

PROTECTION OF VIDEO COPYRIGHTS ON THE YOUTUBE PLATFORM IN FAIR USE PRINCIPLES

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Abstract

In copyright, there are two exclusive rights, namely economic and moral rights, and these two rights are not owned by the creator or copyright holder because there is a principle called the Fair Use Principle. Video copyright is one of the objects of copyright protection in digital media whose existence is in great demand by various circles of society because it is easy to access gadgets and internet networks. One of the platforms that are often used to upload, watch, and share videos is Youtube. The specification of this research is Legal Research using a normative juridical approach and data collection techniques utilizing a literature study, then analyzed in a qualitative normative manner. The results of this study are on the Youtube Platform. Several channels re-upload video copyrighted works that do not belong to them without permission, even if those channels do not include the source, and monetization is carried out so that it is for commercial purposes. It is not following Fair Use principles and the Youtube platform as an organizer. The electronic system, of course, also has responsibility for violations that occur on its Platform, which in this case is the occurrence of copyright infringement

Keywords: Fair Use; Copyright; Videos; Youtube.

A. INTRODUCTION

“Humans have thoughts and reason, so that humans can create a work of copyright called a Copyright.”¹ Copyright is an exclusive right owned by the creator that arises based on declarative principles shortly after work

is realized in a tangible form. Based on the opinion of Attorney Richard Stim, “to get protection, a copyrighted work must be an original creation embodied in a concrete form, and there must be creativity.”²

Article 4 of the Copyright Law states that there are two exclusive rights in Copyright, namely moral and economic rights. Moral rights are rights

¹ Ramli, T.S., Ramli, A.M., Permata., R.R., Wahyuningsih, T., Mutiara, D., & C, F.G. (2020), Aspek Hukum atas Konten Hak Cipta Dikaitkan Dengan Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik, *Jurnal Legislasi Indonesia*, 1 (17), 62-29. Direktorat Jenderal Peraturan Perundang-Undangan, Jakarta.

² Riswandi, Budi Agus. (2016). *Doktrin Perlindungan Hak Cipta di Era Digital*, Yogyakarta: FH UII Press. Hlm 110

that arise because everyone is obliged to respect other people's copyrighted works, so it is not allowed to take or change other people's copyrighted works. "Protecting the reputation of the creator or copyright holder is the primary goal of moral rights."³

Debois, in his book entitled *Le Droit d'auteur*, states that in a civil law country, moral rights include :⁴

1. *"Droit Publication*
The right to do or not to make an announcement of the creation;
2. *Droid de Repentier*
The right to change the work that is deemed necessary includes withdrawing the work from circulation when it has been announced;
3. *Droit au Respect*
The right to be respected so that no other party changes his creation; and
4. *Droid a La Paternite*
The right to include the name of the work, including not to approve the change in the name of the author who is listed and the right of the author to publish his work."

³ Sudjana,(2018). Implikasi Doktrin Fair Use Terhadap Pengembangan Ilmu Pengetahuan oleh Dosen atau Peneliti dalam Perspektif Hukum Hak Cipta. *Jurnal Veritas et Justitia*, 4 (2). Hlm 493-514. Universitas Parahyangan.

⁴ Jened, Rahmi. (2014). *Hukum Hak Cipta (Copyright's Law)*. Surabaya: PT Citra Aditya Bakti. Hlm 138-139

Meanwhile, economic rights based on Article 8 of the Copyright Law are the exclusive rights of the creator or copyright holder to obtain economic benefits from a copyrighted work. Economic rights are a tangible form of appreciating the work created because it requires thought, effort, energy, creativity, and money.

In Article 9 paragraph (1) of the Copyright Law, it is regulated that the creator or copyright holder has the economic right to publish, duplicate, translate, adapt, arrange or transform, distribute the work or copies thereof, perform, announce, communicate, and rent out the work. Furthermore, it is also regulated in Article 9 (2) and paragraph (3) that other parties who wish to exercise economic rights must obtain permission from the creator or copyright holder and may not reproduce or use commercially without permission.

Copyright protection applies as long as the creator is still alive and continues for 70 (seventy) years after the author's death, starting from January 1 of the following year. For copyrights owned or held by legal entities, the protection is valid for 50 (fifty) years from the first announcement of the

creation. As for traditional cultural expressions whose copyright is held by the state, the protection applies indefinitely.

There are several principles in copyright protection, namely: ⁵

1. "A copyrighted work can be protected by copyright if it is already in a concrete or tangible form;
2. Copyright protection is protected based on declarative principles;
3. It is not mandatory to register a work, but it is highly recommended to register the work with the Directorate General of Intellectual Property (DJKI);
4. Copyright is a right whose existence is recognized and protected by law; and
5. The nature of copyright is exclusive, so only the creator has the right to his creation unless there is permission from the creator."

One of the objects of copyright protection based on Article 40 paragraph (1) letter m of Law Number 14 of 2014 concerning Copyright (Copyright Law) is a cinematographic work. Based on the Elucidation of Article 40 paragraph (1) letter M of the Copyright Law, cinematography can be made in the form

⁵ Sudaryat. (2010). Hak Kekayaan Intelektual. Bandung: Oase Media. Hlm 45.

of celluloid tape, video tape, video disc, optical camera, and/or other media that allows it to be shown in cinemas, wide screens, television, or other media.

Video creations are currently one of the sources of income for Youtubers. Legal protection for video-copyrighted works must be considered to ensure the continuity of creativity in video-copyrighted works, especially at this time there have been developments in the digital world. This is done because "copyright is a means for humans to achieve prosperity and happiness in life."⁶ This legal protection is essential because

"Although most Indonesians are open to the presence of digital technology, not all have good insight and awareness of the security and privacy of information and the protection of digital works."⁷

In this digital era, we have seen various objects of copyright protection

⁶ Ramli, T.S., Ramli M.A., Permata., R.R., Adolf., H., Damian., E., & Palar., M.R.A. (2010). The Protection of Content in Media Over the Top and Telecommunication Network in INDONESIA Copyright Law Perspective. *NTUT Journal of Intellectual Property Law and Management*, 2 (8). Hlm 58-65. National Taipei University of Technology.

⁷ Jufryanto Puluhulawa, Mohamad Rusdiyanto U Puluhulawa, and Vifi Swarianata, "Liability Limitation of PeduliLindungi Applications in the Convergence Dynamics of Telematics Law," *KnE Social Sciences*, 2022, 100-111.

come into contact with technology. For example, “presence of music and videos that previously only used Compact Discs (CDs) became accessible via digital media.”⁸ Internet-based digital platform services that can be used

“for communication, buying and selling/financial transactions, data storage and retrieval, social media networks, games, search engines, as well as digital information in the form of images, text, sound, films, videos, to a combination of and/or all.”⁹

A digital platform service provider is a

“party that provides, manages, and operates a digital platform either individually or jointly to its users for the benefit of themselves and/or other parties.”¹⁰

Currently, digital transformation is happening very quickly, and copyrighted content is “one of the elements that influences and has a high valuation value, significantly when it is associated with media such as Youtube, Netflix,

Vidio.com, Spotify, Joox, and others.”¹¹ In principle, this digital platform does not create content but only accommodates and accommodates content uploaded by its users.

“Today's digital technology changes have changed many aspects of human life.”¹² One of them is a way for people to get economic benefits by monetizing videos uploaded on the Youtube Platform. A monetization is a form of turning content into money with installs. This money will be sent to the account listed on the Youtube account.

Video creation is “one form of entertainment in great demand by the public. The public can access various kinds of videos through the Youtube Platform.”¹³ With “the rapid advancement of technology in today's era, the copyright regime faces new challenges,”¹⁴ One of the challenges is copyright infringement. The role of the

⁸ Sihombing, A.K., Permata, R.R., Ramli, T.S. (2021). Comparison of Digital Copyright Protection on Over the Top (OTT) Streaming Content Media in Indonesia and the United States. *Padjajaran Journal of Law*, 8 (2). Hlm 183-212. Padjadjaran University.

⁹ Permata, R.R., Ramli, T.S., Utama, Y., Utama, B., & Millaudy, R.A., (2022). Hak Cipta Era Digital dan Pengaturan Doktrin Fair Use di Indonesia. Bandung: Refika Aditama. Hlm 24.

¹⁰ Ibid.

¹¹ Ibid.

¹² S, Man Suparman. (2002). Perjanjian Baku dalam Aktivitas Dunia Maya, Cyberlaw: Suatu Pengantar. Jakarta: Elips II. Hlm 14

¹³ Prasista, A.A., Winarno, B., & Alam, M. Z. (2014). Tinjauan Terhadap Tindakan Pengumuman Perbanyakan Video Melalui Situs Youtube Secara Melawan Hukum (Studi Kebijakan dan Ketentuan Hak Cipta Dalam Situs Youtube). *Jurnal Hukum Student Journal*. Hlm 1-18. Universitas Brawijaya.

¹⁴ Ramli, Ahmad M. (2004). Cyber Law dan HAKI dalam Sistem Hukum Indonesia. Bandung: Refika Aditama. Hlm 6

law is to “provide guarantees for creators to control and enjoy the results of their copyrighted works exclusively, and of course, for that, it requires the state to enforce legal arrangements.”¹⁵

In addition to being protected by the Copyright Law, video copyrights uploaded on the Youtube Platform are protected by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). More specifically, copyright protection on digital media is contained in Article 25 of the ITE Law, which stipulates that electronic information and/or documents that have been compiled into an intellectual work, internet site, and intellectual work contained therein objects protected by Intellectual Property—based on the provisions of laws and regulations.

There is a principle that causes the creator's exclusive rights not to be owned absolutely by either the creator or the copyright holder, and this principle is called the Fair Use Principle.

¹⁵Setiada, T.S., Atsar, A., & Kurniati, G. (2020). Perlindungan Hukum atas Pelanggaran Pembajakan Hak Cipta Video di Situs Youtube. *Jurnal Ilmu Hukum*, 2 (9). Hlm 331-350. Fakultas Hukum Universitas Riau

A work used by another party will not be considered a copyright infringement if “the source is clearly stated and the use does not harm the natural interests of the creator.”¹⁶

Understanding the Fair Use Principle states that “other parties can reuse copyrighted material under certain conditions without first asking permission from the creator or copyright holder.”¹⁷ This is in line with the opinion of Thomas G Field Jr that the Fair Use Principle is “one of the limitations in the copyright regime that allows the use of works belonging to other parties without prior permission or license.”¹⁸

The regulation of the Fair Use principle must set limits and exceptions to exclusive rights, especially the economic rights of the creator or copyright holder because this is a limitation for the public to try to express their artistic expression. These

¹⁶ Damian, E. (2014). *Hukum Hak Cipta*. Bandung: PT Alumni. Hlm 257.

¹⁷ Mashdurohatun, A. & Mansyur, M.A. (2015). Identifikasi Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan IPTEK Pada Pendidikan Tinggi di Jawa Tengah. *Yustisia Jurnal Hukum*, 4 (3). Hlm 522-540. Universitas Sebelas Maret

¹⁸ Aini, F. N. & Wauran, I. (2021). Pemenuhan Prinsip Fair Use dalam Cover Lagu Berdasarkan Hukum Hak Cipta Indonesia. *Jurnal Ilmiah Kebijakan Hukum*, 15 (1). Hlm 111-131. Badan Penelitian dan Pengembangan Hukum dan HAM Kementerian Hukum dan HAM RI.

exceptions and limitations aim “to protect copyrighted works so that people can use a copyrighted work to gain knowledge in the social and cultural fields.”¹⁹

The regulation of Fair Use Principles in Indonesia is contained in Article 43 to Article 49 of the Copyright Law. In Article 43 Letter d of the Copyright Law, it is stipulated that for the act of creating and disseminating copyrighted content through information and communication technology media that is not for commercial purposes or the creator does not express an objection, and the act is not included in the category of copyright infringement.

Based on Article 15 of the ITE Law, the implementation of the electronic system has the responsibility for the activities of the implementation of the electronic system, which in this case is the Youtube Platform. If there is a violation on the Youtube Platform, the Youtube Platform is undoubtedly responsible.

¹⁹ Permata, R. R., Ramli, T.S., Utama, Y., & Millaudy, R.A. (2021). Regulasi Doktrin Fair Use Terhadap Pemanfaatan Hak Cipta Pada Platform Digital Semasa dan/atau Pasca Pandemi Covid-19, *Dialogia Iuridicia Jurnal Hukum Bisnis dan Investasi*, 13 (1). Hlm 130-148. Fakultas Hukum Universitas Kristen Maranatha

Youtube tries to provide answers and solutions to problems that occur on its platform in order to at least minimize copyright infringement that occurs.

B. Problem Research

Based on this background, the author sees that two main problems can be taken with the following restrictions: (1) How is the implementation of the Fair Use Principle on video copyrighted works belonging to other parties that are re-uploaded without permission? Moreover, (2) What actions can be taken against the many unauthorized re-uploads on the Platform?

C. Research Method

In this study, the research method used is the normative juridical research method. This research method reviews the applicable laws and regulations related to research topics and literature studies. The data collection technique used is a theoretical literature study by reading and studying the literature and legislation. The data analysis method used is a qualitative normative way. Namely, the data is compiled qualitatively to answer related problems.

DISCUSSION

A. Analysis of Unauthorized Re-uploading Cases related to the Implications of Fair Use Principles on the Youtube Platform

There are so many copyrighted works on the Youtube Platform, which certainly has a positive effect because it makes it easier for people to work and access videos. However, it turns out that, on the other hand, it also creates controversy regarding the protection of copyrighted works on the Youtube Platform.

Copyright infringement is divided into two types, and the first is plagiarism, namely:

"The act of taking part of the work of someone else's copyright and inserting it into his creation as if it were his creation. The second is a violation by taking, reproducing, and distributing other people's creations as they were initially without changing the contents."²⁰

One can benefit from videos uploaded on the Youtube Platform by enabling monetization on the videos. This monetization has its charm because

²⁰ Geriya, A. A. G. M (2021). Pelanggaran dan Kebijakan Perlindungan Hak Cipta di Youtube. *Jurnal Living Law*, 13 (2). Hlm 100-110. Universitas Djuanda.

of the "Channel gains existence, popularity, and profits from the number of viewers and subscribers of the Channel."²¹

There is no problem if the video copyright uploaded and monetized is the result of his copyrighted work. However, in practice, it cannot be denied that at this time, there are still many Channels that re-upload video copyrighted works that do not belong to them without permission, even if the video is monetized. to gain economic benefits.

One tangible example is Channel Adeliba Green which re-uploaded a video titled "Thai CCTV Ads – Sad "I am Not Desta/Ipang Bip" #Vlog #Iklancctv" on 20 September 2015. The video is a video belonging to Chanel Vizer entitled "ความจริงที่" Official HD: Vizer (vizer CCTV)," which was uploaded on 27 August 2015.

In Cyber Law, what is referred to as the creator or copyright holder is "the person who uploads and/or his name is included in the work unless proven otherwise."²² In this case, the first to

²¹ Kristianto, B. R. D. & Marta, R.F. (2019). Monetisasi Dalam Strategi Komunikasi Lintas Budaya Bayu Skak Melalui Video Blog Youtube. *Jurnal Lugas*, 3 (1). Hlm 45-56. Institut Ilmu Sosial Dan Manajemen STIAMI.

²² Sudjana. (2014). Sistem Perlindungan atas Ciptaan Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dalam Perspektif

upload the video was the Vizer Channel. Moreover, the content of the video was an advertisement for CCTV products from Vizer.

Adeliba Green's channel monetizes the video that she re-uploaded. This can be seen from the advertisement at the beginning of the video so that the Adeliba Green Channel gets economic benefits from this video. Even in the video's description, Adeliba Green's Channel does not state where the source of this video came from.

The actions taken by the Adeliba Green Channel have also violated the provisions of Article 43 letter d of the Copyright Act for distributing copyrighted video works through the Youtube Platform (which, in this case, is included in information and communication technology media) with the aim of commercialization. The actions of Channel Adeliba Green based on Article a quo have violated copyright. They do not meet the Fair Use principle because it violates the moral rights and economic rights of Channel Vizer as the creator.

When someone intentionally infringes on the reproduction,

Cyber Law. *Jurnal Veritas et Justitia*, 2 (2). Hlm 253-257. Universitas Parahyangan, Bandung.

dissemination, or announcement of a video copyrighted work without first asking permission from the creator or copyright holder, especially for commercialization purposes, of course, "it is a copyright infringement and is not by the principle good intention."²³

Based on the above analysis, the actions taken by Channel Adeliba Green against Channel Vizer are contrary to the Fair Use Principles, so it is a copyright violation, namely the reproduction and distribution of video copyrighted works belonging to Channel Vizer without permission for commercial purposes and does not include the source.

B. Policy Regarding Re-uploading Without Author's and/or Copyright Holder's Permission on the Youtube Platform

Many people love to access the Youtube Platform to upload, watch, share, like, comment, and do other activities. This is done because the Youtube Platform is straightforward to access. It only requires adequate devices and an internet network.

²³ Krisna, M.A.Y. & Priyanto, I. M. D. (2019). Tanggung Jawab Pihak Youtube Terhadap Pelanggaran Video Tanpa Izin Pencipta. *Jurnal Kertha Negara Ilmu Hukum*, 7 (10). Hlm 1-17. Universitas Udayana.

Copyright infringement on the Youtube Platform is still joint, which makes creators or copyright holders worry because they have gone to great lengths to create video copyrighted works so they can enjoy their work results.

Technology advancements have increased the possibility for individuals to gain economic benefits and popularity from copyrighted work, but it has also increased the possibility of copyright infringement. If copyright infringement has occurred, then, of course, some parties must be held responsible.

The YouTube Platform Copyright rules and policies regulate that video uploaders may only upload their own or other people's videos but with prior permission from the creator or copyright holder of the video.

In the theory of responsibility put forward by Hans Kelsen, it is explained "that a person is legally responsible for a specific act."²⁴ The occurrence of copyright infringement on the Youtube Platform also results in liability to the Youtube Platform as the organizer of the electronic system.

²⁴ Kelsen, H. (2006). *Teori Umum tentang Hukum dan Negara*. Bandung: PT Raja Grafindo Perkara. Hlm 95.

This is also in line with Article 15 of the ITE Law, which stipulates that the operator of the electronic system (in this case, the Youtube Platform) is responsible for operating the system on its platform. The ITE Law has an unlimited range of jurisdictions because it applies not only to legal actions carried out by Indonesian citizens or Indonesian legal entities but also to legal actions committed by foreign citizens or foreign legal entities with legal consequences in Indonesia. "This is considering using information technology, electronic transactions, and universal or cross-territorial communications."²⁵

Youtube is also trying to answer the copyright infringement problems that occur on its Platform through its parent company, Google, Inc., by releasing a system called Content ID.

The Content ID feature is intended for creators or copyright holders of video copyrighted works on Youtube by joining a database called a "reference file." Youtube will scan the content uploaded to this reference file to check for

²⁵ Hadiani, S., Zamil, Y.S., Rafianti, L. (2021). *Aspek Tanggung Jawab Youtube dalam Penyelenggaraannya di Indonesia Berdasarkan Hukum Penyiaran, Telekomunikasi, dan Hukum ITE*. *Jurnal Indonesia Sosial Sains*, 2 (8). Hlm 1365-1380. CV Publikasi Indonesia.

similarities or similarities, both in terms of video and audio.

In the Content ID feature, creators or copyright holders can choose several actions provided by the Youtube Platform: content blocking, monetization, and viewing content broadcasting statistics. Content ID cannot wholly resolve copyright infringement that occurs on the Yot Platform in various ways so that it is not detected by Content ID, for example, by changing the resolution, compiling videos and others.

In addition to providing solutions with Content ID, Platform Youtube also provides education to its users regarding copyright which users can access on Youtube's official website. The education provided is very much, including understanding copyright, copyright claims, used by the Fair Use Principles, and others.

The Youtube platform collaborates with government policymakers, industry representatives, and creators to improve copyright protection. Youtube is also subject to copyright infringement notifications as stipulated in the Digital Millennium Copyright Act (DMCA).

The Youtube platform can receive reports of copyright infringement from the copyright holder of a video. After that, Youtube will consider whether the reported actions are included in fair use for educational or non-commercial purposes or not. For every reported channel, a warning will be sent by Youtube.

Youtube can also disable and delete videos if they get complaints from creators or copyright holders. This is an action taken by Youtube if it is proven that there is a violation of copyright infringement on its Platform.

Even though Youtube has set its policies in preventing and dealing with copyright infringement, the state must also play a role in guaranteeing the rights and obligations of its citizens who are members of the Youtube Platform.

Article 54 of the Copyright Law stipulates that to prevent infringement of copyright and related rights on information technology-based facilities, the Government (in this case, the Government of Indonesia) is authorized to supervise the creation and dissemination of content that violates copyright and related rights. , cooperate and coordinate with domestic/foreign

parties, and supervise the recording of creations and related rights products at performance venues such as cinemas, theaters, concerts, and others.

Furthermore, in Article 55 and Article 56 of the Copyright Law, it is regulated that anyone who knows of a copyright infringement in the electronic system for commercial purposes can report it to the Minister for further verification by the Minister. Suppose sufficient evidence has been collected from the report results at the complainant's request. In that case, the Minister submits a recommendation to the Minister of telecommunications and informatics so that the infringing content can be partially or entirely closed or make the electronic system services with copyright infringement inaccessible.

CONCLUSION

The Copyright Law has provided arrangements regarding the Fair Use Principle, which should not harm the creator or copyright holder. However, unfortunately, it still does not provide definite and clear boundaries regarding the Fair Use Principle.

The act of someone who re-uploads a video copyrighted work without permission on the Youtube

platform can harm the economic and moral rights of the creator or copyright holder. Mainly if monetization is carried out on videos re-uploaded without such permission, it does not include the source of the video, so it does not meet the Fair Use Principles.

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