


Legal Protection of the Moral Rights of National Film Creators Uploaded Without Permission on TikTok Social Media

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Abstract

Introduction: The development of technology in this era has certainly made many platforms created, one of which is TikTok. Film is one of the copyrighted works that is included in the category of cinematographic works protected by Law Number 28 of 2014 concerning Copyright. On this platform, users can upload a variety of content from the results of user creativity.

Purposes of the Research: Analyzing the legal protection of the moral rights of national film creators uploaded without permission on TikTok social media.

Methods of the Research: The research method used is normative research, statutory approach, primary and secondary legal materials and material collection procedures using literature studies. the approaches used are: statute approach, conceptual approach, and casus approach. The technique of searching for legal materials uses document study techniques, and analyzes the study using qualitative analysis.

Findings of the Research: Research shows that protection related to the moral rights of national film creators uploaded on the TikTok application without the creator's permission is by providing sanctions to violators as contained in Law Number 28 of 2014 concerning Copyright and related to the settlement of moral rights disputes for national film creators uploaded without permission can be done in two ways, namely litigation and non-litigation. For the litigation route, the dispute can be resolved in court, while for non-litigation, the settlement can be through alternative dispute resolution which includes mediation, conciliation and negotiation and the most effective settlement in this problem is through the litigation route so that it can have a deterrent effect.

Keywords: Legal Protection; Moral Rights; Creators.

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INTRODUCTION

Copyright (*copy right*) is a branch of IPR which plays a role in protecting the rights of human works in the fields of literature, art and science.¹ For example, like a filmmaker, where a director makes a film and owns the copyright to the audio and visual recordings of the film. This gives him control over the distribution, reproduction, and public appearance of the film. Meanwhile, rights related to copyright (*in* the Copyright Law called related rights) include rights related to protected works such as the rights of artists, record producers, and broadcasters contained in Articles 43 to 50 of Law Number 28 of 2014 concerning Copyright. Copyright protection for a work can be granted if the work has a concrete form, this means that the work must be realized in a form that can later be read,

¹ Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual*, (Malang, Setara Press, 2017), h. 5.

seen or heard.² Therefore, Article 1 number 1 of Law Number 28 of 2014 concerning Copyright or (hereinafter referred to as the Copyright Law) provides an understanding of copyright. Article 1 number 1 of Law Number 28 of 2014 concerning Copyright reads: "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations". Based on this understanding, it can be interpreted that copyright is born automatically based on a declarative aspect, after the work is created or has been realized. Article 4 of the Copyright Law, the creator or owner of the copyright has exclusive rights to economic rights and moral rights. Exclusive rights are granted because they can only be granted to the creator, in other words they can be restricted or prohibited from being used by others without obtaining permission from the creator.³

There is a difference between economic rights and moral rights, economic rights have economic value but moral rights do not. Based on the explanation of Article 5 paragraph (1) of the Copyright Law, it can be concluded that moral rights are rights given to every creator or copyright holder where the right aims to always include a name on every work created and the creator has the right to his entire creation. Meanwhile, economic rights based on Article 8 of the Copyright Law are the right of every creator or copyright holder to obtain financial benefits for the works he creates. Moral rights are very important for creators in the sense that this moral right for creators to maintain the integrity of their work so that it will not damage their image if the work is used by others. One example is the inclusion of the creator's name if the creator's work wants to be used by others. The work is still recognized as the creation of the creator.

Almost everyone in Indonesia continues to use social networks in their daily activities regardless of their needs. The active use of social networks in Indonesia continues to grow and develop by 10,000,000 (ten million) or equivalent to 6.3% (six point three percent) compared to January 2020. Furthermore, in the same period, the number of internet users in Indonesia grew by 27,000,000 (twenty-seven million) or if changed in the form of a percentage growth of 15.5% (fifteen point five percent), the total number became 202,600,000 (two hundred and two million six hundred thousand).⁴ In general, social media has various forms that are known to the public and are often used such as, Instagram, Twitter, WhatsApp, YouTube, Facebook, TikTok and many others. However, the fact is that TikTok is one of the applications that can be said to be quite in demand among both adults and children. TikTok or Douysin originated in China which was created by Zhang Yiming and released in September 2016.⁵

This application is a short video platform where the video can be made in durations including 15 seconds, 60 seconds, 10 minutes and the video can be supported with a music background. This application is also used to record, edit, and upload on the application or can be shared to other social media so that it can be watched by fellow users and non-users of the application. In addition, TikTok can be a place to search for certain content, because

² Theresia N. A. Narwadan, Hak Moral Pencipta Atas Karya Cipta yang Diunduh Dari Internet, *Jurnal Sasi*, 20 no. 2 (2014), p. 71

³ Khwarizmi Maulana Simatupang, Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital (Juridical Review of Copyright Protection in Digital Sector), *Jurnal Ilmiah Kebijakan Hukum*, 15 no.1 (2021), p. 71.

⁴ Adelia Septiani, Restanti Tania, Aulia Fitria, Liliannisa Damayanti, *Media Sosial, Identitas, Transformasi dan Tantangannya*, (Malang: Intrans Publishing Group, 2020), p. 63.

⁵ Ade Rosdiana dan Nurnazmi, Dampak Aplikasi Tiktok Dalam Proses Sosial DI Kalangan Remaja Kelurahan Rabadompu Timur Kecamatan Raba Kota Bima, *Jurnal Pendidikan Sosiologi*, 4 no. 1 (2021), p. 101.

this application can make it easier for people to find what content or videos they are interested in, this is what makes many people start abusing the application by taking movies that have been uploaded to the application properly and uploading them again without thinking about the rights of the film owner and how to appreciate the intellectual work of an individual. The activity carried out by certain individuals in this context is to re-upload movies on the TikTok application not only to foreign films but also to national films. It is known that national films are films whose production comes from a country and usually in the film reflects the culture, language, and identity of that country. Generally, national films have characteristics that make them different from foreign films in terms of narrative, visuals and topics.

Re-uploading films on the TikTok application is done part by section, as can be seen from the Tiktok Brnd Film account with around 107,400 followers (one hundred seven thousand four hundred) and the total number of likes is 2,700,000 (two million seven hundred thousand) where this account uploads films, one of which is the film entitled "Habibi & Ainun" and gets likes on each part of the film "Habibi & Ainun" starting from thousands of likes and even reaching tens of thousands of likes. In addition to the uploads made by the account, there are also other accounts that upload other national films such as an account with the name of Budiyantoo99 which performs the same actions as the Brnd Film account which uploads a film titled Laskar Pelangi in a way that is part by part, from this explanation it can be seen that people today prefer to watch for free rather than having to watch in the cinema or watch on a special application that shows These films are like the Vidio application, this does not reflect how moral behaviors are appreciating the works of a creator, based on the explanation above, the author is interested in doing research related to this issue.

METHODS OF THE RESEARCH

The research method used is the normative juridical research method. This research uses a legal approach (*Statue Approach*) and a conceptual approach. The legal materials used include Primary, Secondary, and Tertiary Legal Materials. The data collection technique used is by using literature studies (*Library Research*), and the analysis used is qualitative descriptive analysis.

RESULTS AND DISCUSSION

A. Protection of the Moral Rights of National Film Creators Uploaded on TikTok Social Media

The concept of legal protection is that the legal protection that applies to the creator of a work is in the form of any copyrighted work in the fields of science, literature, and art that is born from inspiration, thought, imagination, or skills or expertise that are manifested in a tangible form where the protection of the work is valid for a predetermined period of time in accordance with its field and division. The government has taken measures to reduce copyright infringement as much as possible, in this case the actions taken by the government include the adjustment and formation of legislation which has been passed by Law Number 28 of 2014 concerning Copyright. Of course, copyright protection certainly protects all those involved, one of which is protecting the exclusive rights of creators. The exclusive rights of the creator exist automatically based on the declarative principle after a work is created in

real form. Exclusive rights in copyright contain important components, namely moral *rights and economic rights*.

Moral rights in copyright are rights that are inherently owned by the creator to his creation, this means that from the beginning of the creation of a copyrighted work the copyright takes effect. According to *the World Intellectual Property Organization*, as an international institution that works to protect intellectual property rights, "*Moral rights allow authors and creators to take certain action to preserve and protect their link with their work*".⁶ Moral rights allow authors and creators to take certain actions to preserve and protect their work. Moral rights are the recognition that a creation is a development of the creator's personality and that the relationship between the creator and his creation must be respected.⁷ The creator has the right to publish his work, announce, reproduce, and prohibit others from using or reproducing it commercially, thus it can be known that the sentence affirms that the creator has complete control over the use of his work, whether in terms of publication, reproduction or other matters.

Moral rights in copyright include forms of infringement related to moral rights, including *Infringement* (unauthorized use through copying), *Non-Literal Copping and Plagiarism*:⁸ a) *Infringement* according to Henry Campbell Black is the unauthorized use of material that is under copyright protection. One form of infringement related to this that often occurs is copying or making copies of all or most of a work. copying is the act of directly making a duplicate or replica of a work, such as using a copier, recording equipment, or video recorder; b) *Non-literal* copying, copyright infringement where a new work is rearranged using materials derived from other works. This *non-literal act of copying* is an important topic in the application of copyright law. The process of applying copyright law will determine which *non-literal acts of copying* are considered to be infringing on copyright and which are not. The basic principle of copyright law is that copyright protects expression and does not protect ideas. This basic principle is often referred to as *idea and expression dichotomy*.⁹ Copyright protection is only granted to works that have been expressed; c) Plagiarism or imitation of these ideas often occurs, resulting in new creations that resemble those of the previous people. As a result, it is often a source of copyright conflicts.

The case of copyrighted works that occur is related to cinematographic works, namely films, where the film uploaded by accounts including Brnd Film and Budiyantoo99 is uploaded to the tiktok application and does not have permission from the creator to upload it, besides that also in the pieces of the film that are uploaded, the name of the creator of the film is not included. Of course, from this, the actions taken by the accounts are classified as a violation of moral rights because they have violated the provisions stated in Article 5 of Law Number 28 of 2014 concerning Copyright. In accordance with the provisions of Article 5 paragraph (1) of Law Number 28 of 2014 concerning Copyright, moral rights are rights that are eternally attached to the creator to: a) Continue to include or not include his name on the copy in connection with the public use of his creation; b) Using his real name or impersonation; c) Changing his creation in accordance with the propriety in society; d)

⁶ World Intellectual Property Organization, *Understanding Copyright and Related Rights*, (Switzerland, World Intellectual Property Organization, Geneva, 2016), p. 9.

⁷ Rahmi Jened, *Hukum Hak Cipta (Copyrights's law)*, (Bandung, Citra Aditya Bakti, 2014), p.135.

⁸ Ferol Mailangkay, *Kajian Hukum Tentang Hak Moral Pencipta dan Penggunaan Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta, Lex Privatum*, 5 no. 4 (2017), p. 141.

⁹ Paul Goldstein, *Hak Cipta: Dahulu, Kini dan Esok*, (Jakarta, Yayasan Obor Indonesia, 1997), p. 5.

Changing the title and child titles of the work; and e) Defend his rights in the event of distortion of creations, mutilation of creations, modification of creations or things that are detrimental to his personal honor or reputation.

Therefore, moral rights cannot be transferred while the creator is still alive, but their implementation can be transferred through a will or certain reasons in accordance with the provisions of the law after the creator dies. However, it should be noted that in the transfer of moral rights, the beneficiary may refuse or waive his rights provided that such refusal or waiver is stated in writing. In addition, to protect his moral rights, the creator can have matters related to copyright management information and copyright electronic information which is contained in Article 6 of the Copyright Law, Article 7 of the Copyright Law contains classifications related to the content of Article 6 of the Copyright Law, namely: 1) Copyright management information, namely: a) A method or system that can identify the originality of the substance of the creation and its creator; and b) Information codes and access codes. 2) Copyright electronic information includes information about: a) A work; that appear and be electronically attached in connection with the activity of announcing the work; b) The name of the creator, his alias or his disguise; c) The Creator as the copyright holder; d) The period and conditions of use of the work; (e) Number; and f) Information codes.

Today's technological advances have led to an increase in the ease of accessing cinematographic works in digital form which are increasingly widely distributed, reproduced, or traded through the social media platforms where they are uploaded. Uploading films that are done part by part on the TikTok social media platform without including the identity of the creator can certainly interfere with the reputation and harm the creator's self-honor, so it is important for the creator to maintain his moral rights. Regarding progress in the digital realm, the Copyright Law has also regulated this matter as stipulated in Article 54 of the Copyright Law which states that: "to prevent copyright infringement and related rights through information technology-based means, the government is authorized to: a) Supervision of the creation and dissemination of infringing content and related rights; b) Cooperation and coordination with various parties, both domestic and foreign in preventing the creation and dissemination of content that infringes copyright and related rights; and c) Supervision of the recording act using any media of the creation and related rights products at the performance venue.

The acts carried out by the two accounts, namely the Brnd Film and Budiyanto99 accounts where the two accounts uploaded films on the TikTok application which were carried out in part with a certain purpose without the permission of the creator of the film, is an act that violates copyright and of course violates the provisions of the articles in the Copyright Law, in addition to violating the provisions of the Copyright Law, the act certainly violates the terms of service on the TikTok application itself. Based on these acts, of course, both accounts can be subject to sanctions, it can be seen from the criminal provisions stated in the Copyright Law that in Article 112 which reads that "Every person who without the right to commit an act as referred to in Article 7 paragraph (3) and/or Article 52 for commercial use, shall be sentenced to imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

B. Dispute Resolution on Moral Rights Disputes of National Film Creators Uploaded on TikTok Social Media

National film creators have the moral right to prohibit anyone from altering or damaging their work without their consent and recognition as the producer of copyrighted works. The re-upload of the film was carried out by the Tiktok account Brnd Film with followers of around 107,400 (one hundred seven thousand four hundred) and the total number of likes was 2,700,000 (two million seven hundred thousand) where this account uploaded films, one of which was the film entitled "Habibi & Ainun" and got likes on every part of the film "Habibi & Ainun" starting from thousands of *likes* and even reaching tens of thousands of *likes*. In addition to the uploads made by the account, there are also other accounts that upload other national films such as an account with the name Budiyantoo99 which performs the same action as the Brnd Film account which re-uploads the film titled Laskar Pelangi in a part-by-section manner. From this explanation, it can be seen that people today prefer to watch for free rather than having to watch in the cinema or watch on special applications that show these films such as the Vidio application, this does not reflect how moral behaviors are appreciating the works of a creator. The moral rights dispute in this case occurred because films such as Habibi & Ainun and Laskar Pelangi were uploaded without permission from their creators, which means that there is no recognition or respect for the moral rights of the filmmakers.

Moral rights disputes can also occur because in uploading the film it can be said to be a modification of the work in accordance with the explanation of Article 5 paragraph (1) letter e of Law Number 28 of 2014 concerning Copyright, which is "modification of the work", it can be said to be a modification of the work, because the film uploaded on TikTok is formed in the form of pieces and then uploaded. This case is a 24-episode Habibi & Ainun film. Meanwhile, in the film Laskar Pelangi there are as many as 38 episodes and each piece of the film is 3 minutes long and some are even 5 minutes long. In the TikTok application, the films are changed into parts by sections, so that there is a cut of the films. Apart from the two causes of moral rights disputes that have been mentioned, the treatment of the two TikTok accounts can also be said to be Duplication. Article 1 paragraph (12) states that "duplication is the process, act, or way of duplicating one or more copies of a work and/or phonogram in any way and in any form, permanently or temporarily", which is intended in the article refers to the process of producing a copy of a work or phonogram, either permanently or temporarily, in any way and in any form.

The copyright infringement committed on TikTok media by the Brnd Film and Budiyantoo99 accounts by uploading film clips made without permission has harmed the filmmakers themselves. This act can be categorized as an unlawful act. Article 1365 of the Civil Code regulates related to unlawful acts (*onrechtmatige daad*). Article 1365 of the Civil Code reads: "every unlawful act, which brings harm to another person, obliges the person who, by mistake, publishes the loss, to compensate for the loss". Thus, if an act can be said to be an unlawful act, it means that the act has fulfilled the elements of an unlawful act. The elements of unlawful acts include the following: a) The act is an unlawful act (*Onrechtmatige daad*). The act of the Brnd Film and Budiyantoo99 accounts uploading film clips without the consent of the film creator is an unlawful act because the uploaded film has been regulated by the Copyright Law; b) There must be an error: The act of uploading the film on TikTok media that is done without the permission of the filmmaker is a mistake because it is done without the permission of the filmmaker. Here, the accounts violate the moral rights of creators as copyright holders of the film work; c) There must be losses caused: The act of uploading a film without permission is detrimental to the creator of the film as the copyright

holder. The losses themselves are divided into 2, namely material losses and immaterial losses. Material losses are real losses suffered and profits that should be obtained. While immaterial losses are losses that are idiil, such as fear, illness, and loss of enjoyment of life, to determine the extent of the idiil losses that are compensated, in principle the harmed must be placed in such a state as possible, if there is no unlawful act;¹⁰ d) There is a causal relationship between the act and the loss: The existence of a causal relationship can be inferred from the sentence of Article 1365 of the Civil Code which states that "An act that due to its fault causes loss". Losses arise as a result of the actions of the people behind these accounts. If there is no deed, there are no consequences that cause harm to the filmmaker.

The copyright infringement of national film creators uploaded on TikTok's social media harms the moral rights of creators protected by law. This act will cause legal consequences, namely sanctions for the perpetrator, Disputes can occur anywhere and anytime, this can happen between individuals, groups, companies or countries. In other words, disputes can be public or civil in nature, and can occur at the local, national, or even international level. According to Jimly Asshiddiqie, a dispute is a difference of opinion or dispute between two or more parties regarding a matter that is not agreed by one party.¹¹ The settlement of moral rights disputes against a copyright work can certainly be done by alternative dispute resolution, arbitration, or court, as stipulated in Article 95 paragraph (1) of the Copyright Law. Article 1 paragraph (10) of Law Number 30 of 1999 concerning Arbitration and Dispute Resolution states that "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through a procedure agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation or expert assessment." Settlement through this effort is usually based on the good faith of all parties to avoid litigation, including: 1) Mediation: Mediation is a way to resolve conflicts where the parties involved negotiate to reach a peaceful agreement with the support of a neutral and impartial mediator. As an intermediary, the mediator's role in helping is to manage the meeting, lead the discussion objectively, keep the discussion process running politely, manage the emotions of the parties involved, and encourage parties or negotiators who are not very capable or reluctant to express their opinions; 2) Conciliation: Conciliation is a way of resolving disputes by involving the help of a conciliator who actively provides advice and opinions on the dispute. The conciliator's activeness shows that he is more involved in giving his views, which distinguishes him from the mediator. The conciliator not only acts as a facilitator like a mediator, but can also take the initiative to recommend and offer the results of the dispute resolution process to the parties. Nonetheless, the final decision on the dispute may be left to the parties involved; 3) Negotiation: Legal Dictionary: *Dictionary of Law Complete Edition*, negotiation is a bargaining process by means of negotiation between the parties to the dispute to find a mutual agreement. Negotiation is a method of conflict resolution in which only the parties involved in the conflict participate, without the presence of a third party intermediary.

According to Article 1 paragraph 1 of Law Number 30 of 1999 concerning Arbitration and Dispute Resolution, it states that "Arbitration is a way of resolving a civil dispute outside of the courts based on an arbitration agreement made in writing by the parties to the dispute." Based on this understanding, it can be known that arbitration is a method of resolving civil disputes outside the general court, in discussing arbitration, it can be

¹⁰ Sakkirang Sriwaty, *Hukum Perdata*, (Yogyakarta: Teras, 2011), p. 135.

¹¹ Jimly Asshiddiqie, *Indonesian Constitutional Law*, (Depok: RajaGrafindo Persada, 2017), p. 148

ascertained that it is related to civil disputes because it cannot be used for administrative or criminal disputes.

Dispute resolution through litigation is carried out in court by filing a lawsuit against the violation of moral rights. Article 95 paragraph (2) of the Copyright Law states that "The competent court as referred to in paragraph (1) is the Commercial Court." Commercial courts are the only courts that can handle copyright disputes. Courts other than commercial courts cannot handle copyright disputes. However, if the disputing party is known to exist and/or is in the Unitary State of the Republic of Indonesia, the parties must resolve the dispute through mediation before taking legal action. The aggrieved party has the right to file a lawsuit for damages for the violation of moral rights. As a result of the decision, an appeal can be submitted to the Supreme Court, then Articles 96 to 104 of the Copyright Law regulate this matter comprehensively. Article 99 paragraph (1) of the Copyright Law states that "The Creator, Copyright Holder, or owner of Related Rights has the right to file a lawsuit for compensation to the Commercial Court for infringement of Copyright or Related Rights products." Based on this article, it means that in the event of a dispute over moral rights, a lawsuit for compensation can be filed for the aggrieved party. Article 99 paragraph (3) states that "A lawsuit for damages as referred to in paragraph (1) may be in the form of a request to hand over all or part of the income obtained from the organization of lectures, scientific meetings, performances or exhibitions of works that are the result of infringement of Copyright or Related Rights products." Based on this article, it can be known that in copyright disputes involving infringement of moral rights, a lawsuit for damages filed by the creator may include a request that the infringer hand over part or all of the revenue obtained from the copyright infringement committed.

Regarding the many violations of moral rights that occur in terms of re-uploading national films without permission on TikTok social media, dispute resolution that can be pursued from aggrieved parties and what is more effective according to the author is dispute resolution through litigation by providing appropriate sanctions in accordance with the articles that have been explained earlier. So that violations related to moral rights can be dealt with firmly and have a deterrent effect for every violator and also not only for violators but also a reference for every content creator so as not to do harmful things.

CONCLUSION

Legal protection for the moral rights of film creators uploaded on TikTok social media is regulated in Law Number 28 of 2014 concerning Copyright, which provides recognition of the exclusive rights of creators including the right to integrity and attribution. The moral right protected in Law Number 28 of 2014 concerning Copyright is the right to keep the name of the creator, prohibit distortion or mutilation of the work, and regulate the modification of the work. Therefore, the government has an important role in supervising and preventing copyright infringement through information technology, as regulated in the Copyright Law, including supervision of the dissemination of copyright-infringing content and cross-border cooperation to address these problems. Dispute resolution against violations of the moral rights of national film creators uploaded on TikTok social media can be done through several methods, including alternative dispute resolution including mediation, conciliation, and negotiation. Furthermore, it can be done through arbitration or court. Of course, a more effective dispute resolution in this study is through litigation to provide a deterrent effect on the perpetrators. Resolving these disputes is important to

maintain fairness for national filmmakers and support the appreciation of creative work in this growing digital era.

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