

LEGAL PROTECTION FOR CREATORS OF CINEMATOGRAPHIC WORKS AGAINST COPYRIGHT INFRINGEMENT THROUGH STREAMING AND FREE DOWNLOAD SITES

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ABSTRACT

The ease in accessing the internet turns out to be a means of unlawful acts. One of them is piracy of cinematographic through the website. However, the community considers that the cinematographic work that has spread on this internet network has become public domain, so it is legal to be accessed. The government has made regulatory changes, namely the ordinary offense to be a complaint offense which aims to further emphasize the personal nature of copyright, so that if the creator feels violated his right to be able to complain himself. In this paper, we would like to discuss the ownership status of cinematographic works that have been spread across the internet and how the effectiveness of legal protection given to the creators of cinematographic works. The method of legal writing used is normative legal research with through the legislation approach. The results of this study are that ownership of cinematographic works remains with the creator until the protection period expires and the distribution via the internet without the author's permission is illegal. Legal protection given to the creator with the existence of this complaint is still not effective, the biggest factor is due to the passive attitude of the creator and the lack of public awareness about copyright protection. With the proliferation of piracy through websites, special regulations are needed to protect the creators of cinematographic works on online site piracy.

Keywords: Cinematographic Works, Ownership Status, Legal Protection, Websites, Piracy.

INTRODUCTION

Cinematographic is copyright, in Indonesia, copyright arrangements contained in Act No. 28 of 2014 about Copyright (hereinafter called Copyright Law; Triyanto, 2017). Discuss on the cinematographic surely can not be separated from film. The film is embodiment of the work of the cinematography as stated in article 1 Act No. 33 of 2009 about The Film. Its protection arises automatically since it's the creation manifested in tangible form (film), this is according to the principles of declarative copyright. As the development of technology, now we can watch the movie in the home with a paid service or anywhere, not just in the movies. Various television channels now have been broadcasted to be able to serve a row of quality films. There are some applications that provide streaming services legally like Netflix movies, iflix, HOOQ, Genflix, Catchplay Video, Amazon Prime, and Viu. But behind all of the simply thing we can do by technology, this is a double-edged sword because of the technology, especially the internet, at

the same time be effective to do violate law (Ermansjah, 2010). One of them is copyright violation of cinematography through free streaming and download sites.

Outside Indonesia, the case is a pretty phenomenal is the closure of site The Pirated Bay from Sweden. This site provides of sharing of files with torrent, therein film and music that is still copyrighted. The founder of this site have been arrested and tried, but even though the site has been blocked and is said to be inaccessible, it is estimated the site back to life with the changed domain originating from Costa Rica. America has also handled similar case and had arrest five people perpetrators of piracy of internet over movies. Films such as Argo, Dilan, The Avengers, and Skyfall are uploaded in illegal online group named RemixHD, 26 k, UNiQUE, DTRG, and HOPE/RESISTANCE. The case ended with imprisoned five persons who do copyright violators. However the occurrence piracy of cinematography indirectly influenced from the creator. The attitude of the creators apparently as agree, because even though this piracy by internet is easy to known but they just silent. Then the persons who founded of this website such as approval of the creator of the film, assuming the silent means agreement. Afterwards people considers that the movie has been uploaded to the internet has become public domain because access to the internet is the right of all people. The problem is it true the ownership of a work that has been enjoyed in general, especially via the internet, will change over?

Based on the matters as set forth in the background, the author is interested in researching and reviewing deeper into how the ownership of cinematography that has been uploaded to the internet as well as how the effectiveness of the protection provided Copyright Law (Sujud, 2003).

METHOD

This paper is the result of normative research using secondary data, which consists of primary legal material in the form of Law Number 28 of 2014 concerning Copyright, Law Number 33 of 2009 concerning Film is a work of cultural art and several international provisions such as TRIPs. Secondary legal material in the form of book journals and other sources of resources relating to copyright and cinematography. All of the data is processed deductively to be processed and analyzed to construct the initial hypothesis, the hypothesis is processed and analyzed again, so repeatedly that it until finds accurate conclusions.

RESULT AND DISCUSSION

Ownership of Cinematographic on Internet

Copyright is part of the intellectual property rights. Like other part of the intellectual property, then the copyright mandatory to be protected. International protection against copyright has been around for a long time, one of which has been enshrined in the Berne Convention for the protection of art and literature that have been ratified by Indonesia. There is also the international intellectual property organization, that is World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). There has been also a WTO Agreement (Agreement Establishing the World Trade Organization) and include in it the Treaty of Trade Related aspects of Intellectual Property Rights (TRIPs) which is an international treaty in the field of Intellectual Intellectual which is considered the most extensive object as well as the most restrictive setting. The issue of the protection of intellectual property, in particular copyright, this

became more important in the world because it is felt can make it as a means of improving creativity and the creation of the work. Subsequently encouraged the state to continue doing and seeking protection for the creators by giving social restrictions and rules that are binding, so that the creator feels the certainty of the law and can continue develop its potential. Indonesia is one of the countries that became part of the legal protection of intellectual property internationally (Chairan, 2011). The participation of Indonesia in the forefront of international copyright protection it gives rise to the obligation to implement in its National Legislation in the field of copyright, especially in the matter of the application of law for the protection of copyright works (Oksildefa, 2015 & 2016).

Copyright is intellectual property protection coverage is the most widespread because in it include science, art, and literature. The object of copyright protection have been listed in Article 40 Copyright Law 2014. One of the objects protected by copyright is a cinematography. The work of cinematography is a creation in the form of moving images (moving images), among others, documentary film, film advertising, reportage or film stories that made the scenario, and cartoon movies. The work of cinematography can be made in celluloid tape, videotape, video disc, optical disc and/or other media which allow it to show in the cinema, the big screen, television, or other media. The definition of the film according to Act No. 33 of the year 2009 about the Film is the work of art and culture which is a social institution and the media of mass communication made under rule cinematography with or without sound and can be show. It can be said that the film is a real embodiment of a work of cinematography, so his presence should be protected from any form of copyright infringement suit that was mandated in Copyright Law.

The work of this cinematography though protected, yet still became the biggest target of copyright infringement. Which one Copyright infringement occurs on a work, in particular the work of cinematography, is piracy. Copyright infringement currently apparently had included the development of technology. Initially the piracy of cinematography is very often found in the form of DVDs, now has been switched by using the internet and website for file sharing. Even the website also provides services direct stream. This is driven by the increasing use of internet access. In the year 2018, estimated as much as 3.6 billion humans on Earth to access the internet at least once each month. Indonesia in the use of internet access was ranked sixth in the world and is the number one in Southeast Asia. But with a high number of internet use, apparently the internet users in Indonesia are still dominated by the economic levels among the population with middle down class.

Despite causes of loss, the streaming service provider's website and free download via the internet was still persists. This is because the impetus will need entertainment for the community. Whereas, In fact the public can enjoy the work of cinematography through cinema, television, or film streaming application that is legal. Various television channel has now has broadcasting rights to be able to serve a row of quality films. There are also some applications that provide streaming services movies legally like Netflix, iflix, HOOQ, Genflix, Catchplay Video, Amazon Prime, and Viu. The parties relating to the impressions certainly has had the broadcasting rights of a film. If through the application, the user can use the paid premium services within a certain period to be able to enjoy a variety of movies presented in the application.

However it turns out that the community still chooses the means of watching movies through pirated content provider's web site. There are several factors that make the community tend to choose to watch movies are illegal, because of high ticket prices, the limited access of

cinema theaters in every province, the reluctance to pay television service or paid application ease of access, the internet, the number of films that are present in one good movie site in the country and abroad, as well as lack of knowledge and public awareness of copyright. The makers of this web site will rake in profits is not a little. Earned income comes from advertisements are attached, which are usually negatively charged because they contain elements of pornography and gambling. By giving the ad slot in it, not to mention there's additional shortened site link, adf.ly, which also still contained advertisements by paid \$10.00 (ten cents) per click.

The public needs to be very educated about the eradication of copyright infringement. Based on some of the questioning was done the author against some people, apparently they think that movies that they see or they download for free is not illegal. This opinion is due to the quality of the movie is seen has been very good as it is original. Movies that have been transmitted to the web site can achieve quality High Definition or Blu-ray. Perpetrators of piracy will typically record a film that is being broadcast in theaters through a hidden camera first. Usually the film with the quality of the cam will also be uploaded in advance to meet the wishes of the community. Nonetheless, films that propagated the remains illegal.

Actually the copyright of cinematographic works protected by Copyright Law 2014 for 50 years since it was first announced. During this time then the ownership will remain on cinematographic works creators (Rian, 2018). The creators have moral rights and economic rights. What is meant by economic rights is the right to obtain economic benefits over the creation and product related rights, while moral rights are rights inherent to the creator that can not be eliminated or removed without any reason. Economic rights and moral rights given to creators of at once makes it a form of protection provided to law. With it have those rights, then the Creator can demand their rights when those rights are not met or violated by others. With the provisions of the existence of the films are presented in streaming and download sites for free is a form of copyright infringement, as uploaded and disseminated without the express permission of the creator.

Some website has a note in this film illegal providers contained a column of the DMCA or Digital Millennium Copyright Act. It claim that the website will support the copyright law and would protect the legal copyright owner seriously and if the creator does not permit then it is advisable to contact the provider of the website. Recognition of the unilaterally keep this does not affect the ownership and status of the film uploaded on the web site. Website-the website continue to present a wide variety of movies, not that it has got permission from the creator and film circulation it becomes legal. The Government in this regard have been categorizing it as a copyright violation, evidenced by blocked the website service provider and download free movie streaming.

The Effectiveness of Legal Protection For Creators of Cinematography According to Copyright Law

Blend of ease of access to the internet and the high interest of the community to obtain a cheap and affordable entertainment that increasingly encourage rampant piracy to the works, including cinematographic works. The work of cinematography or better known as film is a popular means of entertainment in society. Growing number of films broadcast and served the community on the other hand thus causing the community to enjoy the show with minimal expenses. The public only need to access the site provider of pirated movies that are desirable

and can then enjoy watching movies for free without thinking about the impact for its creator. A mentality like this still exist in Indonesia, let alone the majority of the community, through this kind of site is the middle of the community down.

The number of visits to websites of pirated content providers will certainly benefit on behalf of content providers, because in these sites there is usually a lot of ads. The income provider of the site is derived from the ad views per day. For example indomovies 88 received a visit from the user as much as 146.853/day, the site hnmovies as much as 74.807/day, the site cerpenkamu as much as 65.335/downloadfilmbaru site of the day, as much as 24.825/day and ngunduhfilm as much as 7.169/day. Within the site the first place ganool most widely visited, in a day can get income amounting to \$938 per day (Robby & Sumarsono, 2016). It is surely obvious conflict with copyright, because these sites although circulate a paper with free stay benefit in other ways. The cinematography has been protected by the Government of Indonesia and its protection are listed in the Copyright Act.

Copyright is an exclusive right owned by the creator and in it attached to economic rights and moral rights. The rights afforded by this law aims to protect its creator over copyright infringement actions committed persons certain persons, especially against piracy over the internet. This exclusive right in Creator automatically after his was declared. In the cinematography, intended creator is director and the copyright holder is the producer of the film.

Arrangements concerning copyright in Indonesia has been around since colonial times, and then setting about copyright continues to change and evolve to follow the demands of the times and international pressure. The current legislation governing copyright is Copyright Law 2014. This Act replaced the Act on copyright that before, namely Act No. 19 of the year 2002 concerning copyrights. In this there is some Copyright Law differences arrangements with the law before. One of the differences is related to offence for copyright infringement, i.e., from ordinary offence into complaint offence. It is clearly expressed, as it says in the Article 120 Copyright Law 2014.

Meant of ordinary offence is a usual offence which can be prosecuted without the need for the existence of the complaint. The ordinary offence liability imposes on enforcement agencies to actively follow up on criminal offences. Matters that fall within the category of ordinary delik, can not be stopped despite the explain his party has decided to make peace. A crime categorized as ordinary offence, if included in the crimes set forth in legislation, and are not otherwise specified in the Act (Mega, 2015). Complaint offence or criminal action which is *klachtdelict* other demands only be done on the basis of the existence of the complaints from the parties concerned (Teguh, 2010).

Change the ordinary offence into the complaint offence aims to clarify the subject harmed over copyright violations (Lucia, 2016). By complaint offence will be clear who the creator or rights holders of a work that is abused. This is because when using complaint forrence, creator or copyright holder will report to law enforcement agencies. According to the Directorate General of intellectual property rights, changes that are related to the nature of delik ownership itself. Ownership of copyright it is private, so it's been a reasonable thing when a person who harmed itself that pitted on law enforcement officers in order to make his case follow up.

One of the other factors that affect the changing nature of the ordinary offence becomes the complaint offence was the era of the Asean economic community (MEA). Countries that became members of ASEAN apply complaint offence in case of a breach of copyright. For example in Malaysia the Copyright Act 1987 Incorporating all amendments up to 1 January

2006, explained that Malaysia implemented complaint offence against copyright infringement. Another example is in section 66 Copyright Act B.E. 2537, i.e., the law on copyright of Thailand. The use of offence ASEAN countries said to be influential because in an era of MEA easily works can be entered into the Member States of the MEA.

Complaint offence used in Copyright Law 2014 gives a result for law enforcement officers. Law enforcement officials can no longer play an active role in reducing violations of copyright, in particular piracy. Law enforcement officers can only act after getting complaints from aggrieved parties namely the creator itself or the copyright holder. Different at the time was still using ordinary offence, law enforcement officers are required to play an active role in reducing the breach of copyright.

Changing nature of this offence aims to increasingly asserts that copyright is a right that is personal. Then if the violation occurs there must be a complaint from the aggrieved party. When still using ordinary offence then apparatus must work hard to prove the elements of the disadvantage. On the other hand the lack of sufficient human resources qualified to venture the cyber world in Indonesia is still not enough. In addition the existence of this complaint offence implied Government encourages the efforts of non settlement of litigation, so it's expected to provide a win-win solution.

However, the change from the ordinary offence became complaint offence apparently still does not run effectively. This is evidenced by the still rampant copyright violations that keep mushrooming, especially through the medium of the internet (Daniel, 2016). The pirating of a movie through the medium of the internet, namely through the web site and download this free streaming should be easier detected, right but who are still in question was not yet the existence of the measures of the creator himself. There has been no case of reporting copyright infringement by internet media that come to the Court.

In fact the creator or copyright holder, prefer to keep work and ignores his pirating that occurs at sites of streaming and download for free. This is because of the many sites that provide pirated movies. The application of the complaint where to offence parties concerned should report the loss or violation of its rights. The creator can find this tends to be a waste of time to continue to work. This condition is also apparently being the enforcement complaint offence be not run effectively. Although it has been in force, the Government complaint offence still has the right to tackle piracy. One way is to do the closing and blocking against these sites. The Government policy to do the blocking is also listed in article 54 Article 56 Copyright Law until 2014. This problem is like a chain that will never be completed. Despite the blocking of the site has been carried out and the use of complaint to reaffirm rights delik creator has done. Effectiveness against its will not run with the absence of public awareness to combat copyright infringement and the will of the creator or copyright holder to sue and protect creation.

CONCLUSION

Piracy of cinematography are now performed by using the streaming service provider's web site and download for free. Distributing the work of cinematography in the internet is not then change the status of ownership. The creator remains the owner of the during still in term of protection. Actually creators is protected against copyright infringement that takes place through the streaming service provider's web site and download for free. Offence settings changes in Copyright Law is intended to clarify the status of ownership of copyright works which are

individual as well as keeping track of the international world. But on the other hand with the change of law enforcement officers into complaint *delik* is inactive and can only wait for the report. But very many are piracy/hijacking happened, so change this into not running offence optimally. In terms of its creator apparently still no awareness is also to protect his work from piracy over the internet.

For improvement of protection, the following steps are recommended.

1. Improvement of education related copyright in Indonesia must be further improved. Knowledge society, be it pirated content as well as its creator connoisseur will copyright will cause the level of awareness to protect a work.
2. Regulations related to internet, intellectual property and the offense should be made more forcefully.

ENDNOTE

1. https://kominfo.go.id/index.php/content/detail/4286/Pengguna+Internet+Indonesia+Nomor+Enam+Dunia/0/sorotan_media

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