




# Legal Analysis of Cartoon Film Copyright Violations in Free Movie Streaming Services

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Submitted: 2022-05-02

Revised: 2022-07-01

Published: 2022-07-03



## Article Info

### Keywords:

Copyright; Cinematographic Works; Cartoon Films; Unlawful Act.

## Abstract

**Introduction:** *The bad impact of free movie streaming services is the Author or Copyright Holder does not get royalties for the use of his or her creation as well as moral rights because the name of the Author on the film streaming services is not included as something attached to the Work.*

**Purposes of the Research:** *The purpose of this study is to figure out whether or not the publication of cinematographic works in the form of cartoons on free movie streaming services is an unlawful act. This study also aims to investigate the efforts to prevent copyright infringement of cartoon films distributed by other parties in free movie streaming services.*

**Methods of the Research:** *The research method used is normative legal research with a statute legal approach.*

**Results of the Research:** *The result of this study includes 2 (two) things. This study found that the publication of cartoons in free movie streaming services is an act against the law because it violates Copyright Law which causes harm to the Author or Copyright Holder. Moreover, the results of this study also explain the various efforts to prevent copyright infringement on cartoon films distributed by other parties in free movie streaming services.*

## 1. INTRODUCTION

Film is a work that provides entertainment for those who watch it. There are kinds of films that are played by people or through animation known as cartoon films. Film is a work of art created by people, and the filmmaker owns the copyright to their work.

Copyright is one of several rights protected within the scope of Intellectual Property Rights. Intellectual Property Rights or hereinafter referred to as IPR is a legal and legally recognized material right that comes from the results of creative activities, an ability of human thought that is expressed to the general public in various forms that have benefits and are useful in supporting human life, as well as having economic value.<sup>1</sup>

Based on Article 1 number 1 of Law Number 28 of 2014 on Copyright or hereinafter referred to as Copyright Law, Copyright is an exclusive right of the author vested

<sup>1</sup> Sulasi Rongiyati, "Pelindungan Hukum Hak Kekayaan Intelektual Pada Produk Ekonomi Kreatif (Protection Of Intellectual Property Rights On Creative Economic Products)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2017): 39–58, <https://doi.org/10.22212/jnh.v9i1.1001>.

automatically on the basis of declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations. Creation according to Article 1 number 3 of Copyright Law is any scientific, artistic, and literary works resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form

Article 40 paragraph (1) Copyright Law mentions various kinds of works that are protected within the scope of Copyright, one of which is a cinematographic work or better known as "Film". Law Number 33 of 2009 on Film defines Film as a cultural artwork which is a social institution and mass communication media made based on cinematographic rules with or without sound and can be shown.

As explained in general elucidation of Article 40 paragraph (1) letter m Copyright Law, the film is a creation in the form of moving images, including documentary films, advertising films, reportage or feature films made with a scenario, and cartoon films. Of the many types of film mentioned earlier, cartoon films are one type of film that is much favored and in demand by the public because of their unique characteristics. Cartoon films are the copyrighted works that use application facilities in the multimedia field by trying to combine images, text, audio, animation, and video to modify a series of still images in such a way that it looks as if they are moving and sounding and can become an interesting storyline.<sup>2</sup>

The implication of the regulation of cartoon films as copyright protected by Copyright Law is that the Author as the Copyright Holder of the film in question has an exclusive right, namely the right to exercise a monopoly on his creation to protect his creation from others. If there is another person who wants to do an act against a Work in the form of a cartoon, then that person must have permission from the Author concerned. On the other hand, if there is another person who wants to commit an act against the Creation in the form of a cartoon without the permission of the Author, then that person may be subject to criminal sanctions in the form of a fine and/or imprisonment.

In today's digital era, it is easy to watch a cartoon. It only requires the internet, to enable people to watch cartoons through various movie streaming services provided by certain parties. The presence of the current internet is also an easy choice for people as an instant step in watching movies.<sup>3</sup>

Movie streaming services on the internet are divided into 2 (two), namely paid movie streaming services and free movie streaming services. A paid movie streaming service is an official movie streaming service that cooperates and also enters into a written agreement with the Author of the film to exercise economic rights to his or her creation for commercial purposes such as netflix.com, vidio.com, viu.com, and others. Meanwhile, the free movie streaming service is those who do not cooperate and do not enter into a written agreement with the film Author to obtain a license to exercise economic rights over his or her creation for commercial purposes such as layarkaca21.com, indoxxi.com, kawanfilm21.com, and others.

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<sup>2</sup> Try Rindawati, Lily Thamrin, and Lusi, "Penggunaan Media Audio Visual Film Kartun Dalam Pembelajaran Kosakata Bahasa Mandarin Pada Siswa Sd Lkia. , 9(1), ." *Jurnal Tunas Bangsa* 9, no. 1 (2022): 1-10.

<sup>3</sup> Relys Sandi Ariani, Luna Dezeana Ticoalu, and Herlin Sri Wahyuni, "Mengoptimalkan Peran Lembaga Perfilman Indonesia: Analisis Aspek Hak Cipta Terhadap Praktik Siaran Video Ilegal," *Jurnal Kajian Pembaruan Hukum* 1, no. 2 (July 2021): 175, <https://doi.org/10.19184/jkph.v1i2.24475>.

Currently, many free movie streaming services carry out activities in the form of broadcasting works for commercial purposes without the permission of the Author as the Copyright Holder, especially in cinematographic works in the form of cartoon films. This is increasingly complicated because the resulting creation is in the form of an electronic form that can be broadcast by irresponsible parties very easily using the internet as the main platform.

An example of a case of the existence of this free movie streaming service is the presence of a free movie streaming service in the form of Kawanfilm21 as a forum for broadcasting cartoon films which in fact can still be accessed freely where the film streaming service provider does not pay any Copyright to the owner/ Author of the film but the service provider benefits from the film.<sup>4</sup>

The mechanism for broadcasting the film in question begins with someone uploading a cartoon film without permission and/or without a license from the Author on a film streaming service that has been set on the internet, which will then be broadcast and then accessible to the whole community for free without having to pay. It does not end there, after the series of activities is successful, the cartoon film which should be the exclusive work of the Author may be further disseminated by other parties. Therefore, the activity becomes uncontrollable and difficult to overcome.

The bad impact of this free movie streaming service is the material and immaterial losses experienced by the Author. From one side, the Author or Copyright Holder does not get royalties for the use of his or her creation as well as moral rights because the name of the Author on the film streaming services is not included as something attached to the Work.<sup>5</sup>

The circulation of free movie streaming services on the internet that broadcast works for commercial purposes is a copyright infringement in the form of publicizing of works as regulated in Article 113 paragraph (3) Copyright Law which states: "Every person who unlawfully and/or without permission of the Author or Copyright holders infringes the economic rights of the Author as referred to in Article 9 section (1) point a, point b, point e, and/or point g for Commercial Use shall be sentenced to imprisonment for up to 4 (four) years and/or fine up to Rp 1,000,000,000.00 (one billion rupiah)".

Responding to legal issues regarding the existence of free film streaming services as a means to broadcast creations in the form of cartoon films, which should be an exclusive work protected by Copyright as well as a work produced by an Author with the sacrifice of thought, cost, time, and staff, it is interesting to examine whether the publication of cartoons in free movie streaming services is against the law or not. Therefore, based on the above explanation, researcher was interested in conducting legal research entitled "Legal Analysis of Cartoon Film Copyright Violations in Free Movie Streaming Services according to Law No. 28 of 2014 on Copyright".

This research is different from previous research which put more emphasis on the implementation of legal protection of Copyright Holders of cinematographic works (films)

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<sup>4</sup> "Situs Streaming Film Buat Buat Nonton Gratisan Saat Di Rumah Saja," CNBC Indonesia, 2020.

<sup>5</sup> Daniel Andre Stefano, Hendro Saptono, and Siti Mahmudah, "Perlindungan Hukum Pemegang Hak Cipta Film Terhadap Pelanggaran Hak Cipta Yang Dilakukan Situs Penyedia Layanan Film Streaming Gratis Di Internet (Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta)," *Diponegoro Law Journal* 5, no. 3 (2016): 1-11, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/11384>.

in the case of free viewing and downloading via the Internet and its obstacles<sup>6</sup>, and other research emphasis on the copyright infringement through the Instagram application such as uploading cinema movie trailers to Instastory.<sup>7</sup> The difference in this paper from previous research is that the author focuses on the problem of whether the activity of publicizing cartoon films in free movie streaming services including an unlawful act or not.

This journal article examines whether publishing cartoons on free movie streaming services violates the law or not. After that, the question will arise: whether the publication of cartoon films in free movie streaming services as an unlawful act and what are the efforts to prevent copyright infringement on cartoon films distributed by other parties in free movie streaming services.

## 2. METHOD

This study is normative research employing a statutory research approach. The data used in this study were secondary data consisting of primary, secondary, and tertiary legal materials. The data collection technique used in this study was a literature study with qualitative descriptive analysis techniques.

## 3. RESULTS AND DISCUSSION

### 3.1 The Publication of Cartoon Films in Free Movie Streaming Services as an Unlawful Act

In order to determine an activity for publicizing cartoons in a free movie streaming service carried out by someone as an unlawful act, that activity must at least meet all elements of an unlawful act as regulated in Article 1365 of the Civil Code. The explanation regarding the elements of unlawful acts and their relation to cartoon film streaming activities on free movie streaming services can be explained as follows:

a. The existence of an action

An act against the law or an unlawful act begins with an act by the perpetrator.<sup>8</sup> The intended action includes doing something (active) or not doing something (passive).<sup>9</sup> Furthermore, the definition of an "action" in the context of an unlawful act can be explained as follows:<sup>10</sup>

- 1) *Nonfeasance* is an act where someone does not do something that is required by law.
- 2) *Misfeasance* is an act that is done wrongly, the act is an obligation or an act that the perpetrator has the right to do.
- 3) *Malfeasance* is an act that is carried out but the perpetrator has no right to do it.

It is known that there are several acts committed by a person in the case of publications of cartoons in free movie streaming services, namely acts in the form of broadcasting works

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<sup>6</sup> Shadiqi Hutomo, "Perlindungan Hukum Terhadap Pemegang Hak Cipta Karya Sinematografi (Film) Dalam Kasus Penayangan Dan Pengunduhan Gratis Melalui Internet Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Universitas Katolik Seogijapranata, 2019).

<sup>7</sup> Dita Shahnaz Saskia, "Analisis Hukum Pelanggaran Hak Cipta Terhadap Cuplikan Film Bioskop Yang Diunggah Ke Instastory Oleh Pengguna Instagram" (Universitas Sumatera Utara, 2020).

<sup>8</sup> Velliana Tanaya, *Perbuatan Melawan Hukum Informasi Menyesatkan (Misleading Information) Dalam Prospektus Go Public* (Tangerang: Fakultas Hukum Universitas Pelita Harapan, 2018).

<sup>9</sup> Mariam Darus Badruzaman, *Hukum Perikatan Dalam KUHPerduta Buku Ketiga: Yurisprudensi, Doktrin Serta Penjelasan* (Bandung: PT Citra Aditya Bakti, 2015).

<sup>10</sup> Munir Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*, Ctk Kelima (Bandung: PT Citra Aditya Bakti, 2017).



included in the category of publication of works. Based on Article 1 Number 11 Copyright Law, publication means any reading, broadcasting, the exhibition of works using any means, either electronically or non-electronically, or performing in any way so that works can be read, heard, or seen by others. The act is an act committed by someone but the perpetrator has no right to do so (*malfeasance*). Referring to the provisions of Article 9 paragraph (1) Copyright Law, a person who has the right to make a publication of a work is the Author or Copyright Holder. Other parties who are not mentioned in the provisions of the article, are automatically not entitled to perform the act and must obtain permission from the Author or Copyright Holder to carry out the act.

Therefore, it can be concluded that based on the explanation above, there is an act committed by a person to determine that someone has committed an unlawful act. For this matter, the element of the existence of an act as the first element in an unlawful act has been fulfilled.

#### b. The Act against the Law or Unlawful Act

To determine that someone has committed an unlawful act, it must be proven that the person concerned has committed an act against the law or an unlawful act. In the past, the court interpreted "against the law" as a violation of the applicable laws and regulations. However, since 1919 through the decision of the *Hoge Raad* of the Netherlands on January 13, 1919, in the *Lindenbaum versus Cohen* case, there has been a development of the notion of "against the law". The unlawful act occurs against violations of laws and regulations but also includes any violation of decency in people's lives.<sup>11</sup>

The elements of unlawful act include things as explained as follows:<sup>12</sup>

- 1) Acts that violate applicable laws  
An act that violates the law is an act that violates written legal provisions as the main basis of a regulation that applies in society.
- 2) Acts that violate the rights of others guaranteed by law  
An act that is contrary to the rights of others (*inbreuk op eens anders recht*) is one of the acts prohibited by Article 1365 of the Civil Code. The rights violated are the rights of a person recognized by law, including:<sup>13</sup>
  - a) Personal rights (*persoonlijkheidsrechten*)
  - b) Property rights (*vermogensrecht*)
  - c) Right to liberty
  - d) Right to honor and reputation
- 3) Acts that are contrary to the legal obligations of the perpetrator  
The term "legal obligation" (*rechtsplicht*) can be interpreted as an obligation given by law to a person, both written law and unwritten law. Thus, it is not only against the written law (*wettelijk plicht*) but also against the rights of others under the law (*wettelijk recht*).<sup>14</sup>
- 4) Acts that are contrary to decency (*goede zeden*)  
An act that violates decency that has been recognized by the community as an unwritten law is also considered an act against the law or an unlawful act.

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<sup>11</sup> Fuady.

<sup>12</sup> Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53–70.

<sup>13</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.

<sup>14</sup> Fuady.

Therefore, when the act of violating the decency causes a loss to the other party, the party suffering the loss can claim compensation based on an unlawful act (Article 1365 of the Civil Code).<sup>15</sup>

- 5) Acts that are contrary to good attitudes in society to pay attention to the interests of others (*indruist tegen de zorgvuldigheid, welke in het maatschappelijk verkeer betaamt ten aanzien van anders person of goed*).

An act that is contrary to prudence or necessity in good social relations is also considered an act against the law. Hence, if someone takes an action that harms another person, even though it does not violate the articles of the existing laws and regulations, it may still be referred to be an unlawful act, because the act is contrary to the principle of prudence or necessity in social interaction. The obligation in the community is certainly not written but is recognized by the community concerned.<sup>16</sup>

Of all these elements, the publication of cartoons on free movie streaming services has in fact met all of the existing elements where:

- 1) A publication of a cartoon in a free movie streaming service is an act that violates the law, namely violating Article 9 paragraph (2) and paragraph (3) of the Copyright Law where a person in carrying out the act is not based on the permission of the Author or Copyright Holder and the act is intended for commercial use.<sup>17</sup>
- 2) An act in the form of publications of cartoons in free movie streaming services is an act that violates the rights of others guaranteed by law which in this case violates the economic rights of the Author or Copyright Holder.<sup>18</sup> Economic rights for the Author or Copyright Holder are part of the property rights regulated in Article 9 paragraph (1) Copyright Law.
- 3) A publication of cartoons in a free movie streaming service is an act that is contrary to the legal obligations of the perpetrator where the person concerned does not carry out an obligation by not respecting the copyright owned by the Author or Copyright Holder. A person who commits a publication of a cartoon film copyright, but does not have a Copyright license and does not ask permission from the Author or Copyright Holder to do so, can be said to be the confiscation of someone's rights. This violates a legal obligation where someone should be obliged to respect the copyrights of others.
- 4) An act in the form of publication of cartoons in a free movie streaming service is an act that is contrary to decency (*goede zeden*) for the act is an act that steals/seizes the rights of others secretly without the permission of the Author or Copyright Holder.
- 5) An act in the form of publication of cartoons in a free movie streaming service is an act that is contrary to good attitudes in society to pay attention to the interests of others. In this case, someone who commits a violation completely ignores the interests of the Author or Copyright Holder to earn income.

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<sup>15</sup> Fuady.

<sup>16</sup> Fuady.

<sup>17</sup> Hendrianto et al., "Perlindungan Hukum Bagi Pemegang Hak Cipta Film Dari Kegiatan Streaming Dan Download Pada Website Ilegal," *JOM Fakultas Hukum Universitas VI* (2019): 1-15.

<sup>18</sup> Hendrianto et al.

Since all the elements of “against the law” as mentioned above complement each other, then the element of the existence of the act “against the law” as the second element in an unlawful act has been met.

c. An error on the part of the perpetrator

The element of error done by a person is another element that must be met to determine that someone has committed an unlawful act. An act that is considered by law to contain an element of error can be legally held accountable if it meets the following elements:<sup>19</sup>

- 1) There is an element of intentionality, or
- 2) There is an element of negligence, and
- 3) There is no justification or excuse for forgiveness (*recht vaardigingsgrond*), such as *overmacht*, self-defense, insane, and others.

The legislator emphasizes that a person who commits an unlawful act is only responsible for the loss he or she incurs if the act can be blamed on him or her. According to Volmar, legislators define error in several senses, including:<sup>20</sup>

- 1) The perpetrator is responsible for the actions and losses caused by the act;
- 2) Negligence as opposed to intentional;
- 3) Unlawful nature.

The element of error, in general, can be due to 2 (two) things, namely intentional or negligence. Intentional is when a person commits an act or neglects an obligation where according to his estimation, he already knows the detrimental consequences that will inevitably arise, but still performs an act or neglects his obligation. Meanwhile, the element of negligence is the opposite of the element of intent.<sup>21</sup> It is explained in law that in order for an act to be considered an omission, it must meet the following main elements:<sup>22</sup>

- 1) There is an action or neglect of something that should be done;
- 2) There is a duty of care;
- 3) The precautionary obligations are not carried out;
- 4) There is a loss for other people;
- 5) There is a causal relationship between the act of not doing the deed and the resulting loss.

The publication of cartoons on a free movie streaming service is clearly intentional, not negligent because someone who carries out cartoon movie announcements in a free movie streaming service does it with full awareness and continues to do so even though he or she knows the consequences of his or her actions.

Furthermore, in these activities, there is no element of justification or forgiving reasons at all. Everything that is done by the person concerned is purely a pre-planned thing which causes it to be outside of an *overmacht* state (unpredictable force situation) which can be a reason for forgiveness for an act that causes harm. Since all the elements of wrongdoing in

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<sup>19</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.

<sup>20</sup> Tanaya, *Perbuatan Melawan Hukum Informasi Menyesatkan (Misleading Information) Dalam Prospektus Go Public*.

<sup>21</sup> Rosa Agustina et al., *Hukum Perikatan (Law of Obligations)* (Denpasar: Pustaka Larasan, 2012).

<sup>22</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.

unlawful acts complement each other, then the element of error as the third element in unlawful acts has been fulfilled.

d. The existence of a loss for the victim

The existence of a loss (*schade*) for the victim is also an element that must be met to determine someone to commit an unlawful act. Losses that arise as a result of unlawful acts can be in the form of loss of wealth or material loss and moral loss or immaterial loss.<sup>23</sup> Material losses are generally related to the losses suffered and the benefits that are expected to be received by the victim. Meanwhile, immaterial losses are abstract losses whose amount is determined based on an assessment, where efforts are made accordingly to return the victim, as much as possible, to its original state before the unlawful act committed by a person.<sup>24</sup>

Accordingly, there are material and immaterial losses for the Author or Copyright Holder as a victim in the publication of cartoon films in free movie streaming services. In material losses, the Author or Copyright Holder suffers financial losses in the absence of royalty payments from the publication of cartoon films in free movie streaming services. Meanwhile, in immaterial losses, the Author or Copyright Holder experiences mental stress because the creation is made with all of his or her mind, energy, and time used is displayed without including the name of Author or Copyright Holder. Based on the existing losses, the element of loss as the fourth element in an unlawful act has been fulfilled.

e. The existence of a causal relationship between actions and loss

The causal relationship between the actions committed and the losses incurred is also a condition of an unlawful act.<sup>25</sup> In this case, causality aims to see whether there is a causal relationship between unlawful acts and the losses incurred to hold someone accountable.<sup>26</sup> There are several teachings on cause-and-effect relationships used, including:

- 1) The teaching of *conditio sine qua non* (Von Buri).<sup>27</sup>  
*Conditio sine qua non* has the meaning of an absolute requirement. According to Pompe, this teaching sees every problem as the cause of an effect. Von Buri emphasized that every problem which is a condition for the emergence of an effect is the cause of an effect.
- 2) Proximate cause theory  
The Proximate Cause Theory is a theory that is more oriented towards what caused the loss to the victim, whether the perpetrator's actions or other actions that were outside of an unlawful act. However, due to the existence of a loss, what needs to be proven is the relationship between the act against the law and the resulting loss.<sup>28</sup>

From existing theories, it can be explained that the publication of cartoon films in free movie streaming services without the permission of the Author or Copyright Holder is a problem that actually causes consequences for the Author or Copyright Holder, namely

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<sup>23</sup> Tanaya, *Perbuatan Melawan Hukum Informasi Menyesatkan (Misleading Information) Dalam Prospektus Go Public*.

<sup>24</sup> Tanaya.

<sup>25</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.

<sup>26</sup> Tanaya, *Perbuatan Melawan Hukum Informasi Menyesatkan (Misleading Information) Dalam Prospektus Go Public*.

<sup>27</sup> Tanaya.

<sup>28</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.



material losses and immaterial losses. From one side, the Author or Copyright Holder does not get royalties for the use of his or her creation as well as moral rights with no inclusions of the author's name on free movie streaming services as something attached to Creation.<sup>29</sup> For this matter, the element of a causal relationship between the act and the loss as the fifth element in an unlawful act has been fulfilled.

Furthermore, the consequence for someone who commits an unlawful act is the obligation for that person to provide compensation to the victim who suffers a loss. As it was previously known, an unlawful act related to the publication of cartoon films on free movie streaming services is an act that shows an element of error in the form of intentionality on the part of the perpetrator.

An error in the form of intentional acts is only deemed to exist if the intentional act has caused certain consequences to the physical and/or mental or property of the victim, even though it has not been intentional to injure (physically/mentally) the victim.<sup>30</sup> The element of error in the form of intent is considered real in an action if it fulfills the following elements:<sup>31</sup>

- 1) There is awareness (state of mind) to do.
- 2) There are consequences of actions.
- 3) Awareness to do, not only to cause consequences, but also the belief that these actions "definitely" can lead to these consequences.

In terms of the severity of the error rate of someone who commits an unlawful act in the form of negligence, an unlawful act committed intentionally has a higher error rate. A person who intentionally causes harm to another person (whether for his benefit or not), means that the person concerned has committed an act that violates the law in a more serious sense than the act he did just for sheer negligence.<sup>32</sup>

According to the Civil Code, the provisions regarding compensation as a result of unlawful acts are not much different from compensation in default. The requirements for compensation according to the Civil Code, in particular compensation for unlawful acts, include:<sup>33</sup>

- 1) Component Loss  
The components of a compensation consist of 3 (three) things, namely costs, losses, and interest.
- 2) Starting Point of Compensation  
The commencement of compensation is as follows:
  - a) At the time of being declared in default, the debtor continues to neglect his obligations, or
  - b) If the default is something that must be given, from the time the grace period has been exceeded, the debtor has been able to make or provide the default.
- 3) Not for Force Majeure Reason

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<sup>29</sup> Stefano, Saptono, and Mahmudah, "Perlindungan Hukum Pemegang Hak Cipta Film Terhadap Pelanggaran Hak Cipta Yang Dilakukan Situs Penyedia Layanan Film Streaming Gratis Di Internet (Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta)."

<sup>30</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.

<sup>31</sup> Fuady.

<sup>32</sup> Fuady.

<sup>33</sup> Fuady.

New compensation can be given to the victim if the event that caused the loss is not classified as an act of coercion or force majeure.

4) When Loss Occurs<sup>34</sup>

An indemnity can only be granted against losses, including:

- a) The loss he had suffered.
- b) Losses due to loss of profits or income that could have been enjoyed by the victim.

5) Predictable Loss

Losses that must be compensated by someone who commits an unlawful act are losses that can be expected. In this case, the resulting loss must be expected to occur, or should reasonably be expected to occur, and suspicion existed at the time the unlawful act was committed.<sup>35</sup>

Furthermore, in terms of compensation to victims in the context of unlawful acts, the law imposes several types of compensation, including:<sup>36</sup>

1) Actual Compensation

Actual compensation is compensation whose value can be calculated easily. Therefore, several losses in rupiahs are out according to the losses experienced by the victim.

2) Punishment Compensation

Punishment compensation is compensation in a large amount that exceeds the actual amount of loss. The amount of compensation is intended as a punishment for the perpetrator. Compensation for this punishment is appropriate for serious cases of intent, such as severe abuse of someone without any sense of humanity.

3) Nominal Indemnity

A nominal indemnity or nominal compensation is compensation in the form of giving a sum of money, even though the actual loss cannot be calculated in money. In fact, there may be no material loss at all. In the case of an unlawful act that contains an intentional element, this type of compensation can be applied and is not appropriate for cases of negligence.<sup>37</sup>

It is noted that compensation payments do not always have to be in the form of money. The *Hoge Raad* of the Netherlands, in its decision on May 24, 1918, considered that the return to its original state before the loss was one of the forms of compensation payments that could also be made.<sup>38</sup> The purpose of this is to return the victim to his original state, at least to the state he might have achieved, namely before the unlawful act was committed. In this case, what is sought is a return that would be more appropriate than the payment of compensation in the form of money, because the payment with a certain amount of money is only an equivalent value.<sup>39</sup>

From several compensations as described previously, the Civil Code does not explicitly or even does not regulate in detail certain compensation, or any aspect of compensation. In response to this, the judge has the freedom to implement the existing

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<sup>34</sup> Fuady.

<sup>35</sup> Fuady.

<sup>36</sup> Fuady.

<sup>37</sup> Fuady.

<sup>38</sup> Sri Redjeki Slamet, "Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum: Suatu Perbandingan Dengan Wanprestasi," *Lex Jurnalica* 10, no. 2 (2013): 107–20.

<sup>39</sup> Slamet.

compensation under the principle of propriety, as long as this is indeed requested by the victim.<sup>40</sup>

Referring to the publication of cartoon films in free movie streaming services, the type of compensation that can be applied in such unlawful acts is actual compensation. The application of actual compensation is the most appropriate type of compensation from several other compensations and can be applied to losses that have been experienced by the Author or Copyright Holder as the victim. For example, compensation for all costs incurred by the victim, loss of profits, illness, and suffering, including mental suffering such as stress, shame, bad reputation, and others. In this case, the Author or Copyright Holder has the right to ask for compensation in the form of payment of a sum of money following the nominal profit that can be obtained if someone cooperates with the Author or Copyright Holder through a license agreement to make publications of cartoon films and service.

### **3.2 Efforts to Prevent Copyright Infringement on Cartoon Films Distributed by Other Parties in Free Movie Streaming Services**

The Indonesian government as the main subject in making efforts to prevent copyright infringement on cartoon films distributed by other parties in free movie streaming services enforces several main rules as general guidelines containing preventive measures for copyright infringement, including:

- 1) Law Number 28 of 2014 on Copyright
- 2) Law Number 11 of 2008 on Information and Electronic Transactions as amended by Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Information and Electronic Transactions or hereinafter referred to as the Information and Electronic Transactions Law.
- 3) Joint Regulation of the Ministry of Law and Human Rights Number 14 of 2015 and the Ministry of Communication and Information Technology Number 26 of 2015 regarding the Implementation of Closing Down Content and/or a User's Right to Access over Copyright Infringement and/or Related Rights in an Electronic System.

First, the Article 113 paragraph (3) Copyright Law explains that Every Person who unlawfully and/or without permission of the Author or the Copyright holder infringes the economic rights of the Author in the form of publishing the work, duplicating the work in all its forms, distributing the work or copies thereof, and/or publication of work for Commercial Use shall be sentenced to imprisonment for up to 4 (four) years and/or fine up to Rp1,000,000,000.00 (one billion rupiahs). The provision of this article is clearly a form of prevention provided by the government to prevent copyright infringement on cartoon film works by other parties in free movie streaming services.

Second, based on Article 48 paragraph (1) of the Information and Electronic Transactions Law, Every Person who fulfills the elements as referred to in Article 32 paragraph (1) shall be sentenced to a maximum imprisonment of 8 (eight) years and/or fine up to Rp2,000,000,000.00 (two billion rupiahs). It is also a form of prevention of copyright infringement provided by the government on copyrighted works (in this case cartoons) distributed by other parties in free movie streaming services.<sup>41</sup>

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<sup>40</sup> Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*.

<sup>41</sup> Hendrianto et al., "Perlindungan Hukum Bagi Pemegang Hak Cipta Film Dari Kegiatan Streaming Dan Download Pada Website Ilegal."

Third, to prevent copyright infringement carried out through information technology-based facilities (in this case in the form of providing free movie streaming services on the internet) as the main platform for distributing cartoons by certain parties, the government is authorized to supervise the content production and distribution activities that are suspected of violating Copyright.<sup>42</sup> The supervision in question is supervision in the form of an assessment if sufficient evidence is found that the film streaming service in question has committed copyright infringement. When the government conducts supervision, it is necessary to have cooperation and coordination from various parties, both domestically and abroad to prevent the creation and dissemination of copyright-infringing content.<sup>43</sup>

If adequate evidence is found, everyone who knows about Copyright infringement on an electronic system for commercial use is expected to notify it to the Minister in charge of government activities in the legal sector. The Minister then advises to the Minister of Communication and Information to take down part or all of the content in the electronic system that violates Copyright or renders the electronic system services unavailable, based on the current reports.<sup>44</sup>

The role of the government as described previously is the implementation of the Joint Regulations of the Ministry of Law and Human Rights Number 14 of 2015 and the Ministry of Communication and Information Technology Number 26 of 2015 regarding the Implementation of Closing Down Content and/or a User's Right to Access over Copyright Infringement and/or Related Rights in an Electronic System. Based on Article 2 paragraph (2) of the Regulations, the report as described previously can be made by:

- 1) Author;
- 2) Copyright Holder;
- 3) Related Rights Owners;
- 4) Licensee of Copyright and/or Related Rights;
- 5) National Collective Management Institute or Collective Management Institute;
- 6) Authorized Association; or
- 7) Other parties who have power of attorney.

From several existing regulations, the government has made efforts to prevent copyright infringement on broadcasting cartoons on free movie streaming services in the form of:

- 1) Closing down all free movie streaming services that upload cinematographic works (cartoons) without the permission of the Author or Copyright Holder provided to the public. This can be seen through the government's efforts to ban 468 free movie streaming services from 2019 to 2021.<sup>45</sup>
- 2) Application of criminal offenses as mentioned in Copyright Law for copyright infringement and Electronic Information and Transactions Law.

Besides prevention efforts from the government, other efforts to prevent copyright infringement have also been carried out by other supporting subjects (in this case the cinema). Cinema as a place that is prone to cases of copyright infringement makes many

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<sup>42</sup> Marni Emmy Mustafa, *Aneka Penegakan Hukum Hak Cipta, Paten, Merek Dan Indikasi Geografis* (Bandung: Alumni, 2017).

<sup>43</sup> Mustafa.

<sup>44</sup> Mustafa.

<sup>45</sup> Lingga Aryo, "Layanan Streaming Legal Dan Ilegal Di Masa Pandemi," 3 Januari, 2022.

parties record full films which will then be distributed through various free movie streaming services on the internet.

In response to this, the prevention efforts taken by the cinema in overcoming the occurrence of copyright infringement are by announcing advertisements in the form of a prohibition for viewers to record films in any form, including the applicable laws and sanctions that will be faced if someone does the recording. Moreover, the cinema in dealing with copyright infringement also installs a device in every room where the film is shown, namely infrared CCTV. This tool serves to help cinema officers control what audiences do with cellphones or other recording devices.<sup>46</sup>

Another effort that is also made by the cinema to prevent copyright infringement is to provide socialization to the audience to participate in preventing copyright infringement by reporting everyone they know who has committed an infringement. This is because there are still many people who record films in cinemas who escape the supervision of officers because they are recording secretly. Thus, the cinema needs help from viewers who understand the importance of respecting other people's copyrights by reporting every activity that occurs. Potentially copyright infringement.

#### 4. CONCLUSION

Based on the research findings that have been described previously, the result of this study includes 2 (two) things. First, the publication of cartoons on free movie streaming services is an act against the law because it violates Copyright Law which brings harm to the Author or Copyright Holder. The legal consequences for someone who commits the act are the obligation to provide compensation to the Author or Copyright Holder in the form of actual compensation in the form of payment of an amount of money in accordance with the nominal profit that can be obtained by the Author or Copyright Holder on these activities. Second, efforts to prevent copyright infringement on cartoon films distributed by other parties in free movie streaming services have been accommodated by the government by enacting several written regulations such as Copyright Law, Electronic Information and Transactions Law, and other regulations related to the implementation of closing copyright infringement content in electronic systems. Moreover, other efforts to prevent copyright infringement have also been carried out by other supporting subjects (in this case the cinema) by showing advertisements prohibiting filming using any electronic device in the room where the film is showing, installing CCTV monitoring equipment in the room where the film is showing, and outreaching to moviegoers to actively participate in reporting copyright infringement if they know that someone has committed a copyright infringement.

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<sup>46</sup> "Video Rekaman CCTV Di Studio Bioskop, Masih Berani Macam-Macam?," Solopos, 2019.



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