

CHAPTER I

INTRODUCTION

A. Background

The rapid advancement of Information and Communication Technology (ICT) in this era has brought about significant transformational impacts on the digital creativity domain. Alongside technological advancements, the scope of digital creativity has expanded without rigid boundaries. Innovations such as artificial intelligence, virtual reality, and high-speed internet have opened doors for creators to explore new ideas and generate more dynamic and interactive content.¹ The global community can now easily collaborate online, facilitating the exchange of ideas and knowledge across borders, which was previously challenging to achieve.²

In the realm of multimedia, human creativity manifests through various art forms, including fine arts, painting, music, traditional dances, and cinematography in the form of films. Celebrating the diversity of human expression, art serves as a medium depicting boundless creativity and imagination. For instance, fine arts give physical form to artistic concepts and allow observers to sense the artist's presence through the work. Paintings, with their colorful array and diverse techniques, serve as visual mediums demonstrating a unique blend of technical skill and the creator's emotional

¹ Bahtiar, "Filterisasi Hoax dari Kemajuan Teknologi Komunikasi dan Informasi", *Al-Hikmah Media Dakwah, Komunikasi, Sosial dan Kebudayaan*, Vol. 11, No. 2 (March, 2020), p. 16.

² Nining Widya Lestari, "Strategi Pengembangan Teknologi dalam Menumbuhkan Ekonomi Kreatif di Indonesia", *Indikator*, Vol. 1 No. 1 (September 2020), p.54.

expression. Meanwhile, music presents the magic of sound, weaving tones and melodies into stories capable of touching the listener's emotions. Traditional dances and rituals, as living cultural heritage, express the stories and identity of a society through bodily movements and embedded rituals.³

Art in the form of film or cinematography is one such art form that combines visual, auditory, and narrative elements. Through film, humans can present complex stories, immerse in emotions, and convey profound messages. This art form requires not only technical skills but also strong creative vision from directors and production teams.⁴ Thus, through various art forms, humans create traces of their creativity reflecting cultural diversity, thoughts, and emotions enriching life experiences.

Unfortunately, alongside technological advancements, there is a tendency for the inappropriate use or even unauthorized use of these works, resulting in modifications and utilization that may not align with the creator's original intent. This phenomenon raises ethical and legal questions regarding intellectual property rights, necessitating a balance between innovation and protection of artistic works.

The importance of awareness of copyright and ethics in the use of artistic works in the multimedia field becomes crucial. Society, industry players, and policymakers need to synergize to develop norms that appreciate creativity and protect creators' rights. By fostering an environment that supports creativity

³Romadhoni, "Meredupnya Media Cetak, Dampak Kemajuan Teknologi Informasi", *An-Nida : Jurnal Komunikasi Islam*, Vol. 10, No. 1, (Februari, 2019), p. 56.

⁴ Ardiyanti, "Perfilman Indonesia: Perkembangan dan Kebijakan, Sebuah Telaah dari Perspektif Industri Budaya", *Kajian*, Vol. 22, No. 2 (June, 2017), p. 24.

aligned with principles of justice and integrity, we can ensure that multimedia remains an inspiring medium without sacrificing the rights that should be protected.

The importance of legal protection for artistic and intellectual creations cannot be underestimated in the context of economic sustainability and national economy. Artistic and intellectual creations have the potential to drive significant economic growth. Recognition and legal protection of intellectual property rights create incentives for creators to innovate and produce economically valuable works.⁵ By granting exclusive rights to their works, creators are empowered to manage and distribute their creations in a profitable manner, thus stimulating the creative economy sector.

Legal protection for creative works also has positive macroeconomic impacts, as it can increase state revenue. Through legal regulations ensuring the sustainability of intellectual property rights, the state can ensure that the economic potential inherent in artistic and intellectual works can be optimally exploited. The revenue generated from the exploitation of these artistic works, whether through sales, licensing, or other forms of exploitation, can become a significant source of income for the government. Thus, legal protection of creative works becomes an essential prerequisite for achieving sustainability and sustainable economic growth.⁶

⁵ Dwi Ramadhan, "Perlindungan Hukum Terhadap Bahasa Pemrograman Dalam Undang-Undang Tentang Hak Cipta", *Jurnal Lex Renaissance*, Vol. 7, No.1 (July, 2017), p. 14.

⁶ Sugiyanto, Yahanan, 2022, *Perlindungan Hukum Pengarang Sebagai Pemegang Hak Cipta Dalam Penerbitan Buku*, Bandung: Lex LATA, p.4.

Films are typically shown in cinemas as the primary means for the public to enjoy them. However, with the advancement of sophisticated technology, in recent years, many individuals have utilized potentially illegal means to share films for free with audiences who are unable to watch them in cinemas. One such action is recording films in cinemas and distributing them for free on social media.⁷

In the context of this rapid technological development, there are negative impacts on copyright, particularly in the film industry. The illegal distribution of film content is increasing alongside the ease of current technology. According to a survey conducted by a global data and public opinion company, the majority of Indonesians prefer to watch films through illegal websites as a result of the increasing popularity of online streaming services.⁸

The filmmaking process is a component of the intellectual property of this industry. Exclusive rights granted to creators, inventors, or designers over economically valuable works are known as intellectual property. Through registration with the appropriate authority, these rights are automatically granted as recognition and deserving appreciation for legal protection from the state. Thus, the creation of a work must be legally protected through Intellectual Property Rights (IPR).

From a legal perspective on Intellectual Property Rights (IPR), several regulations have been enacted, including Law Number 14 of 2001 on Patents,

⁷ Wahyuni, S., Darma, S., Saaduddin, S., “Penciptaan Film Fiksi “Dibalik Sungai Ular” Menggunakan Alur Non-Linear, *Gorga : Jurnal Seni Rupa*, Vol. 10, No.1 (October, 2021), p. 47.

⁸ Losung, A. D., Sepang, M., & Koesoemo, A. T., “Kajian Hukum Tentang Pelanggaran Hak Cipta Ditinjau Dari Undang-Undang Hak Cipta”, *Lex Privatum*, Vol. 9, No.9 (May, 2021), p. 62.

Law Number 15 of 2001 on Trademarks, and Law Number 28 of 2014 on Copyrights. Legally, these three laws are most commonly used in business to protect IPR, but the scope of protection varies. Trademark rights protect brands and services owned by their proprietors. Patent rights recognize researchers for their research results applicable to industries. However, copyright provides exclusive rights to a work, whether published or unpublished, based on moral and economic value. Creators benefit from intellectual property, which protects their intellectual creations.⁹

As part of intellectual property rights, in Law Number 28 of 2014 on Copyright, copyright is defined as the exclusive right automatically granted to creators when their work is created concretely, without prejudice to restrictions established by law. The purpose of Copyright Law is to protect copyright and ensure that it is personal. Therefore, creators and copyright holders have exclusive rights, meaning others are not allowed to use, copy, reproduce, or sell their copyrighted works without their permission.¹⁰

Unauthorized distribution or broadcasting involves uploading copyrighted film works without permission through widely used social media applications like Tiktok, Telegram, YouTube, and similar platforms, whether it's full scenes

⁹ Salsabila, Fakhira Meshara, Ranti Fauza Mayana, and Laina Rafianti, "Copyright Commercialization of Songs Uploaded in TikTok Application Without the Creator's Permission." *Jurnal Sains Sosio Humaniora*, Vol. 5, No. 1 (June, 2021), p. 213–24.

¹⁰ Hafidz Muftisany, 2022, *Hak Cipta dalam Pandangan Islam*, Bekasi: Elementa Media, p. 21.

or excerpts (spoilers). Such uploads are illegal. Deviations in copyright lead to losses often used as means for illegal film streaming.¹¹

Illegal content uploads constitute copyright infringement harming the creators or rights holders. Such illegal actions often become problematic in the copyright domain, particularly concerning illegal film streaming. This phenomenon indicates deviations that can result in serious impacts, both on the entertainment industry and the contributors to such works.

Issues involving copyright related to illegal film streaming result in significant financial losses. Copyright violations can diminish the income that creators and rights holders should rightfully earn, impede the growth of the creative industry, and harm the overall entertainment ecosystem.

The widespread dissemination of films often occurs as a result of prior disclosure of the film's plot, known as spoilers. These spoiler actions fall under the category of disclosing elements of works that are the economic rights of creators and copyright holders. According to Article 9 (2) of the Copyright Law, anyone wishing to do such actions must first obtain permission from the creator and/or copyright holder. This is done to avoid potential losses if someone spoils the film for the creator and/or copyright holder, leading people to choose not to watch it through official platforms authorized by the copyright holder.

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¹¹ Puteri Ananda, "Pengawasan Terhadap Kegiatan Penyiaran Film Oleh Penyelenggara Platform Ilegal Berdasarkan UU Hak Cipta dan UU ITE", *Bandung Conference Series: Law Studies*, Vol. 3, No. 1 (September, 2023), p. 14.

the category of disclosing elements of works that are the economic rights of creators and copyright holders. According to Article 9 (2) of the Copyright Law, anyone wishing to do such actions must first obtain permission from the creator and/or copyright holder. This is done to avoid potential losses if someone spoils the film for the creator and/or copyright holder, leading people to choose not to watch it through official platforms authorized by the copyright holder.

The case of the Warkop DKI Reborn film in 2016 is an example of copyright infringement and the resulting losses. Although the film was watched by more than six million people in Indonesia, someone who watched it was involved in an incident potentially violating the film's copyright. Unlike other piracy cases typically associated with the illegal production of CD/DVD copies, this case involved infringement through live broadcasting on the Bigo Live application.¹² The situation mirrors copyright infringement issues emerging on social media platforms, such as challenges in providing legal protection against copyright violations in films uploaded or published on social media without permission.¹³

The fact that many films are recorded and disseminated via social media reflects a lack of awareness and understanding of copyright among the public. The sustainability of this situation can be attributed to the low level of legal

¹² Yuningsih, "Analisis Perlindungan Hukum Pemilik Hak Cipta Film Terhadap Perekaman Film Tanpa Izin Melalui Fitur Siaran Langsung Pada Aplikasi Bigo Live", *Jurnal Halu Oleo Legal Research*, Vol. 4, No. 2 (August, 2022), p.104.

¹³ Noor Nurkhaliq Khussamad, "Perlindungan Hukum Hak Cipta atas Film Layar Lebar yang Dipublikasi Melalui Media Sosial Tanpa Izin", *Riau Law Journal*, Vol. 3, No. 1 (May, 2019), p. 124.

awareness and lack of knowledge about copyright among the public. People who do not fully understand the importance of copyright tend to take actions that may harm creators and rights holders. Public misunderstandings about copyright can be the root of problems regarding illegal film recording and distribution. Efforts to educate the public need to be strengthened to enhance understanding of copyright concepts, the positive impacts of respecting them, and the potential legal consequences of copyright violations. As a result, they often do not realize that their actions constitute copyright infringement. Indonesian society still pays little attention to the phenomenon of illegal content dissemination through social media. Due to the absence of strict regulations, people are not afraid to violate copyright in film works¹⁴¹⁵

If there is copyright infringement, people who know about it tend to remain indifferent because they think those who spread illegal films should be responsible, not themselves. People who only watch or enjoy illegal films feel they are not responsible for the violation, thus appearing indifferent and downplaying the infringement. This cannot be ignored because copyright infringement falls into the category of serious violations.¹⁶

Legal protection of copyright for filmmakers plays a crucial role in supporting the sustainability and development of the film industry. Copyright

¹⁴ Febriani & Tantimin, "Kajian Normatif Ilegal Streaming Melalui Media Sosial: Studi Pada Platform IGTV", *Jurnal Komunitas Yustisia*, Vol. 5, No. 1, (June, 2023), p. 7.

¹⁵ Sari, "Perlindungan Hukum dan Upaya Hukum Terhadap Pelanggaran Hak Cipta dalam Situs Film Ilegal Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta", *UNISMA*, Vol. 14, No. 1 (June, 2021), p. 28.

¹⁶ Rachmasari, Arifin, & Astanti, "Perlindungan Hukum Hak Cipta Pada Film Yang Diakses Secara Ilegal Melalui Telegram", *Semarang Law Review (SLR)*, Vol. 3, No. 2 (May, 2022), p.4.

provides exclusive recognition of film works, granting filmmakers the right to control the use, reproduction, and distribution of their works. With this legal protection, filmmakers are empowered to exploit their creativity optimally without worrying about misuse or illegal use by others. This creates a conducive environment for innovation and investment in film production, thereby enhancing the competitiveness of the industry globally.

In addition to providing economic incentives, legal protection of filmmakers' copyright also has positive implications for cultural and creative aspects of society. By promoting respect for copyright, we can stimulate the development of art and cultural diversity through diverse film production. Legal protection also provides filmmakers with the confidence to experiment and present their unique visions without worrying about potential exploitation or plagiarism. Thus, the existence of legal protection of copyright not only safeguards filmmakers' financial interests but also upholds the values of creativity and diversity in the realization of film works.¹⁷

Based on the background above, which highlights the lack of public awareness to appreciate a copyrighted work and the lack of legal knowledge among the public that copyright infringement carries legal consequences, I am interested in conducting a thesis on "Unauthorized Film Clip Distribution on Social Media: Perspectives on Copyright Law."

¹⁷ Luthfi, 2021, "Analisis Pengetahuan, Sikap, dan Perilaku Mahasiswa Ilmu Komunikasi Universitas Hasanuddin Terhadap Website Streaming Film Ilegal" ((Undergraduate Thesis, Faculty of Law, Universitas Hasanuddin Makassar), p.32.

B. Problems Formulation

Based on the background provided, the problem formulation for this research is as follows:

1. How is the legal protection provided for copyright holders of cinematographic works?
2. What legal measures can be taken by copyright holders of cinematographic works who suffer losses due to the unauthorized distribution of films on social media?

C. Objectives of Research

Based on the problem formulation, the objectives of this research are as follows:

1. To understand the legal protection provided for copyright holders of cinematographic works.
2. To understand the legal measures that can be taken by copyright holders who suffer losses due to the unauthorized distribution of films on social media.

D. Benefits of Research

1. Research Benefits
 - a. Theoretical Benefits
 - 1) This research can provide theoretical contributions by investigating legal aspects related to the unauthorized dissemination of film clips on social media, enriching understanding in the domain of copyright law.
 - 2) This research can serve as a foundation for the development of legal theories related to the phenomenon of audiovisual content

dissemination in the era of social media, contributing to the understanding of new concepts in a digital context.

2. Practical Benefits

- 1) The research findings can provide legal guidance for stakeholders such as film producers, social media platforms, and viewers to understand the legal consequences and responsibilities related to the unauthorized dissemination of film clips.
- 2) By detailing legal aspects related to the unauthorized dissemination of film clips, this research can assist in designing more effective copyright protection policies, supporting the growth and sustainability of the film industry.