

LEGAL PROTECTION OF COPYRIGHT OF YOUTUBE CONTENT REUPLOADED ON TIKTOK

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ABSTRACT

TikTok as one of the social media that is currently developing and has a high interest has caused TikTok users to have the ambition to upload various interesting content to quickly increase the number of followers, viewers, and likes. This ambition causes the community of TikTok users to take actions that do not respect copyright works by re-uploading content or videos sourced from other people's YouTube channels. The act of re-uploading other people's YouTube videos on TikTok in order to make a profit causes Youtube content creators to not be free to express their ideas and ideas because they are worried that YouTube viewers will see the content they have created through re-uploading on TikTok. This study aims to determine the legal protection of copyrights for YouTube content that is re-uploaded on Tiktok. The approach method used in this study is normative juridical, namely the approach in terms of the applicable laws and regulations. Sources and types of data used in this study are secondary data sources. The secondary data collection method was carried out using a literature study, namely the data collection method which was carried out by examining regulations, documents, and literature. The results of this study indicate that copyright infringement re-uploading other people's YouTube content without permission and not including the source causes economic losses for creators because TikTok viewers can see the re-uploads on TikTok and do not see content from the source on YouTube. Thus harming the economic rights and moral rights of the creators. The legal remedies that can be taken consist of preventive and repressive legal measures and these actions are subject to sanctions based on Article 113 paragraph (3) of Law Number 28 of 2014 concerning Copyright.

Keywords: Legal Protection, Copyright, Reupload, Tiktok, YouTube

INTRODUCTION

In the era of digitalization, the development of technology, information and communication is very rapid. The rapid development of technology has brought changes in all areas of life.¹ Advances in technology make it easier for people to carry out every activity, both from the health sector, the economy, education, industry and others.² The internet has presented a new reality of people's lives and changed distance and time to be unlimited. With the medium of the internet, people can carry out various activities that are difficult to do in the real world, because they are separated by distance, it becomes easier.³

The virtual world has now become a boundless space that is used by the public as a place that is very easy to reach for channeling various expressions that cannot be channeled in the real world directly or through other conventional media. The development of cyberspace with easier internet access, as well as the development of various *platforms digital* in cyberspace makes it easy for people to share their experiences or stories and can also take advantage of these media as a means to announce their creations which are the result of their creative thoughts personally so that they can be enjoyed by the general public.⁴ This is followed by a change in thinking in order to develop creative ideas. These ideas or thoughts are commonly referred to as Intellectual Property. Intellectual Property originates from human intellectual creativity which requires sacrifice of effort, cost and time, so in this case it is necessary to have special rights in Intellectual Property. Intellectual Property Rights themselves have benefits for creators, because the works of creators will be protected by law, for example copyrights.⁵ According to Article 1 number 1 of Law Number 28 of 2014 concerning Copyright " *Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions.* "

The development of technology through social media *platforms* makes it easier for people to obtain information without distance and time limitations, while one example of social media that has recently penetrated in various parts of the world is Tiktok. Tiktok is one of the social media that has such high appeal among people today. The public uses the Tiktok application to express their creativity and provide tips and all information regarding fashion, culinary, economics, politics and others which are presented briefly through videos, pictures and songs. The Tiktok application provides unique and interesting special effects that are easy and short to use by its users so they can make short videos with good results and can be presented to other users.⁶ People are

¹Amaliyah, Fauziah P. Bakti, Rezky Amalia Syafiin, Kun Arfandi Akbar, "Challenges and Developments of Online Taxi Services: Perspectives on the Prohibition of Monopolistic Practices and Unfair Business Competition", *Amanna Gappa*, Faculty of Law, Hasanuddin University, Vol. 27, Number 1 March 2019, p. 14

² M. Arif Azza Z, " Legal Protection of Youtube Video Copyrights that are re-uploaded on Instagram", *Journal of Kertha Desa*, Vol. 9 No.9, p.2

³ Wahid, Abdul, and Labib, Mohammad. (2010). *Mayantara Crime (Cyber Crime)*. Bandung: PT. Refika Aditama, p. 32

⁴Ari Mahartha, "Transforming Cinematographic Works into Parody Videos with Commercial Purposes from the Perspective of Copyright Protection", *Journal of Kertha Patrika*, Vol. 40, No. April 1, 2018, p. 14

⁵ Pawitram, MRA Dharmawan, NKS and Indrawati, AKS "Regulation of Collective Management Institutions Regarding Withdrawal of Royalties Based on Law No. 28 of 2014 Concerning Copyright " *Kertha Semaya Journal*, No. 1 (2017): 2

⁶ Yani Sri M, DKK, "Utilities of Tiktok Social Media for Digital Business Marketing, As a Promotional Media", *Hospitaly Journal*, Vol.11 No.1 June 2022, page 2

currently also using the Tiktok application as a source of income, for example those who have followers or *followers* who have a lot of them will use it by opening *endorsements* and many also use Tiktok as a medium for promoting their business.

Tiktok as one of the most developed and most interested social media causes tiktok users to have the ambition to upload a variety of interesting and current content in order to increase the number of *followers*, *viewers* and *likes* quickly and easily. Because of this ambition, there are not a few people who use Tiktok who don't respect copyrighted works by re-uploading content or videos sourced from other people's YouTube *channels*. This causes viewers not to see YouTube content from the creator's YouTube channel but to see the content through re-uploading videos on Tiktok. Copyright infringement that often occurs in society is when someone re-uploads a video without including the name of the owner or creator of the video. Here there is copyright infringement on copyrighted works which is detrimental to the original uploader because the video is used commercially.

Intellectual property rights are closely related to intangible objects that originate from the human mind and are protected and are intellectual works that are born from human feelings and creativity.⁷ It can be seen in Article 40 paragraph (1) letter m of Law Number 28 of 2014 concerning Copyright which states that protected Works include Works in the fields of science, art and literature, one of which is copyright on cinematographic works. Videos uploaded to the YouTube *platform* are a form of cinematographic work, this is as explained in the Elucidation of Article 40 paragraph (1) letter m of Law Number 28 of 2014 concerning Copyright which states " *What is meant by "cinematographic works" are creations in the form of images moving images include documentaries, advertising films, reportage or story films made with scenarios, and cartoon films. Cinematographic works can be made on celluloid tape, video tape, video disc, optical disc and/or other media that allow them to be shown in cinemas, big screens, television or other media. Cinematography is an example of an audiovisual form ."*⁸ YouTube as a platform makes a means of providing space for several individuals around the world to connect by providing information and inspiration to one another. In addition, YouTube is also a place for distributing content and advertisements on a small and large scale.⁹ So that anyone can easily view and post their work on YouTube.

The act of re-uploading other people's YouTube videos on Tiktok in order to make a profit causes Youtube content creators to not be free to express their ideas and ideas because they are worried that YouTube viewers will see the content they have created through re-uploading on Tiktok. As explained in Article 4 of Law Number 28 of 2014 concerning Copyright which reads " *Copyright as referred to in Article 3 letter a is an exclusive right consisting of moral rights and economic rights ."* Therefore the act of re-uploading other people's videos can harm the economic rights and moral rights of the YouTube video creator.

Based on the problems above, it is felt necessary to examine in depth the legal issues related to the Legal Protection of Copyright for YouTube content which is re-uploaded on Tiktok. Based on this, the problems that can be formulated are as follows:

1. How is the legal protection of copyrights for YouTube content that is re-uploaded on Tiktok by other people?
2. What are the legal remedies for copyright infringement of Youtube content that is re-uploaded on Tiktok?

METHOD

The research method used in this research is normative juridical. Normative juridical research is carried out by taking a juridical approach in terms of the applicable laws and regulations. The sources and types of data used in this study are secondary data sources consisting of primary legal materials and secondary legal materials. The primary legal material used is Copyright Law and the secondary legal material used is literature and legal journals related to Copyright. The secondary data collection method is carried out using a literature study, namely by examining the relevant regulations. The data analysis method used in this study is qualitative. Data from research results originating from primary legal materials and secondary legal materials are presented in the form of data analysis to answer this research and then compiled in written form and become this paper. The research specifications used in this study are analytical descriptive in nature, this study aims to describe or provide an overview of the applicable laws and regulations then be associated with legal theory.

RESULTS AND DISCUSSION

Legal Protection of Copyright for Youtube Content Re-Uploaded on Tiktok by others

Wealth is an abstraction that can be owned, transferred, bought, or sold. Intellectual property is wealth for all products produced by intelligence, such as technology, knowledge, art, literature, compositions, writings, caricatures, and so on. Based on this, IPR is the rights (authority/power) to do something about the intellectual property that is regulated by applicable norms or laws.¹⁰ In its implementation Haki and copyright have a close relationship, because with the existence of Haki, copyright gets legal protection.¹¹

Legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments.¹² Because according to him, the nature and purpose of law is to provide protection (protection) to the community, which must be realized in the form of legal certainty.¹³

Copyright according to Article 1 number 1 of Law Number 28 of 2014 concerning Copyright is " *the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions ."* A work can be declared as a real form if the work can be seen,

⁷Tomi Suryo Utomo, 2010, *In the Era of Global Rights Wealth: A Contemporary Study*, Graha Ilmu, Yogyakarta, p. 1

⁸Explanation of Article 40 paragraph (1) letter m of Law Number 28 of 2014 concerning Copyright

⁹Rulli Nasrullah, 2017, *Social Media*, Symbiotic Rekatama Media, Bandung, p. 17

¹⁰Adrian Sutedi, 2009, *Intellectual Property Rights*, Sinar Graphic, Jakarta, p. 38

¹¹Suryawan, Made Angga Adi DKK. "Implementation of Withdrawal of Royalties by the Karya Cipta Indonesia Foundation in the Bali Region at Restaurants in Gianyar Regency for the Use of Songwriting and Musical Works" *Journal of Kertha Semaya* 6 , No. 5 (2018):2

¹²Philippus M. Hadjon, *Op. cit*, p. 10

¹³Philippus M. Hadjon, *Op. cit*, p. 2

heard, read and can be enjoyed by someone. A copyrighted work is protected by copyright if it has been realized and must have a distinctive form, be personal and show authenticity as a form of creation that is born of a person's ability, creativity or expertise.¹⁴

With the renewal of the Copyright Act to become Law Number 28 of 2014, copyright protects the rights of creators and copyrights are obtained automatically from the moment a work is created. Definition of Works according to Article 1 number 3 of Law Number 28 of 2014 concerning Copyright "*Creation is any copyrighted work in the fields of science, art and literature that is produced on inspiration, ability, mind, imagination, dexterity, skill or expertise. which is expressed in a real form.*

YouTube content can be said to be a cinematographic work as explained in Article 40 paragraph (1) letter m of Law Number 28 of 2014 concerning Copyright which states that protected creations include works in the fields of science, art and literature, one of which is copyrights for cinematographic works, namely works in the form of *moving images*, including documentaries, advertising films, reports or story films made with scenarios and cartoon films. Cinematographic works can be made on celluloid tape, video tape, video disc, optical disc and/or other media that allow them to be shown in cinemas, big screens, television or other media. Cinematography is an example of an audiovisual form.¹⁵

Violation of intellectual property rights on YouTube content that is re-uploaded on social media without permission or using other people's work to gain illegal profits is an action that is detrimental to the creator. Re- uploading YouTube content on TikTok can be said to be broadcasting. According to Article 1 number 11 of Law Number 28 of 2014 concerning Copyright explains "*Announcement is the reading, broadcasting, exhibition of a creation using any means, whether electronic or non-electronic, or doing it in any way so that a work can be read, heard, or seen by others.*" Meanwhile, the definition of broadcasting based on Article 1 number 15 of Law Number 28 of 2014 concerning Copyright is "*Broadcasting is the transmission of a work or related rights product wirelessly so that it can be received by everyone in a location far from where the transmission originates.*" In Article 59 paragraph (1) of Law Number 28 of 2014 concerning Copyright, it is explained that the protection of copyrights for cinematographic works is valid for 50 (fifty) years from the time the announcement was made.

Works that are registered give exclusive rights and economic rights to their creators so that these rights are duly protected by statutory provisions,¹⁶ Article 4 of Law Number 28 of 2014 concerning Copyright states "*Copyright as referred to in Article 3 letter a is an exclusive right which consists of moral rights and economic rights.*" Regulations regarding Moral rights are regulated in Article 5 of Law Number 28 of 2014 concerning Copyright which states that:

Article 5

The moral rights referred to in Article 4 are rights that are eternally attached to the Creator to:

- a. keep including or not including his name on the copy in connection with the use of his work for the public;
- b. use aliases or pseudonyms;
- c. change their Works according to social decency;
- d. change the title and subtitle of the Work; and
- e. defend their rights in the event of distortion of Works, mutilation of Works, modification of Works, or reputation

Moral rights require that the creator's identity be attached to his work, either by his own name or by a pseudonym. In certain cases and on the basis of the creator's consideration, the creator can abolish his identity and allow his creation to be anonymous¹⁷. The official creator has the right to publish his creation, duplicate his creation, announce his creation, and prohibit other parties from duplicating and/or using his creation commercially.¹⁸

Furthermore, the definition of economic rights is written in Article 8 of Law Number 28 of 2014 concerning Copyright which reads "*Economic rights are the exclusive right of the Author or Copyright Holder to obtain economic benefits from Works.*" Further arrangements regarding economic rights are regulated in Article 9 of Law Number 28 of 2014 concerning Copyright which reads:

Article 9

- (1) The creator or copyright holder as referred to in Article 8 has economic rights to:
 - a. publication of Works;
 - b. Reproduction of Works in all its forms;
 - c. translation of Works;
 - d. adaptation, arrangement, or transformation of Works;
 - e. Distribution of Works or copies thereof;
 - f. creation show;
 - g. Announcement of Creation;
 - h. Creation Communication; and
 - i. rental of Creation.
- (2) Everyone who exercises the economic rights referred to in paragraph (1) must obtain permission from the Author or Copyright Holder.
- (3) Everyone without the permission of the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works

¹⁴Andrian Sutedi, 2013, *Intellectual Property Rights*, cet.II, Sinar Graphic, Jakarta, p. 115.

¹⁵Explanation of Article 40 paragraph (1) of the Law of the Republic of Indonesia Number 28 of 2014 Concerning Copyright (Copyright Law).

¹⁷Ferol Mailangkay, Study of the Moral Rights of Authors and Related Rights According to Law Number 28 of 2014 Concerning Copyright, *Lex Privatum*, Vol. V/No. 4/June/2017, p. 139

¹⁸ *Loc. cit*

Based on the article above, it is clear that there is a prohibition against using other people's work for commercial purposes without the creator's permission because this violates economic rights. Commercial use based on Article 1 number 24 of Law Number 28 of 2014 concerning Copyright is " *Commercial use is the use of work and/or related rights products with the aim of obtaining economic benefits from various sources or for payment .* "

The act of re-uploading YouTube content on TikTok without permission by not including the name of the creator and commercial use is a violation of the economic rights of YouTube content creators. Someone who without permission re-uploads other people's YouTube content without permission causes economic loss for the creator because TikTok *viewers* can see the re-upload on TikTok and not see content from the original source on YouTube. So that YouTube content creators should benefit from the large number of *viewers* on their YouTube *channel* , but are disadvantaged by those who re-upload their videos. ¹⁹Activities related to information technology are called cyber activities, which means virtual activities that have a very real impact on the device even though the evidence is electronic. ²⁰In principle, a copyrighted work that is distributed commercially through any media is a form of infringement. So, uploading a cinematographic work to social media is a copyright infringement because it includes announcing the copyrighted work without the creator's permission.²¹

Legal Remedies Against Copyright Violation Of Youtube Content Re-uploaded On Tiktok

The low level of understanding of the Indonesian people regarding the importance of copyright protection is the reason for the large number of cases of copyright infringement. In addition, the concept of thinking of the Indonesian people in appreciating works that are born from intellectual abilities with various sacrifices and has economic value must be protected. ²²An action that can be considered as copyright infringement is when it violates the special rights of the original creator. ²³Re-uploading YouTube content without the permission of the creator is an act of copyright infringement, so legal action is required for this action. Legal remedy is the provision of protection for human rights owned by someone who here is the owner of the exclusive rights to a work so that he can feel the rights guaranteed by law. ²⁴There are two legal remedies that can be taken for acts of copyright infringement re-uploading YouTube content, namely:

1. Preventive Legal Measures

Preventive legal protection is an effort to prevent copyright infringement which can cause harm. Preventive efforts aim to prevent acts of infringement against works.²⁵ The prevention of copyright infringement in Indonesia has been carried out by the government as written in Article 54 of Law Number 28 of 2014 concerning Copyright which reads:

Article 54

To prevent Copyright and Related Rights infringement through information technology-based means, the Government has the authority to:

- a. supervising the creation and distribution of content infringing on Copyright and Related Rights;
- b. cooperation and coordination with various parties, both domestic and foreign in preventing the creation and dissemination of content infringing on Copyright and Related Rights; and
- c. supervising the act of recording using any media on Works and Related Rights products at the performance venue.

Registering a work is a preventive action that can be taken by the creator or copyright holder to obtain legal protection and legal certainty regarding the rights to his work. ²⁶Even though copyright does not require registration and is automatic, it is nevertheless recommended to creators and copyright holders to register their creations, because the said work registration letter can be used as evidence in court if a dispute arises against the work in the future.²⁷

2.Repressive Legal Measures

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or a violation has been committed. ²⁸In dealing with Copyright infringement, repressive measures that can be taken through legal means are by taking civil law and/or criminal law. ²⁹Based on the contents of Article 95

¹⁹ *Op. cit.*, p.7

²⁰ Ahmad M. Ramli, 2006, *Cyber Law and IPR in the Indonesian Legal System* , Cet. 2, PT. Refika Aditama, Bandung, p. 3

²¹ Luh Mas Putri P,I Made Subawa, Legal Consequences of Uploading a Film Copyright without Author's Permission on Social Media, *Kertha Semaya Journal* , Vol. 6 No. 11 of 2018, p. 10

²² *Ibid.* , p. 6

²³ *Op. cit.* , p. 8

²⁴ Wirapratwi, Ni Putu Indri, and I Gusti Ayu Agung Ari Krisnawati. "Legal Protection Against Copyright in the Field of Computer Programs." *Journal of Kertha Semaya* 6 , No. 3 (2018): 4

²⁵ Urge K, I Gusti Ngurah P, Copyright Protection Against the Use of Songs as Video Background Sound on the Yotube Site, *Kertha Semaya Journal* , Vol. 7 No. 10 of 2019, p.al. 11

²⁶ Almira Sheila W, Febri Jaya, Use of Songwriting Works in Tiktok Creative Video Content: What are the Protection and Legal Measures? *e-Journal of the Yustisia Community, Ganesh University of Education, Law Study Program* , Vol. 4 No. November 3, 2021

²⁷ *Loc.it.*, p. 11

²⁸ Muchsin, *Legal Protection and Certainty for Investors in Indonesia* , Sebelas Maret University, Surakarta. 2003, p. 20

²⁹ Labutubun, MA (2019). Resolution of Disputes over Logo Rights (A Study of Overlapping Copyrights and Trademarks). *ADHAPER: Journal of Civil Procedure Law* , 5(1), 151-166.

of Law Number 28 of 2014 concerning Copyright, repressive legal remedies can be pursued in two ways, the first is the non-litigation route in the form of settlement through alternative dispute resolution by mediation, negotiation and conciliation. Then secondly, if the creator wants to go through litigation, he can file a lawsuit with the Commercial Court.³⁰ As written in Article 99 paragraph (1) of Law Number 28 of 2014 concerning Copyright which reads "The creator, Copyright Holder, or Related Rights owner has the right to file a claim for compensation to the Commercial Court for violations of Copyright or Related Rights products." The litigation route is carried out by submitting an application to the Commercial District Court by including evidence, then the court will issue a temporary decision, this is regulated in Article 106 of Law Number 28 of 2014 concerning Copyright which states:

Article 106

At the request of a party who feels aggrieved due to the exercise of Copyright or Related Rights, the Commercial Court may issue a temporary ruling for:

- a. prevent the entry of goods allegedly resulting from Copyright or Related Rights infringement into trade routes;
- b. withdraw from distribution and confiscate and store as evidence relating to the said Copyright or Related Rights infringement;
- c. securing evidence and its disappearance by violators; and/or prevent
- d. stop violations to prevent greater losses.

As written in Article 113 paragraph (3) of Law Number 28 of 2014 concerning Copyright which states "Anyone who without rights and/or without the permission of the Creator or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of a maximum Rp. 1,000,000,000.00 (one billion rupiah)." Then in Article 96 of Law Number 28 of 2014 states that "Authors, copyright holders and / or related rights holders or their heirs who experience loss of economic rights are entitled to compensation.

The act of re-uploading YouTube content without including the name of the original creator is an act that violates moral rights which can harm the original creator. Re-uploading YouTube content on TikTok is permitted as long as it does not harm the creator as explained in Article 43 letters c and d of Law Number 28 of 2014 concerning Copyright which states:

Article 43

Actions that are not considered as copyright infringement include:

- c. retrieval of actual news, either in whole or in part from news agencies, Broadcasting Institutions, and newspapers or other similar sources provided that the source must be stated in full; or
- d. creation and distribution of Copyright content through information and communication technology media that are non-commercial and/or beneficial to the Author or related parties, or the Creator states that he has no objection to such production and distribution.

Level of legal awareness of the Indonesian people regarding copyright is still very low so that there are still many copyright violations that occur. therefore, in this case, it is necessary to improve people's thinking about the importance of Copyright, by seeking to increase awareness of respecting copyrighted works and efforts to be made by conducting ongoing outreach to the public.³¹

CONCLUSION

1. The act of re-uploading YouTube content on the TikTok application without the creator's permission is a copyright infringement in the cinematography field, this is reviewed from Article 40 letter m of Law Number 28 of 2014 concerning Copyright. As regulated in the Law, Copyright is an exclusive right consisting of moral rights and economic rights. Someone who without permission re-uploads other people's YouTube content without permission and does not include the original source causing economic losses for the creator because of the viewers tiktok can see those reposts on tiktok and not see the content from the original source on youtube. So that this action harms the economic rights and moral rights of the creators. Regulations regarding economic rights are written in Article 9 while arrangements for moral rights are regulated in Article 5 of Law Number 28 of 2014 concerning Copyright. Such copyright infringement is subject to sanctions as stipulated in Article 113 paragraph (3) of the Copyright Law, namely a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).
2. Legal remedies that can be taken for copyright infringement re-uploading YouTube content on TikTok consist of preventive legal remedies and repressive legal remedies. Preventive legal efforts are carried out by the government as written in Article 54 of Law Number 28 of 2014 concerning Copyright. Preventive efforts can also be carried out by registering works so that proof of registration can be used as evidence in court if a dispute arises. Repressive legal efforts can be passed with two

³⁰ Ida Bagus, I Made, Legal Protection of Song Copyright Related to Changes in Lyrics in Cover Activities, *Journal of Kertha Negara* Vol. 9 No. 10 of 2021, p. 803-812.

³¹ Kusmawan, Deni. " Copyright Protection of Books" *Perspective Journal* 19, No. 2 (2014): 2

channels, the first is the non-litigation route in the form of settlement through alternative dispute resolution by mediation, negotiation and conciliation.

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