
**LEGAL PROTECTION OF COPYRIGHT HOLDERS WHOSE WORKS ARE REPLAYED WITHOUT
INCLUDE WATERMARKS ON INSTAGRAM FOR COMMERCIAL PURPOSES**

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ABSTRACT

The activity of re-uploading content via Instagram is sometimes carried out without permission by not including a watermark, and it is often used for commercial purposes. This action is certainly not justified because it can violate the rights of the actual content owner. The method used in this research is method normative juridical, by conducting library law research in research carried out by examining existing library materials against law number 28 of 2014 concerning copyright. The aim of this research is to find out the regulations for protecting content that is re-uploaded without a watermark on Instagram to gain commercial benefits. The results of this research showed that the regulation of all content on Instagram also includes rights to the content based on the applicable law where the user is located, so that if the user is in Indonesia they must comply with regulations in Indonesia. In Indonesia, Intellectual Property uploaded to social media receives copyright protection in both economic and moral aspects. Copyright violations can be subject to legal sanctions in the form of fines and imprisonment in accordance with Article 113 of the Copyright Law. Apart from that, copyright holders also have the right to demand compensation based on Article 96 paragraph (1) of the Copyright Law in the Commercial Court. According to the explanation of Article 100 Paragraph (1) of the Copyright Law, compensation paid can be in the form of income obtained from the content which will be given to the creator.

Keywords: Copyright, Instagram, Reupload, Commercial Purposes

INTRODUCTION

The increasingly rapid development of the world of technology has resulted in many social media applications emerging. long before there were as many social media as there are now, it is important to remember that historically social media was only used by people as a medium for exchanging messages via email or chat. As information technology develops, social media, which initially only functioned as a means for people to exchange messages, has shifted to become a more innovative means. By using one platform, access to a variety of information and entertainment from various parts of the world is easily accessible. Social media connected to the internet allows users to penetrate the boundaries of the dimensions of life, space and time. As a result, social media can be accessed by anyone, anytime, and wherever they are. There are no age restrictions that prevent various groups, from children to adults, from freely accessing all types of content available on social media (Doni, 2017).

There are several social media applications that are widely played, including Instagram, Tik-Tok, Facebook, WhatsApp, Telegram and others. The emergence of the Covid-19 pandemic several years ago meant that all face-to-face activities in various sectors were transferred virtually. In this period, it is known that the graph of internet usage in Indonesian society has increased quite significantly. Based on a survey from APJII in 2019, it shows that Indonesia is one of the countries with the highest level of internet users in the world. Around 64.8% of Indonesia's total population, or around 171.17 million people, access the internet. This increase continued in 2020, with the addition of around 25.5 million new internet users in Indonesia (Saputri, 2022).

One of the most widely accessed social media is Instagram. There are many features presented on this platform, encouraging users to create unique and creative content as possible. There are many

benefits that can be gained when a content creator uploads a unique video, one of which is becoming famous or viral. Social media has properties that encourage popularity, so that users can gain fame. This popularity is a motivation for many users to create content that has the potential to go viral (Saputri, 2022).

Content created by creators is a work that is based on human thought patterns and thinking power. So the content uploaded by creators in social media applications is artistic work and has benefits. This is often referred to as Intellectual Property Rights (IPR) covering the results of intellectual production such as knowledge, literature, art, writing, caricatures, music, technology and so on, all of which are considered a form of wealth (Rahmatullah, 2015). Copyright is one part of the scope of Intellectual Property Rights (IPR) which is regulated in Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law). Copyright is an exclusive right that is automatically obtained by the creator after a creative work is realized in real form, while still paying attention to the limitations stipulated in the applicable laws and regulations (Ningsih, 2019). There are many types of forms protected by copyright, one of which is cinematography, which in this case includes films, advertisements, documentaries, various other films and videos.

One form of cinematography is video content uploaded on social media. An interesting entertainment presented by the creator, sometimes making the content become busy for many people to see. This means that these videos are often downloaded and uploaded to other platforms, one of which is Instagram. Of course, re-uploading can be a problem if done carelessly, because every content is a work that has legal protection and anyone who misuses it can face legal consequences. Legal protection is a principle or mechanism provided by the legal system to protect the rights of individuals and groups. The importance of legal protection lies in the guarantee of rights protected by law. These rights give someone satisfaction and freedom to exercise them, although there are still restrictions on their actions (Inayah, 2020). Meanwhile, legal consequences are a consequence or impact that can arise from a violation or implementation of the law, which means that when someone violates a norm that applies in society, then there are consequences that that person must face.

The activity of re-uploading social media content to the Instagram platform is sometimes carried out without permission by not including a materialmark and is often used for commercial purposes. This is of course not justified because there are values attached to a work, including moral values which are maintained in a work, such as respect for the rights to privacy, honor and human dignity. There is also commercial value where a cinematographic work can have high commercial value, either through product sales or marketing, promotions or broadcasting rights. Copyright protects these values and ensures that the creator of a work obtains economic benefits from his work.

The existence of this phenomenon can certainly be detrimental to creators because the work they create with imagination, thoughts and inspiration can easily be re-uploaded on other media without permission and used for commercial purposes. Many creators have criticized actions like this because they are a type of copyright violation. It is not impossible that creators will experience losses from the rise of actions like this. So, based on the description above, the problem can be formulated as follows:

1. What is the legal protection for copyright holders whose works are rebroadcast without a materialmark on Instagram for commercial purposes?
2. What are the legal consequences for parties who republish works without a watermark on Instagram for commercial purposes?

RESEARCH METHODS

The research method applied in this research is a normative juridical research method with a focus on the use of secondary data (data obtained indirectly). Meanwhile, the primary legal material for this research is law number 28 of 2014 concerning copyright. The secondary data used in this research was analyzed through a descriptive-qualitative approach using a legal framework and conceptual approach

related to copyright protection contained in the primary legal materials.

RESULTS AND DISCUSSION

1. Copyright Protection Arrangements for Content that is re-uploaded on social media

1.1 Privacy and Copyright Terms on Instagram

Instagram is a social media platform that is open and operates globally. Instagram is now under the auspices of the company Meta Platforms Inc., previously known as Facebook Inc (Aisyah, 2023). Instagram was acquired by the company in 2012. Meta Platforms Inc. is a technology company operating globally and based in the United States that has several popular products and services, including Facebook, Instagram, WhatsApp, and Messenger. On Instagram, a user can use work owned by other people based on exceptions or limitations to copyright and related rights based on the applicable law where the user is located. So, Instagram implicitly limits users from doing anything that could violate other people's rights, including intellectual property rights. A person can declare that the person owns or has obtained all necessary rights to the content that the person shares via Instagram. In this case it can be concluded that the regulation of all content on Instagram which also contains rights to that content is based on the applicable law where the user is located, so that if someone in Indonesia shares content on Instagram, that person must comply with the regulations set out. in Indonesia, including regulations governing copyright.

1.2 Legal Protection of Content in Indonesia

In the context of intellectual property rights law, discussions about rights are always an important issue. This is due to the fact that in every creative work that has value, there are various rights given to the creator of the work or copyright owner (Roselvia, 2021). Rights will always be respected and have a significant role in the framework of the Indonesian nation, without any specified time limit. This is reflected in the many discussions regulating rights, especially for Indonesian citizens, in statutory regulations as a concrete form of recognition of these rights (Mustamin, 2020).

Copyright provides protection for works or creations that originate from human intellectual abilities and are manifested in the fields of art, literature and science (Jannah, 2018). Based on the regulations stipulated in Article 40 paragraph 1 letter (m) of the Copyright Law, it can be seen that a cinematographic work is a creation or work that can be given protection through Copyright. Cinematographic work refers to a form of creation that is manifested in moving images. This type of work includes various film genres such as documentaries, reportages or news, advertisements, stories and cartoons (Hendrayana, 2021). In connection with this research, the video content in the application of each online media platform falls into the category of cinematographic works.

This is based on the content contained in social media platform applications, in the form of videos or recordings, where videos are included in the form of audiovisual works or moving images. Thus, the video content in every social media platform application is an intellectual work in the form of cinematography which is protected by copyright. Copyright, in accordance with the provisions contained in Article 4 of the Copyright Law, includes moral rights and economic rights to the copyrighted work. Moral rights as outlined in Article 5 paragraph (1) of the Copyright Law, are rights that are eternally attached to the creator to determine whether or not his name will be mentioned on copies of works used for the public interest (Mailangkay, 2017).

In this context, it also includes the use of pseudonyms (aliases), modification of works in accordance with social norms, changes in titles, and protection of rights in the event of destruction, detrimental changes, mutilation, or modifications that are detrimental to the dignity or image of the author. creator (Fahmi, 2022). Moral rights cannot be transferred while the creator is still alive, because these rights are personal. The personal nature of these moral rights is related to elements such as the creator's reputation, ability and integrity (Surisman, 2020). However, after the creator dies, the exercise of moral rights can be transferred through a will or other mechanism in accordance with legal regulations. If there is a transfer

of the exercise of moral rights, the recipient of the moral rights can choose to waive or refuse the exercise of that right, as long as the waiver or refusal is made in writing.

Apart from moral rights, copyright also contains economic rights. According to Article 8 of the Copyright Law, economic rights are the exclusive rights of creators to obtain economic benefits from their creative works (Fadhila, 2018). These economic benefits are reflected through royalties given to the creator or owner of related rights as compensation for exploiting the economic rights of a copyrighted work or product related to those rights. Therefore, this right gives permission or prohibits someone from reproducing or publishing copyrighted works they own (Saputra, 2022). In contrast to moral rights, economic rights can be transferred or transferred from the creator to another party. Regulations regarding economic rights are regulated in Articles 8 to 19 of the Copyright Law. Thus, copyright contained in video content includes moral rights as well as economic rights.

Creators have exclusive rights to their creative works, and use of these exclusive rights by others is considered a violation. One form of creative work protected by Copyright is social media content (moving images) which is part of cinematography in accordance with Article 40 paragraph (1) of the Copyright Law. It is important to understand the boundaries of plagiarism in the context of social media works that are deemed to infringe copyright. According to Article 5 Letter e of the Copyright Law, the creator has the right to maintain the integrity of his creative work if modifications, mutilations, distortions or other actions occur that are detrimental to his reputation or honor (Arfa, 2018). This article makes it clear that a creator has exclusive rights to each of his creative works. This right is permanently vested, therefore, any form of plagiarism is unacceptable in the context of copyright.

The government has taken preventive steps by enacting Article 54 of the Intellectual Property Rights (IPR) Law which relates to Copyright in the context of cinematography. This is important considering the many actions that result in losses to the copyright holder or owner of exclusive rights to the work. With Copyright protection, Copyright violations through social media can be prevented and supervision of the creation and distribution of copyrighted content can be carried out. According to Article 59 paragraph (1) of the Copyright Law, copyright protection for cinematography is valid for 50 years from the first announcement (Megahayati, 2021). Copyright owners, such as collectors or copyright holders, have the right to legal copyright protection.

2. Because of law

2.1 Legal Consequences of Copyright Violation based on Instagram provisions

Instagram has powers within its social networking platform, which allow them to take actions such as discontinuing or changing the Services, removing or blocking shared content and information, and stopping providing the Services in whole or in part, whether based on consent or legal obligation. Instagram may also refuse to provide services in whole or in part to someone to maintain the continuity of a good ecosystem on the platform.

Instagram users who violate other people's intellectual property rights, such as copyrights or trademarks, may face account deletion in accordance with the policies implemented by Instagram (Zahida, 2023). However, the content removal process may take up to 90 days after the start of the removal process. During this process, content that is being removed cannot be viewed by other users, but remains subject to Instagram's Terms of Use and Data Policy. Once content is deleted, there will be up to an additional 90 days to remove it from the backup and recovery system.

In addition, disputes and claims related to other intellectual property rights can be resolved through legal processes in competent courts in the country that has jurisdiction over the claim. If a dispute cannot be resolved in that country, it may be resolved exclusively in the United States, specifically in the District Court for the Northern District of California or the state courts in San Mateo County. Therefore, a person who has a dispute with Instagram submits to the personal jurisdiction of one of those courts to consider such claim, and the laws of the state of California will govern these regulations and any claim, without regard to any conflict of laws provisions. Additionally, the person with the dispute agrees that it is Meta

Inc.'s policy. as the owner of Instagram will apply.

2.2 Legal Consequences of Copyright Infringement based on Positive Law in Indonesia

Violation of cinematography copyright in the form of plagiarism can also receive criminal sanctions in accordance with the provisions of Article 113 paragraph (3) of the Copyright Law. This article explains that any individual who violates the economic rights of the creator, including commercial use without permission from the creator or copyright holder, can be subject to criminal sanctions in the form of imprisonment for a maximum of 4 years and/or a maximum fine of IDR 1,000,000,000.00 (Ningrat, 2020)

Resolving disputes related to copyright can be done through filing a lawsuit for compensation to a court that has authority, namely the commercial court. In cases of copyright infringement related to content on social media platforms that is distributed and reproduced for commercial purposes without permission, alternative dispute resolution, arbitration, or through commercial courts can be carried out.

Thus, it can be concluded that violating the copyright of moving video content, including uploading content without permission from the copyright holder and obtaining profits from that content, can potentially face legal action and be subject to sanctions in the form of compensation payments and criminal action due to violating exclusive copyright. . Social media accounts that re-upload content without permission can also be closed or blocked in accordance with the provisions of the Copyright Law. If an individual commits an act of infringement by utilizing this content, they may be subject to Article 113 paragraph (3) of the Copyright Law, apart from that the creator also has the right to file a claim for compensation based on Article 96 paragraph (1) of the Copyright Law to the Commercial Court. The compensation that must be paid can be in the form of income generated from the content and will be handed over to the copyright owner.

In general, when a person creates a work it is not intended for use by another person without permission. However, in practice this work is often used irresponsibly. Copyright regulates violations of Cinematography Copyright with the aim of minimizing violations and protecting exclusive rights holders from loss. In this case, it is necessary to have regulations that enforce the law to protect copyright in works that have been created by the creator of the work.

CONCLUSION

Content regulation on Instagram, including the rights to that content, is based on the laws applicable in the country where the user is located. In Indonesia, a work or creation can be protected by Copyright if it is produced through human intellectual power and is realized in a tangible form in the fields of art, literature or science. In accordance with Article 40 paragraph 1 letter (m) of the Copyright Law, Copyright includes two aspects, namely Moral Rights and Economic Rights, which relate to copyrighted works. Regulations regarding Economic Rights are contained in Articles 8 to 19 of the Copyright Law. In this context, copyright in video content includes moral rights and economic rights.

Thus, it can be concluded that violations of copyright in moving images or video content, including the act of uploading them without permission from the copyright holder and making a profit from that content, can result in lawsuits and sanctions which can take the form of paying compensation or criminal penalties for violating exclusive copyright. . Social media accounts that re-upload content without permission can also be closed or blocked in accordance with the provisions of the Copyright Law. If there is a violation by a certain party who takes advantage of re-uploading the content, Article 113 paragraph (3) of the Copyright Law may be subject to criminal sanctions in the form of a prison sentence of up to 10 years and/or a fine of up to Rp. 4,000,000,000,- depending on the type of violation committed. The creator has the right to file a claim for compensation in accordance with Article 96 paragraph (1) of the Copyright Law to the Commercial Court. In accordance with the explanation in Article 100 paragraph (1) of the Copyright Law, the form of compensation that must be paid can be in the form of income obtained from the content which is then given to the copyright owner.

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