonesia, especially with the doctrine of *fair use* the creator is still unclear about the limits so it needs to be interpreted if there is a legal dispute in the future.

⁷ Netflix "How Netflix Pays For Movie and TV Show Licensing", available at: <https://id.nesrakonk.ru/how-netflix-pays-movie-and-tv-show-licensing/>, accessed on January 20, 2025

Bambang Pratama argues that the limits of meaning *Fair* (reasonable, sufficient) can be matched with the principle of propriety in the intellectual property law regime in Indonesia.

Law Number 28 of 2014 concerning Copyright provides several alternatives to resolve legal disputes over the distribution of *spoilers of film footage* on TikTok, namely through civil law instruments as explained in the previous paragraphs, namely by filing a lawsuit for compensation to the Commercial Court, then it can be resolved through criminal law instruments, it can also be resolved outside the court, namely by the process of arbitration and can also be resolved by using other alternative settlements such as mediation, negotiation, and conciliation.

The settlement of legal disputes over the dissemination of *spoilers of movie trailers* on TikTok outside the court through arbitration proceedings is regulated in Article 95 paragraph (2). The dispute over the distribution of *spoilers* for movie trailers on TikTok can be resolved through the Intellectual Property Rights Arbitration and Mediation Agency (BAM HKI). This arbitration and mediation body specifically deals with intellectual property rights disputes that were launched since 2012. Then since 2019, BAM HKI has collaborated with the Indonesian National Arbitration Board and the National Mediation Center in handling intellectual property rights cases. Meanwhile, what is meant by arbitration here is the settlement of disputes outside the court based on a written arbitration agreement made by the parties by containing an arbitration clause before the dispute occurs (*pactum compromitendo*) or after the dispute occurs (*Acta Compromise*).

Conclusion

1. The legal consequence for TikTok accounts that upload *spoilers* for movie trailers with cuts to the film in question is that the uploader obtains moral rights and economic rights not from his own creation but from someone else's creation. Where the moral rights referred to here are the acquisition of popularity and support from the general public in the form of comments, *views*, *likes*, and *shares*. Meanwhile, what is meant by economic rights here is the uploader who earns income in the form of money from the monetization system on TikTok. Monetization is the conversion of an asset into money, where the payment comes from the advertiser and is distributed between the channel owner and the TikTok platform for every interaction between the audience and the creative such as clicks, website visits, and video views. Monetization on TikTok itself is based on the interaction of four parties, namely the TikTok platform, advertisers, creators, and viewers.
2. Legal protections for the rights of film creators from uploading movie trailer *spoilers* on TikTok are as follows:
 - a. The provisions in Law Number 28 of 2014 concerning Copyright which regulate the obligation to upload *spoilers* for movie footage on TikTok, which include:
 - 1) Article 9 paragraph (2) of Law Number 28 of 2014 concerning Copyright which requires the uploader to obtain permission from the creator/copyright holder to upload *spoilers* for the film trailer, even more so if the uploader obtains economic rights from uploading the *spoiler* of the film trailer. If this provision is not obeyed by the uploader, then it can be said that the uploader has committed copyright infringement, namely the exploitation of the work. In addition, in the event that the uploader distributes a movie trailer that should only be enjoyed by paid subscribers on a digital *streaming* platform such as *Netflix*, *We Tv*, and so on, it is suspected that the uploader has committed piracy. Where, this act of piracy can be criminally threatened as stated in Article 113 paragraph (4) of Law Number 28 of 2014 concerning Copyright.

- 2) Articles 43-49 of Law Number 28 of 2014 concerning Copyright are related to the doctrine of *fair use* or reasonable interest which requires uploaders to include the name of the creator/copyright holder in the *spoiler* video of the film footage they upload to *TikTok*. If the uploader uploads a movie trailer to *TikTok* with the intention of spreading *spoilers* does not

Listing the name of the creator/copyright holder of the film, it can be said that the uploader has committed copyright infringement, where the rights violated are the moral rights of the creator/copyright holder. The moral right itself is affirmed in Article 5 of Law Number 28 of 2014. In this case, if the creator of the film finds that his work was uploaded by an irresponsible party or a party who does not carry out his obligations, then the creator can complain about the act of copyright infringement and file a lawsuit for compensation and request the confiscation of the announced object or the result of the reproduction of the work to the Commercial Court, this is as stipulated in Article 99 of Law Number 28 of 2014 concerning Copyright. In addition, film creators can complain about the act of copyright infringement to the Ministry of Law and Human Rights as affirmed in Article 55 of Law Number 28 of 2014.

An alternative dispute resolution offered by Law Number 28 of 2014 concerning Copyright, namely through civil law instruments by filing a lawsuit for compensation to the Commercial Court and the Ministry of Law and Human Rights as stated in Articles 55 and 99, then can be resolved through criminal law instruments as stated in Article 120, and can also be resolved outside the court, namely by arbitration process as stated in Article 95 paragraph (2), and other alternative dispute resolution such as mediation, negotiation, and conciliation, as stated in Article 95 paragraph (1).

- b. Protection from *TikTok*, where *TikTok* applies *the doctrine of fair use* (reasonable interest) which is adapted to the country where the content creator lives, so that the application of *the fair use* doctrine in Indonesia by *TikTok* will be adjusted to Law Number 28 of 2014 concerning Copyright. If the filmmaker is not happy that his film is uploaded back to *TikTok* by another account that does not have any interest in him in the form of a movie trailer for any reason, then *TikTok* will follow up by deleting or demonetizing (automatically disabling monetization) the video that has been broadcast. To find out which content is broadcast on its channel that is content that violates copyright, that uses the doctrine of *fair use*, and that is fully in accordance with copyright, it has a *Content ID claim system*. This *Content ID* works by matching videos circulating on *TikTok* complete with sound and visuals and then matching with the database owned by *TikTok* to find out if there is a match with the work of the original owner and confirm that it has obtained permission from the original creator. For

TikTok will stop monetizing videos that contain content belonging to someone who does not have permission with the original creator.

3. The problems that arise in the application of the doctrine of *fair use* are as follows:

- a. The lack of knowledge of economic rights and moral rights to a creation and the difficulty of the litigation process in court so that the parties involved in the dispute over the application of *the fair use* doctrine choose not to carry out dispute resolution in the Commercial Court.
- b. Sanctions for copyright infringement have not yet had a deterrent effect on the perpetrators so that the level of infringement continues to increase even though the government already has the legal apparatus.
- c. The limited number of law enforcement officials who handle copyright issues, as well as the leniency of the verdicts handed down by the judicial process to violators, do not cause a deterrent effect.

The problems mentioned above arise because Law Number 28 of 2014 concerning Copyright does not determine the limits of the use of the doctrine of *fair use* or reasonable interest. Because Law Number 28 of 2014 concerning Copyright does not determine the limit of the use of *the fair use* doctrine, that makes the party who can determine the limit of the use of *the fair use* doctrine for a work is only the creator of the work itself who feels that the economic benefits of his work are harmed or determined by the Court

Trade. In determining that the lawsuit is null and void because it turns out that the case is included in the doctrine of *fair use* or reasonable interest, the law in Indonesia does not determine how to resolve it with certainty, so the solution that the author can offer here is that it is necessary for the judge to make a decision in accordance with legal findings (*rechtsvinding*). In addition, related to the lack of knowledge or understanding of the Indonesian people, especially those who use *TikTok* in the legal realm, especially copyright and the doctrine *of fair use* or other factors are that they do not want to spend a lot of money and a long time to litigate in court or arbitration, the solution that the author can offer here is the need for socialization and the determination of limits from the doctrine *Fair use* is very important for the creation of legal circulation and wider public insight regarding copyright in Indonesia

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