

Legal Protection Against The Use Of Cinematographic Copyright Works Without A License On The Youtube Platform

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Abstract

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This study aims to determine (1) Legal protection against the use of unlicensed cinematographic copyright works on the Youtube Platform, (2) Comparison of laws against cinematographic copyright infringement in terms of the use of copyright without a license on the Youtube Platform between Indonesia and the United States. The type of research that uses the empirical legal method, namely this research is based on documents referred to as literature studies on the research topic. The data sources in this study are primary data sources and secondary data sources, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data was obtained through data collection tools and analyzed using qualitative analysis methods. The results of this study indicate (1) Legal protection against the use of unlicensed cinematographic works on the Youtube Platform includes preventive and repressive legal protection through Law Number 28 of 2014 concerning Copyright, Law Number 33 of 2009 concerning Film, and Law Number 19 of 2016 concerning Information and Electronic Transactions, (2) Comparison of Law between Indonesia and the United States regarding legal protection against the use of unlicensed cinematographic works, it turns out that both countries have not regulated the term movie spoiler, and there are similarities and differences.

1. Introduction

The Industrial Revolution 4.0 is currently taking place in almost all countries. The impact of the Industrial Revolution 4.0 increasingly creates the impression that the use of technology as a result of scientific advances facilitates access to information around the world. The closest and most accessible technology is social media. The use of social media certainly cannot be separated from the positive and negative impacts obtained,

both direct impacts on its users or other parties related to the social media content. The internet can also act as a double-edged sword (Dharmawan, 2017: 88). However, the fact is that even though rules regarding several aspects of using and relating to technology have been enforced, there are still loopholes, even deliberate or negligent misuse of access to these technologies. Forms of misuse both intentional and negligence in the utilization of technology, for example, the phenomenon that has become a problem until now and has not been resolved is the non-release of copyright infringement of cinematographic works on social media.

Protection of the copyright of cinematographic works itself is regulated in Article 40 paragraph (1) letter (m) of Law Number 28 of 2014 concerning Copyright, hereinafter referred to as the 2014 Copyright Law. Cinematographic works are mass communication media motion pictures, which include: documentary films, advertising films, reportage, or story films made with scenarios and cartoon films (Rahmi Jened, 2013: 91). The types of cinematography that have been published from the creation have objects related to copyright, which is a creation whose original level and creativity involves many parties who have contributed to the creation of the creation. To produce a cinematographic work requires thinking by combining ratio and emotional so that later it will produce something called the work of the brain. The work of the brain is formulated as intellectuality which can later give birth to intellectual works in the fields of science, art, and literature (Ngurah Ardhya, 2022: 119). A work of creation that has been published has the right to control the dissemination of its creation through broadcasting accompanied by a license, namely through the Broadcasting Agency, even so there are still problems that occur in society, such as the distribution of cinematographic works (films) without an official license carried out on social media, one example is uploading movie *spoilers* without permission from the creator or illegally on the youtube platform.

Movie *spoilers* themselves are a term commonly used on social media sites. *Spoiler* is a foreign term that translates as a leak (Sudjana, 2018: 78). According to Wikipedia, in the media and the internet, a leak or *spoiler* is writing or information about a story, which reveals the storyline. Spoilers can also be interpreted as information that prematurely provides solutions to the uncertainty of the story for those who have not seen events related to the story (Habi Kusno, 2016: 56). The act of *spoiling* movie trailers is considered unlawful because it is an illegal act. The distribution of the video is also done without permission from the creator of the story, so piracy only benefits one party. In the case of someone who spreads a snippet or completely from a movie that has been attached to copyright, it should be suspected that the person concerned has committed piracy, piracy is the unauthorized duplication of creation and / or related rights products and the distribution of goods resulting from such duplication widely for economic gain.

Various forms of *spoilers* exist on social media, such as packaging movie spoilers using running text, making movie spoilers that are divided into several parts until the end, and packaging movie spoilers based on each part of the story through short videos. Social media that often broadcast movie *spoilers*, such as in the *TikTok* application, *Facebook*, Instagram through *IGTV* and through the Youtube platform with accounts that upload many movie *spoilers*. The existence of *spoilers* on the YouTube platform can eliminate a person's interest in enjoying content and can reduce the value of pleasure in watching a story in a movie. On the other hand, the action of movie *spoilers* is getting more and more here with the existence of many accounts on the Youtube platform which are specialized as *spoiler channels* for newly released popular movies or old movies. Here

are some youtube accounts with the most subscribers/followers to reach millions of followers from uploading movie spoilers or using copyright without a license on the Youtube platform:

1. IQ7 with 5.1 million subscribers
2. Saqahayang with 2.97 million subscribers
3. Mager Nonton with 1.3 million subscribers
4. AlbumFilm with 1.24 million subscribers
5. Y&D with 1.13 million subscribers

From the many YouTube accounts that use copyrighted works without a license which are then uploaded on the Youtube platform that can be watched by millions of people and these accounts can have thousands to millions of subscribers (followers). From this phenomenon, it is certain that these YouTube accounts get promising *adsense* from the videos that have been uploaded on the Youtube platform. This is unfortunate, sometimes the filmmakers have appealed and warned through the film's social media accounts or the accounts of each film player so that film lovers can only enjoy the film's work by watching directly in theaters and on accessible official platforms. The actions of the perpetrators of movie *spoilers* on the Youtube platform can have a detrimental impact on the copyright holder of the film, because there are many accounts on the Youtube platform that upload movie *spoilers* without the permission of the copyright holder or illegal, and may cause losses, especially in economic and commercial rights. Because with the action of the movie trailer spoiler, the perpetrator of the movie trailer *spoiler* gets economic benefits by generating profits for himself by re-uploading part or all of a movie that has been published / aired without permission to the copyright holder. There are still many movie trailer *spoilers* circulating on social media, especially on the YouTube platform, but there has not been a single judge's ruling that discusses this or in the sense that no film producer has filed a lawsuit related to this, because the film producer is only up to a subpoena (warning letter) to movie lovers and there has been no lawsuit against the perpetrator of movie *spoilers* on the Youtube platform.

But whether the legal regulation of cinematographic copyright infringement in Indonesia is the same as other countries, for example the United States. America as a country that controls technology, including in cinema, which is proven by the magnitude of the *Hollywood* industry that controls the world cinema. *Hollywood*, often associated with the world's largest film industry from the United States. Located in Los Angeles, California, *Hollywood* is the highest achievement in the world of international cinema. In America regulates the protection of Copyright in The Copyright Act of 1976. Based on the background description described above, the researcher is interested in examining more deeply the protection of cinematographic copyrighted works on the YouTube platform, with the title "**Legal Protection Against the Use of Cinematographic Copyrighted Works Without a License on the Youtube Platform**".

2. Research Methods

This research is a normative legal research, which is a research both pure and applied, conducted by legal researchers to examine a norm such as in the fields of justice, legal certainty, order, usefulness and legal efficiency as well as other legal fields. This research is based on documents referred to as literature studies on research topics. The data sources in this research are primary data sources and secondary data sources, consisting of primary legal materials, secondary legal materials, and tertiary legal

materials. The data is obtained through data collection tools and analyzed using qualitative analysis methods.

3. Results and Discussion

3.1 Legal Protection Against Unlicensed Use of Cinematographic Copyright Works on the youtube platform in Indonesia.

In social life, of course, it does not escape the existence of a violation that occurs in it, so that regulations are needed which are formulations of norms that can function to regulate. According to Hans Kelsen, law is a system of norms that regulate human behavior (Sudjana, 2018: 61). From the definition of law, it is explained that the law consists of norms where from these norms a system is formed that regulates human behavior. The establishment of law is to be able to create order, justice and legal certainty. But in reality there are still many events that show the existence of disorder and justice in people's lives in Indonesia, such as the phenomenon of violations in the realm of cinematographic copyright ownership in terms of the use of unlicensed copyrighted works on social media platforms, one of which is often used by the public, namely the Youtube platform.

Cinematographic works are mass communication media of motion pictures, which include: documentary films, advertising films, reportage, or story films made with scenarios and cartoon films (Rahmi Jened, 2013: 91). Protection of cinematographic works itself is more to the process of making of the work of creation so that the results of the cinematographic process in the form of products of creation will directly get legal protection. The transition process of cinematographic copyrighted works that have a license held by the copyright holder of the work into copyrighted works without a license, which can occur due to the use of licensed cinematographic works without the consent of the copyright owner of the cinematographic work. One of them is the piracy of copyrighted works by disseminating licensed cinematographic copyrighted works through *spoiler* actions disseminated through the Youtube platform.

As that when a creation is created it will directly lead to copyright for the creator (Putra, 2022: 203). Discussing copyrighted works will not be separated from the regulation of a creation. Creation is any creative work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in real form. One of the creations protected by Law No. 28 of 2014 on Copyright is the work of cinematography . The form of preventive legal protection of cinematographic copyright in Law 28 of 2014 on Copyright is contained in Article 5 paragraph (1) which regulates the exclusive rights owned by copyright holders, Article 9 paragraph (1) which regulates the economic rights of copyright holders, Article 40 paragraph (1), Article 54 which regulates the role of the government in preventing the emergence of violations of the use of copyrighted works on electronic media, and Article 59 paragraph (1) which regulates the validity period of copyright protection against a cinematographic creation. The existence of a person who disseminates cinematographic copyrighted works attached by copyright by uploading footage of cinematographic works or *movie spoilers* to social media can be included as an announcement of creation, which is the economic rights of the creator / copyright holder. Thus, the act is basically obliged to get the permission of the creator/copyright holder.

In the event that someone owns and distributes a movie trailer that is attached to copyright, especially against a movie that should only be enjoyed for paid subscribers

on a digital streaming platform, it should be suspected that the person concerned has committed piracy, namely the unauthorized duplication of creations and / or related rights products and the widespread distribution of goods resulting from such duplication for economic gain. Copyright itself is closely related to the interests of an economic nature, which economic interests are a manifestation of the nature of copyright itself. That the creations are a product of human thought and feelings that have the value of moral rights throughout the time during the copyright protection is still there. In accordance with Article 5 of Law Number 28 Year 2014 on Copyright. If attributed to the act of using copyrighted works without a license on the Youtube platform by uploading a movie review that contains *spoilers* film with Article 9 paragraph 1 of Law No. 28 of 2014 on Copyright regarding the economic rights of a creation. So the act of using a licensed work of authorship or movie *spoilers* which is an act of duplication that is not part of the copyright holder, fulfills the elements of Article 9 paragraph (1) at three points, namely letter a, namely the publication of the work, letter b, namely the duplication of the work in all its forms, and letter e, the distribution of the work or its copies. Actions to the perpetrators of the use of copyrighted works without a license on the Youtube platform with the aim of personal gain or commercial nature that can cause harm to copyright holders in their economic rights, has violated the elements of Article 9 paragraph (1) letters (a), (b), and (e) of Law Number 28 Year 2014 on Copyright should be subject to sanctions. The form of repressive legal protection of cinematographic copyright in Law Number 28 of 2014 on Copyright is contained in Article 55, Article 56 and Article 113 paragraph (3) and (4) After the elements of Article 113 paragraph (3) and (4) are described, it can be concluded that the perpetrators who commit criminal acts of piracy or use of copyrighted works without a license on the Youtube Platform can be punished and sentenced.

Speaking of violations of the use of cinematographic copyright in this case is discussed regarding the use of unlicensed copyrighted works, namely the uploading of content containing movie *spoilers* which are then uploaded through the Youtube platform, so there is certainly a connection with Act No. 33 Year 2009 on Film. The form of preventive legal protection of cinematographic copyright in Law No. 33 of 2009 on Film is contained in Article 35, Article 41, Article 57, Article 79, Article 80. In addition to the Copyright Act and the Film Act there is also Law No. 11 of 2008 on Information and Electronic Transactions which regulates the protection of owners or copyright holders of their creations, including cinematographic copyright works. Article 25 of the EIT Law has explained that electronic information and/or electronic documents that are compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights based on the provisions of laws and regulations. This article focuses more on content that violates decency, so if someone spreads a pornographic movie (cinematography) to an online site, this article can be used to ensnare the perpetrator of piracy. When compared to Article 9 paragraph (1) point b of Law Number 28 of 2014 concerning Copyright which clearly states that the procurement of creation in all its forms including through online sites can also be considered piracy, while Article 27 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions mentions violations that contain or violate decency only, so if the online site has a movie that violates decency then this article can be used.

3.2 Comparison of Laws Against Violation of the Use of Copyrighted Works Without a License on the Youtube Platform Between Indonesian Law and the United States.

According to Satjipto Raharjo, legal protection is to provide protection to human rights (HAM) harmed by others and the protection is given to the community in order to enjoy all the rights granted by law (Salim Hs, 2016: 262). In providing legal protection of course the most noteworthy thing is how the enforcement, to find out whether the rules in a country has provided optimal protection, especially in the realm of copyright protection in Indonesia the need for legal comparison with other countries. Copyright protection in Indonesia itself has been regulated by Act No. 28 Year 2014 on Copyright, which already regulates the cinematographic works described by the author above. But how is the legal protection of cinematographic copyright infringement in other countries, which here the author wants to compare Indonesian law with the United States in terms of protection of cinematographic copyright works.

If we discuss cinematography or film, we will remember the United States which is a country with a very advanced film industry, as evidenced by the United States film industry having a major influence on the film industry globally since the early 20th century so that the effects of the film industry in the United States are found in cinema around the world. Another proof of the rapid growth of the film industry in the United States is that in 2017, the film industry in this country was able to reap profits of US\$10 billion or Rp142.3 trillion, which made the United States the film industry with the highest revenue in the world. The dominant style of American cinema is classic Hollywood cinema, which flourished from 1913 to 1969 and characterizes most of the films made there to this day around the world. Despite the magnitude of the film industry in the United States and the very advanced technology in the country, it still finds problems that are also found in Indonesia, namely violations of the use of cinematographic copyrighted works without a license uploaded to the internet or social media. As quoted from the CNN Indonesia article that there are a number of *Hollywood* filmmaking companies based in Los Angeles, California, United States, once caught a pirate from the UK who uploaded a copyrighted movie to the Internet. After being investigated by the anti-piracy organization Federal Against Copyright Theft (FACT) it turned out that the perpetrator had uploaded more than 2,500 films on the Internet, some of which included *Argo*, *The Avengers* and *Skyfall*. From this phenomenon, the big *Hollywood* movie studios are cooperating with technology to find ways to protect the films they produce from illegal copying or in the form of movie *spoilers* which are the result of duplicating licensed copyrighted works into unlicensed cinematographic copyrighted works that are packaged in a different way but the content of the film is the same, as is rampant in Indonesia. Although there are many people who take advantage of the use of copyrighted works without a license, but in Indonesia there is still no permanent judge's decision related to these issues. On the other hand in Indonesia, the eradication of online movie piracy is also beginning to be intensively carried out, as evidenced by the Ministry of Communications and Information Technology formed a panel that will recommend the closure of a number of sites, including sites of copyright infringement. From the explanation above, the author tries to make a comparison of cinematographic copyright protection from the violation of the use of cinematographic copyrighted works without a license uploaded on social media (Youtube) between Indonesian law and the United States in the following table:

Table 1.1 Comparison of Indonesian and US Copyright Protection

Protection Law	Law No. 28 of 2014 on Copyright	Title 17 US Copyrights	Description
Preventive	Article 40 (1) letter m	§102 (Subject matter of copyright: in general)	In this section, the regulations in both countries regulate the protection of cinematographic works.
	Article 9	§106 (Exclusive rights in copyrighted works)	Both regulate economic rights or exclusive rights. Article 9 of Law No.28 Year 2014 more fully regulates the economic rights owned by copyright holders
Repressive	Article 113 paragraph (3) and paragraph (4)	§506 (Criminal Offenses)	Law No. 28 of 2014 does not regulate dissemination through what media and in American Law the sanctions imposed are only fines.

From a comparison of the law between Indonesia and the United States regarding violations in the realm of copyright, namely against violations of the use of cinematographic copyrighted works without a license on the Youtube Platform through movie *spoilers*, it can be said that in the regulations of the two countries that regulate copyright, namely Indonesia which is regulated in Law Number 28 of 2014 concerning *Copyright* and the United States which is regulated at *Title 17 US Copyright*. Arrangements in Indonesia and the United States both regulate the protection of copyrighted works of cinematography or film. However, the form of infringement of cinematographic copyrighted works is not clearly and specifically regulated in the regulations in both countries. Including the term used by the author on the issue being discussed is a movie *spoiler* which is a violation in terms of the use of cinematographic copyrighted works without a license on the Youtube Platform. With the term movie *spoilers* that have not been regulated in the regulations of the two countries, but the

perpetrators of violations of the use of cinematographic copyrighted works without a license or movie *spoilers* on the Youtube Platform can be punished in accordance with regulations in Indonesia which are regulated in Law Number 28 of 2014 concerning *Copyright* and the United States which is regulated in *Title 17 US Copyright*. Due to the use of cinematographic copyrighted works without a license on the Youtube platform including acts of piracy by duplicating other people's cinematographic copyrighted works uploaded through electronic media / social media then with commercial purposes to obtain economic benefits that can enrich the perpetrator and provide losses to the copyright owner of the cinematographic work that is duplicated. So that if in Indonesia the violation of the use of copyrighted works without a license can be punished in accordance with Article 113 paragraph (3) and paragraph (4) of Law Number 28 Year 2014 on Copyright and can be reviewed from other regulations such as the Film Law and the ITE Law as long as the perpetrator's actions meet the clauses of the article in the regulation.

Legal arrangements in the American state of violation of the use of copyrighted works without a license on the Youtube Platform is subject to section 506 *Title 17 Copyrights*. The difference between Law Number 28 of 2014 on Copyright and *Title 17 Copyrights* lies in the penalties imposed on perpetrators of piracy of cinematographic copyrighted works. If according to Indonesian regulations, namely Law Number 28 of 2014, the perpetrators of piracy of cinematographic works are subject to imprisonment and fines, while in the United States regulations, namely *Title 17 Copyrights*, the perpetrators of piracy are not subject to imprisonment, but only in the form of fines. From the comparison between Act No. 28 of 2014 on Copyright with the American Act *Title 17 Copyrights* above is only part of the regulations governing copyright, the authors only take a little only related to the theme of writing this thesis, that for some aspects of Indonesia is still incomplete in protecting Copyright, especially on Cinematography and on criminal acts of piracy through computer networks or the Internet.

4. Conclusion

Based on this research, it can be concluded as follows:

1. Legal protection of cinematographic copyrighted works from infringement in the form of use of cinematographic copyrighted works without a license or the term film *spoilers* on the Youtube platform there is legal protection that is preventive and repressive regulated by Law No. 28 of 2014 on Copyright, Law No. 33 of 2009 on Film, and Law No. 19 of 2016 on amendments to Law No. 11 of 2008 on Electronic Information and Transactions.
2. Comparison of laws regarding the protection of cinematographic copyright between Indonesia and the United States in both countries has not specifically regulated the term movie *spoilers* in social media, but has been regulated by the act of duplication of creation with commercial purposes for personal gain so that in both countries the act of using copyrighted works without a license can be sentenced in accordance with applicable regulations. The difference in regulation in the two countries lies in the sanctions given to the perpetrators.

There are a number of suggestions that can be proposed to several parties related to Legal Protection Against the Use of Cinematographic Copyright Works Without a Youtube Platform License, namely as follows:

1. The government should pay more attention to the laws and regulations in Indonesia related to movie *spoilers* / piracy, there are still weaknesses, namely if piracy is carried out through online sites, so that supervision of the perpetrators of *spoiler* actions on social media, especially on the Youtube Platform, should be further improved, and punish the perpetrators of movie spoilers on the Youtube Platform.
2. Indonesian society should know that the act of spoilers is an infringement of copyright that can give harm to copyright owners and is against the law. So that the perpetrators of spoiler actions are subject to penalties in accordance with applicable laws and regulations so that such acts are not repeated in the future, and there will be no more harmful acts against the owner or copyright holder.

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