



Legal Protection for Creators for Films Showing on Pirated Sites

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Article Info

ISSN (online): 2583-6536

Volume: 04

Issue: 03

May-June 2025

Received: 12-04-2025

Accepted: 09-05-2025

Page No: 16-26

Abstract

This study is entitled Legal Protection of Creators for Showing Films on Pirated Sites, which aims to understand and analyze the legal consequences of showing films on pirated sites and the second is the legal responsibility for showing films on pirated sites. The research method used in this study uses the Normative research method which is a library research, namely research on laws and regulations and literature related to the material discussed. Based on the results of the study, it can be concluded first: creators and copyright holders have exclusive rights, namely economic rights and moral rights. The act of showing films on pirated sites is to cause losses to the economic rights of creators and copyright holders who should receive economic benefits from a creation, and will have bad consequences for the perpetrators of piracy themselves such as legal prosecution, namely through civil or criminal channels such as compensation or other demands, and other consequences, namely the closure of the film provider site itself by the Ministry of Communication and Information. The second is the factors that cause film piracy, namely economic factors, social factors, technological factors, law enforcement factors, educational factors. Next is the responsibility of the perpetrators both civilly and criminally, responsibility through civil law is in 1365 of the Civil Code regarding unlawful acts and compensation, criminal responsibility is in Article 113 paragraph (3) and (4), and preventive efforts for the act of film piracy.

DOI: <https://doi.org/10.54660/IJL.2025.4.3.16-26>

Keywords: legal protection, copyright, piracy, film

Introduction

In the rapid advancement of information and telecommunication technology, most people use the internet as a social network, education, and entertainment. However, the advancement of information and telecommunication technology is not free from impacts and negatives, both the impact on the users of the technology itself and the impact on other parties involved in the use of the internet. Information technology is a double-edged sword because in addition to providing contributions to welfare in the field of technology, it will also be an effective place for irresponsible parties to commit unlawful acts ^[1]. For example, the negative impact of the advancement of information and telecommunications technology is in the fields of art, literature and, in the film industry or cinematography, there are rampant cases of copyright, for example in cases of film piracy through websites or on social media platforms such as Tiktok, Youtube, or Facebook. Film in Indonesia has been protected by law. Film is a work of art that plays an important role in increasing the resilience of the nation's culture, social institutions and also as a means of communication that is made based on cinematographic standards with or without sound that can be watched. Film or cinematography itself is one of the media used as a means of entertainment. Film is also one of the communication media that

¹ Muhammad Anthony Adan Mas Agus P.,2022, *Cyber Crime Dalam Sudut Pandang Hukum Pidana*, Jurnal IKewarganegaraan, Vol. 6 No. 1 Juni 2022, h 1

also has a major influence in shaping the mindset in society. In the film industry, the person in charge of leading and supervising the creation of a film from start to finish, all creations or the person who designs the creation is the producer, therefore one of the copyright holders in a cinematographic work is the producer. Along with the development of the digital era, watching movies no longer requires going to the cinema, now there are many official film platforms that have been provided to watch movies anywhere, anytime, for example Netflix, WeTv, Vidio, Iqiyi, Disney+, and many more. The number of parties who illegally re-upload films or cinematography on certain platforms without the permission of the copyright holder of the film has made the copyright holder of the film restless, this restlessness arises because the results of the film are distributed without permission from the copyright holder and without an official license, this has resulted in economic losses. Although according to a survey conducted by the Creative Economy Agency (Bekraf) together with the Institute for Economic and Community Research (LPEM), film piracy in Indonesia has resulted in losses for the film sector, with an estimated loss of IDR 31 billion to IDR 636 billion each year ^[2]. In protecting the creator of the work through the law, the government grants copyright to the existing work. Protection of copyright arises automatically after the work is created without having to be registered or recorded, however, copyright registration is also important in order to strengthen the protection of the copyright. Copyright itself has been regulated in Law No. 28 of 2014 concerning Copyright, in article 1 number 1 of the Law, Copyright is the exclusive right of the creator that arises automatically which is sourced from the declarative principle after the creation is created into a physical form and does not reduce the provisions of the legislation. Duplication of the results of the creation must have a license from the creator or copyright holder, a license is a permit granted by the copyright holder to another party which aims to implement economic rights to a creation with certain requirements. Copyright itself not only protects cinematographic works but also protects photographic works, portraits, video games, computer programs, depictions of written works, and others, this has been stated in article 15 of the Law on Copyright. The results of creations in digital form are very easy to duplicate and the results of this duplication are very difficult to see the difference between the original work and the original work original ^[3]. Creations in digital form make it easier for creators to publish and distribute creations in general without charging any fees, but in digital form it makes it easier for unauthorized parties to modify and duplicate creations and in this case it is a copyright violation that is quite large in scale. It is difficult for creators to identify copyright violations, recognize or then take legal action ^[4]. There are 2 problems in copyright infringement, first, doing it intentionally but not distributing or reproducing. second, doing it intentionally and distributing or reproducing. Of the two problems, the most common cases are distributing copyright infringement films on websites and even social media by downloading or

watching directly (streaming), watching through illegal websites can make people's habits from watching legally by coming to the cinema or with applications that provide films legally to watching or downloading pirated ones. On pirated film provider sites, people can watch films and download certain films for free and without being charged, this site also does not require an account to be able to access the films in it. This makes it easy for users to freely use and access pirated film provider sites.

Problem Formulation

1. What are the legal consequences of showing films on pirated film provider sites.
2. What is the legal responsibility for showing films on pirated film provider sites.

Purpose

The purpose of this study is to determine and analyze the legal consequences arising from screening films on pirated film provider sites and the form of legal responsibility for screening films on pirated film provider sites.

Discussion

A. Legal consequences of showing film on pirated film provider sites

1. Copyright holders' rights of cinematographic works

Intellectual property rights are an important part of every country to provide protection and maintain industrial and trade excellence. This form of protection arises because in the 1945 Constitution of the Republic of Indonesia, article 28D paragraph (1), that every individual has the right to have recognition rights, guarantees of protection and has the right to obtain equal certainty in the eyes of the law. In this legal protection, it is hoped that the community can use their rights that have been granted by the state. A person who has created a creation is both the creator and the copyright holder, but in the regulations regarding copyright there are 2 (two) different things but both receive protection provided by the state, the first is the creator of the work itself who has created the creation, and the second is the party who receives the copyright legally given by the creator. Copyright must be protected because it is hoped that it will not harm the creator who has worked hard to create a creation with the idea. Moreover, providing copyright protection for individuals and bodies can also provide benefits for the state to gain trust from the international world because this trust is very necessary in improving the domestic economy. John Locke came up with the labor theory, namely that every person has natural rights to a work or creation, because in a creation the creator has expended energy, time, thought and money ^[5]. In John Locke's theory, there are 3 (three) principles, including:

- a) The creator must be rewarded with ownership rights, considering that the creator creates a creation through a process or stages of thought and creativity.
- b) The creation of assets that have been owned by other parties will give rise to several rights for workers, but this is determined by the work agreement where the labor

² Aderista Tri Wahyufi dan Karim, 2020, "Perlindungan Hukum Pemegang Hak Cipta Sinematografi Terhadap Pelanggaran Dalam Streaming Gratis Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014", Jurnal Judiciary, Vol.9 – No.1- tahun 2020, h 109

³ Gan Gan Gunawan Raharja, 2020, "Penerapan Hukum Terhadap Pelanggaran Hak Cipta Dibidang Pembajakan Film", Jurnal Meta Yuridis Vol.3 No (2) September 2020, h 92

⁴ *Ibid*

⁵ Muhammad Yusuf Ibrahim Dan Irwan Yulianto, 2023, "Justifikasi Hak Cipta Sebagai Hak Kebendaan *Copyright As Property Right*", Jurnal Penelitian Volume 7 Nomor 1 Januari – Juni 2023, H 232

is issued.

- c) Claims of collective ownership rights are subject to the same regulations as other claims, which have been formed with the aim of reconciling the rights of individual creators with the claims of the general public. Forms of creation influenced by the development of the times ^[6].

A creation must prioritize the originality of a work and its real form with the aim that the work can have full copyright. In copyright protection is given to works that have been formed in reality, if the work is still in the form of an idea or concept, it cannot be given copyright protection ^[7]. Therefore, in UUHC, copyright is a right that arises automatically based on an inclusion after a creation has been realized in a tangible form without reducing the provisions of the law. There are requirements for the creator of a creation to obtain legal protection, including:

- a) Fixed, aims to obtain copyright protection from a work, but the creation must be tangible, ideas or concepts do not receive copyright protection. This is in accordance with the provisions of the Copyright Law, Article 41 letter a, creations that are in the form of ideas or concepts or are not yet in tangible form do not receive protection.
- b) Form, in this fixation principle, a certain form is required in a creation.
- c) Original, a creation that is made authentic or original, the original itself is something original, which means that a creation has not had a creator who created the work or is free from elements of other works ^[8].

Cinematography consists of 2 (two) words, namely the words cinema and graphy, which come from the Greek language, namely kimema, which means movement and graphoo which means writing. So the word cinematography itself means moving images. The screening of a film must have a legal license agreement from the creator or rights holder ^[9]. In the explanation of article 40 paragraph (1) of the Copyright Law, cinematographic works themselves are works of creation in the form of moving images such as documentary films, advertising films, news reports or stories made through scenarios, animated films. Cinematographic works can be made with cellophane tape, video tape, video discs, optical discs, and/or other media that can be shown in cinemas, big screens, television, and other media. Cinematographic works themselves have been regulated in article 40 letter m, the Copyright Law, this relates to the regulatory system of the Copyright Law regarding copyright protection consisting of film creators and copyright holders. However, in terms of understanding, creators and copyright holders of cinematographic works are different, in article 1 number 2 of the Copyright Law states that a creator is a person or several people who independently or together create a unique, distinctive and personal creation, in this case the creator of the cinematographic work. However, in Article 1 number 4 of the Copyright Law, copyright holders include the creator as the copyright owner, the party who legally receives the rights from the creator, and the party who obtains the

copyright through transfer or continuation from the previous rights holder. In this case, the copyright holder is the creator, the film producer who has received the creator's rights to reproduce the product of creation and several other parties involved such as the film actor as the recipient of the rights from the film producer to play a role in the creator's creation. The creator has rights that are automatically obtained, namely exclusive rights, exclusive rights in copyright are moral rights and economic rights. In managing these rights, the creator in this case acts as the copyright holder or owner of the copyright. In a creation, economic rights can be transferred while moral rights will remain with the creator and cannot be transferred. Moral rights are always attached to the creator and will not be separated because they are eternal, meaning that moral rights will remain with the creator even though the creator of the work has died. Moral rights will also remain with a creator in relation to copies for general use, whether or not the work includes the name of the creator, the creator uses an alias or pseudonym, changes the title or subtitle of the work, and can defend his rights if there is a copyright violation or something that could harm the creator. Moral rights cannot be transferred if the creator of a work is still alive, unless the moral rights are transferred by will or other reasons after the creator of the work dies, but this must be in accordance with statutory regulations.

Economic rights are rights that arise automatically which are granted to the creator for the work he has created with the aim of economic utilization of a created work. If the creator trades the results of his creation, the manager of the trading place that sells the creation must not allow the sale of the results of duplication of goods containing copyright. The economic rights of the creator are the rights to commercialize or exploit the economy of a work, these rights include: Publishing the work, this right aims to carry out production activities of the work in printed form.

- a. Duplication of works in all forms, duplication of works is the process of making one or more copies by any means, permanently or temporarily.
- b. Translation creation, translation is the process of interpreting words from one language into another. Translated works are protected by the Copyright Law because they are considered derivative works of the original work.
- c. Adapting, arranging, or transforming a created work, the right to adapt is to translate one created work into another.
- d. Distribution of works or copies thereof, distribution activities are the right to distribute, sell and distribute a work.
- e. Performance of creation, a right to display creation in public.
- f. Announcement of creation, the right to communicate to the public a work of creation using any means with the aim that the work can be heard, seen or read by the public.
- g. Communication of creations, a right to provide information to the public about creations is the activity of transmitting creations, showing or cable photograms or other media except broadcasting for the purpose of

⁶ Ujang Badru Jaman, Galuh Ratna Putri, Dan Tiara Azzahra Anzani, 2021, Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital, Jurnal Rechten, Vol.3 No.1 2021

⁷ Kemenkumham, 2020, *Modul Kekayaan Intelektual Tingkat Dasar Hak Cipta*, Jakarta, Kemenkumham, h 15

⁸ *Ibid*

⁹ Mei Prabowo, 2020. *Pengantar Sinematografi*. Semarang, Penerbit The Mahfud Ridwan Intitute, h 4

being received by the public.

- h. Rental of creations, every person or body that utilizes a creation must obtain permission from the creator or copyright holder, therefore every person or body that does not obtain permission The creator or copyright holder is prohibited from duplicating or using the work commercially ^[10].

2. Legal film provider sites and pirated film provider sites

The advancement of technology and information provides benefits for mankind as a social network, education, and entertainment. The most obvious example of the advancement of technology and information is in the human lifestyle itself. As in the world of entertainment, this technological advancement allows humans to access various forms of unlimited entertainment. The ease for people in accessing sites on the internet, especially in the field of film, in activities such as watching movies is now very easy to find anywhere. With the emergence of films that have now evolved in digital form, films that were played a while ago only with media in the form of film projectors and using film tape to watch a film seem very impractical, plus the audience also has to visit the cinema to watch the film. With the existence of a legal and official platform as an alternative, accessing films becomes easier by simply using the internet network and a smartphone or laptop to watch or download films. However, advances in technology do not always have a positive effect on society but also have a negative effect on people's lives, irresponsible parties are the biggest challenge that must be faced by the film industry, namely digital piracy. Digital piracy itself is an activity that refers to copying, downloading various digital products illegally. Broadcast media via digital in the form of websites can be divided into 2 (two), namely legal film provider sites and pirated film provider sites, including:

1) Legal film provider sites

The legal film provider site itself is a site that is legally valid and complies with the laws and regulations, which means that all activities of this site have complied with applicable laws and there are no violations of the law in it. With the existence of this legal film provider site, film creators feel that they are not disadvantaged and on the contrary, film creators will benefit from the existence of a platform that provides their work online, because in this case, viewers who intend to watch films do not need to leave the house to watch a film. Legal film providers have official approval from the creator or copyright holder, the approval is in the form of a license. The license itself is regulated in the Copyright Law, namely written permission submitted by the creator or copyright holder to another party with the aim of implementing economic rights to a creation or related rights product with certain requirements. Legal film provider sites themselves usually have characteristics including:

- a) The films shown have clear quality / High Definition (HD)

The advantages of watching films legally are very many, one of which is having high quality films (HD) so that

the images displayed are very clear.

- b) Generally have to create an account and/or subscribe.
c) Legal and licensed film provider sites generally require you to create an account or subscribe and pay a fee to be able to watch on the site. However, there are also quite a few legal film provider sites that are free to access.
d) There are no ads or there are ads that have passed censorship.

Film provider sites that require a subscription first to be able to access their films generally do not have ads. However, legal film providers that are free to access such as bili bili, iqi yi and so on have displayed ads that have passed censorship and have permits. Because the function of advertising on legal and free film provider sites is generally the main source of income for these legal film provider sites. By displaying ads, they can earn income from advertising that pays to display their films ^[11].

2) Pirated movie provider sites

Pirated movie provider sites are sites that provide or distribute illegal copies of a film, most of which are protected by copyright and their screening does not receive permission from the creator or copyright holder. Unlike legal movie provider sites, pirated movie provider sites do not have permission from the creator or copyright holder and violate copyright, economic rights and moral rights that have been stated in the legislation. These rights are included in the activity of film piracy, piracy itself has been mentioned in article 1 number 23 of the Copyright Law, piracy is the duplication of creations and/or related rights products in violation of statutory provisions with the intention of obtaining economic benefit. This site is usually targeted for blocking by the Ministry of Communication and Information, but even though many sites have been blocked, new pirated movie provider sites have emerged. According to Johnny G. Plate, Minister of Communication and Telecommunications for the 2019-2003 period, sites like Indo XXI also violate intellectual property. Pirated movie provider sites are illegal and there are many risks that follow. Pirated film provider sites generally have the following characteristics:

- a) Easily accessible
The advantage of the pirated movie provider site itself is the ease of access, the pirated movie site does not need to create an account to enjoy the movies on the site.
b) The quality of the films provided is not high quality (HD)
Unlike legal movie sites, illegal movie sites are not high quality (HD)
c) There are many advertisements.
On illegal movie provider sites, illegal or inappropriate advertisements are usually displayed, for example illegal gambling advertisements.
d) Less than optimal service.
On pirated movie provider sites, the services provided are also less than optimal, because there are many disturbances such as buffering that takes too long ^[12].

¹⁰ Kemenkumham, Op.Cit., h.21-22

¹¹ Kadek Januarsa Adi Sudharma, Putu Ngunah Dhimas Pratama Sanjaya, dan Dewa Ayu Duni Asmari, Efektivitas Penegakan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Terhadap Pengguna Situs Film Bajakan Sebagai Dampak Penerapan *Physical Distancing* Di Kota Dnpasar, Undiknas

¹² Iolana Marta Barbara, 2024, "Akibat Hukum Pembajakan Film Pada Situs Ilegal" Journal Ilmu Hukum Kertha Desa, Vol 12 No.3 2024, h 4330

Piracy is very detrimental to the exclusive rights of creators and copyright holders of films because there is a loss of royalties that should be received by the creator. Violations of moral rights also include the following actions:

a) The creator's identity is not included in a creation, either his real name or a pseudonym, unless the creator allows

not to include his name in his creation or a creation whose creator has anonymous status.

b) Damaging, cutting, or changing a creation that tarnishes the honor or reputation of the creator.

c) Use of a creation that harms the moral rights of the creator, especially the creator's integrity rights.

Acts and rights Violated for copyright infringement of cinematographic works include: ^[13]

Table 1

Actions	Rights Violated
Uploading pirated works to pirated film provider sites.	1. Moral Rights: a. Alteration of Copyright b. Distortion of Copyright c. Mutilation of Copyright 2. Economic Rights a. Duplication b. Distribution c. Transformation d. Commercialization of Copyright
Uploading pirated cinematographic works to advertising sites	
Uploading of cinematographic work scene clips	
Uploading of parodies of cinematographic works scenes	

In the act of copyright infringement committed by quoting, copying, recording, and distributing creations without permission from the creator or copyright holder of the work. The Copyright Law will impose sanctions on anyone who violates a creation. Illegal uploading of films is very detrimental to the owner of the related rights, namely the creator or copyright holder because site users can download and watch films and or without charge, such as an example in purchasing tickets at a cinema, some people will choose to watch at home for free without having to come to the cinema. This activity will certainly reduce the enthusiasm and creativity of creators or film producers so that it will hinder the development of the creative economy which currently plays an important role in the country's economy which has provided a profit of Rp. 104 trillion or an average of Rp. 104.4 trillion against the national GDP product of 4.75%. As a result of the rampant films shown on illegal sites, the government has suffered a loss of around Rp. 4 (four) trillion because there is no tax on each film showing on illegal film provider sites ^[14]. Copyright infringement has a real impact on the creator or rights holder, namely as a result of the violation of economic rights itself, film piracy itself is a violation of the creator's exclusive rights, one of which is a violation of economic rights. In copyright, exclusive rights include economic rights and moral rights. Economic rights in copyright are born with the aim that the creator or rights holder obtains economic benefits or economic advantages from the results of his/her creative work that has been made with great difficulty. In this case, the creator or rights holder obtains economic rights from publishing, duplication, translation, adaptation, arrangement or transformation, distribution, performance, announcement, communication, rental of creations. Violation of economic rights will make the creator or rights holder feel very disadvantaged because

the rights holder does not get the economic benefits from his/her creation that should be obtained, namely in the form of royalties. This loss is due to the loss of income from royalties that should be received from the sale or use of their work officially. royalties are a reward for the economic benefits of a creation or related product that will be received by the creator and/or rights holder. Copyright infringement results in the creator or copyright holder not obtaining the exclusive rights that should be obtained, this will cause the creator or copyright holder to suffer losses, both materially and immaterially. The absence of an agreement in the form of a license makes the action illegal and violates the rights obtained by the rights holder which will result in a lawsuit by the party whose rights have been violated. This lawsuit is in the form of a lawsuit, both civil and criminal. In civil law, the creator or copyright holder has the right to receive compensation for all losses that have arisen due to the illegal screening of the film ^[15]. In showing films on pirated film provider sites also resulted in the closure of the site by the Ministry of Communication and Information, because the existence of illegal film provider sites has violated the law on the copyright of the creator or copyright holder of cinematographic products. The closure of pirated film provider sites is an implementation of the Copyright Law, Article 54 concerning the prevention of copyright and related rights violations through information technology-based means and then to implement Article 56 paragraph (2) of the Copyright Law. The Ministry of Communication and Information and the Ministry of Law and Human Rights together made Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 concerning the implementation of the closure of Content and/or User Access Rights in Electronic Systems. One of the joint regulations

¹³Dirjen HKI, 2020, *Modul Kekayaan Intelektual Tingka Dasar Bidang Hak Cipta (Edisi 2020)*, Jakarta, Kemenkumham, h 53

¹⁴ Iolana Marta Barbara, 2024, "Akibat Hukum Pembajakan Film Pada Situs Ilegal" *Journal Ilmu Hukum Kertha Desa*, Vol 12 No.3 2024, h 4330

¹⁵ Audrey Adeline Novia, Dwi Ayu Rahmadani, Maslihati Nur Hidayati, "Pelanggaran Hak Cipta Melalui Situs Streaming Ilegal, Universitas Al Alzar Indonesia, H 19

explains the mechanism for reporting copyright violations that can be carried out by creators, copyright holders, and owners of related rights. Article 13 paragraph (1) also mentions the Role of the Ministry of Communication and Information regarding the closure or blocking and access rights of internet sites that are known to violate copyright and/or related rights.

B. Legal responsibility for showing film on pirated film provider sites

1) Factors causing film piracy

Intellectual Property Rights are rights born from an imaginative act of a human mind that can be expressed or shown to the general public in a real form that can have useful benefits to support human life and have benefits in the economic field. An intellectual work that will receive copyright protection is a work in the field of science, art and literature where a work is in a real form, meaning it can be seen, heard, read. Copyright protection for personal property plays an important role in encouraging the development of capitalism and a free market economy. Since ancient times, society has recognized individual rights such as the right to own land and goods, which are then respected and protected by the state to obtain their interests in the property. With the development of technology, the concept of property has also been affected, the legal system places property in three categories, namely: first, ownership rights to personal property; second, real property such as land and buildings; third, intellectual property, which includes works and ideas^[16]. Basically, the factor causing the emergence of a crime in copyright is a desire to gain an instant economic advantage by seizing the interests and rights of others. The impact of this will certainly have a very big impact on the life of the nation in the economy and law. In the socio-cultural field, it will also have an impact because along with the development of technology, piracy activities are increasingly widespread and diverse from perpetrators of copyright infringement, actions that are carried out continuously and the absence of legal efforts provided will result in public perception regarding this action is a common action and is no longer an action that violates the provisions of the law, not to mention the act of copyright infringement from a common crime to a complaint offense (*klach delict*) will increase the opportunity for perpetrators of copyright infringement to do it openly because if there is no complaint that is included in a copyright infringement from the creator or copyright holder, the authorities will not take action. Therefore, the factor of copyright infringement is due to the great and profitable opportunity and the still weak supervision and monitoring system of copyright infringement. Apart from the factors mentioned above, there are several other factors that cause film piracy:

a) Economic Factors

Film piracy is often based on the economy that is born because there is a desire for a life of sufficiency to fulfill daily needs. The influence of socio-economics itself can not only be felt by developing communities but it can also be felt by people who live in densely populated cities. In economic situations and conditions, it will encourage someone to commit crimes against property that is not theirs as a way out

to balance and fulfill the needs of life. Film piracy is also related to the economic aspect in society, where economic principles will encourage minimal effort (the lowest possible cost) to obtain maximum results in the form of goods or services (the greatest possible profit). The perpetrators of piracy take advantage of low production costs and will produce pirated goods in large quantities, this process allows the perpetrators of piracy to get high profits with low capital compared to having to pay copyright or royalties to the creator or copyright holder. In terms of economy, piracy will also be considered as an act of unfair exploitation, because in addition to providing benefits to the perpetrators of piracy in quite large amounts, on the other hand, it makes the creator or copyright holder feel very disadvantaged because this party should receive compensation for the results of their work and creativity^[17].

b) Cultural Factors

In the socio-cultural context, society still does not have the habit of buying original products, the shopping culture of Indonesian society tends to prioritize low prices over the quality of the product itself. This causes people to buy counterfeit or pirated goods, which are much cheaper than original products. This habit arises because of the disorder in respecting copyright. The impact of the high copyright infringement is very diverse, one of which is because the perpetrators of copyright infringement, in actions that are increasingly carried out continuously but there is no action will create the perception that piracy is a common act and is no longer an act that violates the law and statutory provisions.

c) Technology Factors

Technological developments will have positive and negative impacts, in an example of the negative impact of technological developments, there are parties who take advantage of technological developments to seek illegal profits. One example is film piracy which in the perspective of intellectual property rights piracy is an act that violates Law No. 28 of 2014 concerning copyright. There are many cases of piracy, for example in the case of 2022 where Vidio.com reported the LK21 streaming service for a case of film piracy.

d) Law enforcement factors

The lack of mastery level of law enforcement officers, especially in understanding the material of the Copyright Law, has the potential to affect the effectiveness in handling copyright infringement cases. According to Rusniati, the suboptimal role of the Indonesian National Police as investigators has several reasons, namely: First, investigators as law enforcement officers are still very limited in mastering copyright, for example in confiscations related to copyright infringement such as songs and music, what is confiscated is the music player itself, not the media or copyright material that is violated such as CDs, files or data storage devices, this indicates the need for further training and education to improve investigator competence in handling copyright cases; Second, handling of copyright-related cases in law enforcement is still carried out randomly and unstructured, this can be seen from several cases that show an inconsistent or poorly coordinated approach. This approach causes the handling of copyright infringement cases to be less effective, because there is no focused planning to prevent or follow up

¹⁶ Budi Agus RisWandi, 2004, *Hak Kekayaan Intelektual dan Budaya Hukum*, Rajawati Pers, Jakarta, h 30

¹⁷ Rafi Harits Anandito, *etal.*, 2024, "Analisa Tentang Pembajakan Vidio Dalam Perspektif Hak atas Kekayaan Intelektual" *Jurnal Media Akademik*, Vol.2, No.1 Januari 2024

on violations as a whole; Third, in the low salary system for law enforcement officers, law enforcement in the copyright realm is often transactional, where legal actions will be based on considerations of the benefits to be obtained individually rather than based on the principle of justice. This will affect the integrity of law enforcement officers, and will also encourage the search for additional compensation from certain parties involved in copyright infringement. As a result, law enforcement will be less objective and more oriented towards financial benefits, rather than on copyright protection efforts that should be maintained.

e) Education Factor

Education factor is the main key that can cause copyright infringement, lack of education in society related to the context of copyright and its law makes society persist in piracy. However, when society has education and understanding of copyright, society will tend to be careful in acting and have high legal awareness, this legal awareness will make society understand and obey the rights and obligations as good citizens in accordance with applicable laws and regulations. Conversely, if the level of education of society is low, it will make society less understand the concept of copyright and will tend to consider copyright infringement activities as ordinary actions.

2) Responsibility of the perpetrator for showing films on pirated film provider sites

Legal responsibility is the obligation to accept the risk of a consequence according to applicable law. Cinematographic works themselves are a form of personal rights inherent in their creators, which reflect the characteristics of their creators. These rights give their creators exclusive and personal power, meaning that only the creator has the right to process, change, or utilize the work without the consent of another party, unless the creator grants permission to those who have the right to process, change, or utilize his work. Ownership of an object indicates that the object is under the control of its owner, which in this case is the creator of the cinematographic work. In the context of ownership, this does not only include physical aspects, for example in the form of recordings or films, but also in non-physical aspects such as creative ideas or artistic expressions contained in the work. Ownership rights themselves are rights inherent in an object, in article 542 of the Civil Code it states that a party holding a position over an object is considered to maintain its position as long as the object does not move into the hands of another party or until the object is clearly abandoned. In cinematographic works, ownership of the work can end according to the will of the creator of the work or the legal protection period of the work has expired. This right is in accordance with Article 17 of the Copyright Law which states that economic rights in the work will remain in the control of the copyright holder if they do not transfer all of their economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work, but the creator or copyright holder can only have economic rights in whole or in part which can only be transferred once by the same creator or copyright holder. A work uploaded to an online page does not change its position as a virtual asset from the uploader of the work on the film provider site, when a

streaming site uploads a film for free and does not get permission from the copyright holder, this action constitutes a copyright infringement. Accessing a pirated movie provider site is also an act of copyright infringement, although the purpose of accessing it is not to seek economic benefits, but it can be economically detrimental to the copyright holder. In essence, the actions taken by the party uploading to the pirated movie streaming service site play a role in the piracy of cinematographic works, but in ownership of the work will remain with the creator as long as copyright protection is in effect and there is no official transfer. Civil Liability of the Perpetrator for Showing Films on Pirated Movie Provider Sites

Each right that is included in Intellectual Property Rights basically has legal force over the work it owns and is entitled to obtain legal protection to prevent violations, misuse, or illegal claims over his work. Basically, intellectual property rights have four principles, namely: ^[18]

- a) Principle of justice
Is a right controlled by the copyright owner with the aim of obtaining legal protection for the creations he has created from all violations.
- b) Principle of culture
Is a principle that refers to the role of science, art and literature in encouraging cultural progress and benefits for society
- c) Social principle
Is a principle that regulates how rights are regulated by a regulation on a creation that has been protected by law on the basis of harmony between people and society.
- d) Economic principle
Is a reward or compensation in the form of economic value for a creation.

In the Civil Code, hereinafter referred to as the Civil Code itself, there is no article that clearly regulates copyright. However, copyright itself can be associated with the concept of materiality which classifies objects as tangible and intangible objects. Article 499 of the Civil Code explains that materiality includes every item and also rights that are the object of ownership rights, and in this case copyright is an intangible object. The division of materiality itself has been explained in Article 503 of the Civil Code. Liability in civil law arises from liability due to unlawful acts (onrechtmatige daad) and due to acts of breach of promise (default). Liability due to unlawful acts in the Civil Code has been stated in Article 1365 of the Civil Code, namely that every unlawful act that causes loss to another person requires the person whose fault causes the loss to compensate for the loss.

In unlawful acts consist of mandatory/fulfilled elements, namely:

- a) Elements of unlawful acts, namely the activity of pirating films by uploading films without permission from the creator or copyright owner.
- b) Elements of acts that cause harm to others.
This film piracy activity can cause harm to the copyright owner, whose economic rights have been seized because they do not receive royalties for the work they have created.
- c) Elements of error, namely the activity of pirating the film

¹⁸Ranissa Sekar Elaies, 2023, "Tanggung Jawab Perdata Terhadap Pelanggaran Hak Cipta Atas Tindakan Pembajakan Film Melalui Situs Ilegal", Jurnal Hukum dan HAM, Vol.2 No,5 Mei 2023, h 370

which has been carried out negligently or intentionally. In the elements of unlawful acts, the element of error (schuld), it can be seen how the scope of the element of error is.

- d) Elements of the relationship between actions that cause harm.

After the piracy of the film will cause harm to the copyright holder. Of the four elements, the copyright owner if he wants to file a lawsuit for copyright infringement must ensure that the four elements are met because if one element is not met, the lawsuit will automatically be rejected. This is in accordance with Article 1865 of the Civil Code which regulates the process of proof which states that every individual who claims to have a right or tries to prove his own rights, or who wants to dispute the rights of others, is required to provide evidence to support the claim or event, the point of which is that if a party who wants to file a lawsuit (plaintiff) is required to prove his lawsuit, because in all completeness of the elements of unlawful acts are charged to the plaintiff. The parties who can file a lawsuit in a lawsuit related to copyright are the creator, the holder of related rights, and the holder of related rights. The copyright holder also has the right to make a request with the aim of confiscating the creation that has been duplicated without the permission of the copyright owner, as well as stopping distribution, and making an announcement if the creation is the result of copyright infringement. In terms of responsibility for piracy in civil law, it is not only for unlawful acts, but can use compensation because the economic rights of the copyright holder have been harmed. The compensation lawsuit itself in the Civil Code is also regulated in Article 1365, namely that unlawful activities that cause losses to others require the perpetrator to pay compensation for compensation from the party whose copyright has been violated. And in Article 1366 of the Civil Code which states that the party has responsibility not only for the losses that have been made but also for losses that have been caused by negligence and carelessness. In this article, the parties can also commit copyright infringement unintentionally but still cause losses can be held accountable. The existence of compensation is due to an unlawful act, but before starting a compensation lawsuit, a person must fulfill the elements of an unlawful act, namely that there is an error that causes harm to others. In essence, copyright infringement is not only considered a violation of the law but can also be prosecuted through a lawsuit for damages. The lawsuit for damages itself in Article 93 paragraph (1) and Article 99 paragraph (1) of the Copyright Law is the submission of a lawsuit for damages if the creator, copyright holder, and/or related rights holder suffers a loss caused by copyright infringement, can file a lawsuit for damages with the Commercial Court, in this case the creator, copyright holder, and/or related rights holder has suffered a loss of economic rights because royalties or compensation for the use of the economic rights of cinematographic works have not been paid.

3) Criminal responsibility for perpetrators of showing films on pirated film provider sites

Copyright is an object of intellectual property rights that is very vulnerable to violations. The mode of copyright violation in technological developments is increasing. A creation from the work of a creator has the right to be

protected as his property. Based on Article 1 number 23 of Law Number 28 of 2014, piracy is defined as the unlawful duplication of a creation carried out to obtain financial gain. It can be concluded that the act of duplication is categorized as piracy if it is carried out to gain profit. However, if the act of duplication is not intended to gain profit, then the act is referred to as the announcement of a creation. Announcement of a creation is the act of reading, broadcasting, and displaying the creations of others through electronic or non-electronic media. The Republic of Indonesia provides protection to every cinematography creator and copyright holder from indications of piracy of film screenings. Film screening piracy refers to the act of illegally or unlawfully screening a film, without the granting or knowledge of permission from the film copyright holder. Illegal film screening piracy can be called a serious violation, because it causes losses to the film industry, creators, and copyright holders, and has the potential to damage the Indonesian creative economy. Film piracy is also classified as a violation of exclusive rights owned by the creator, one of which is economic rights. Based on Article 9 of Law Number 28 of 2014, the economic rights owned by the creator or copyright holder include publishing, duplicating creations, translating creations, adapting creations, distributing creations, showing creations, announcing creations, communicating creations, and renting creations. Showing films on illegal provider sites violates the economic rights of the creator or owner of related rights and causes the creator or owner of related rights to suffer material or immaterial losses, therefore the perpetrators of uploading films on pirated film provider sites. in this case, perpetrators of copyright infringement of films from illegal sites can be subject to Article 113 paragraph (3) of the Copyright Law in terms of publishing, duplicating, distributing, and spreading cinematographic works for commercial purposes can be subject to a maximum criminal penalty of 4 (four) years and/or a maximum fine of IDR 1 billion. In contrast to uploaders of cinematographic works on pirated film provider sites, site providers commit economic rights violations by carrying out activities including publishing, duplicating, and making announcements of cinematographic works on their sites and have fulfilled the existing elements. Therefore, the actions of site providers have been regulated in Article 113 paragraph (3) and (4) of the Copyright Law, namely "a person who without rights and/or does not obtain permission from the creator or copyright holder in violating the economic rights of the creator or copyright holder in accordance with Article 9 paragraph (1) namely by publishing, duplicating, distributing, or announcing creations that are used commercially through piracy, can be subject to a maximum prison sentence of 10 (ten) years and/or a fine of up to IDR 4 billion. The Copyright Law has qualified film piracy as a qualified crime with aggravating criminal penalties (gequalificeerde delicten). The definition of a qualified crime is a crime that burdens the perpetrator due to certain conditions. Film piracy can be associated with the aggravation of the criminal law contained in Book I of the Criminal Code, especially in Articles 64 and 65 of the Criminal Code. As Article 64 of the Criminal Code when associated with the context of film piracy, it must fulfill the elements of repeated duplication of copyright, large-scale distribution, and distribution through illegal media. Article 64 of the Criminal Code is an aggravation of the criminal law as a violation that is carried out continuously (voortgeette

handeling), so in this case the imposition of criminal sanctions is only imposed by one criminal rule or if it can be imposed on different rules, later the perpetrator of film piracy will be subject to one of the rules with the most severe principal criminal penalty. In addition, there is an aggravation of the criminal law in the case of concurrent actions (*concursum realis*), namely the perpetrator of film piracy commits several criminal acts at once in one series of actions, such as duplication, distribution, and sale. In this case, the perpetrator of film piracy can be sentenced according to the maximum amount of criminal penalties threatened for the violation committed by the perpetrator, but cannot exceed the maximum sentence of the most severe criminal penalty plus one third of the sentence.

4) Preventive efforts in preventing the crime of film piracy

Preventive efforts are protection efforts carried out by the state or authorities that aim to avoid a crime or violation before the problem arises. In the context of copyright itself, it is one of the rights that is protected internationally through international agreements and binds countries in the agreement to ratify it into their national laws. Efforts from the government in following up on copyright violations by ratifying and creating a Copyright Law to give a frightening effect to copyright violators, and then the Ministry of Information and Information in collaboration with the Ministry of Law and Human Rights by taking steps to eradicate sites that provide pirated films, such as blocking related sites so that the public cannot access the site again. However, sites that have been blocked have been found to have changed their domains, such as on the site www.streaminggratis.com has been replaced with gratisstreaming.co.id. even though the site has changed its domain, the authorized government has swiftly continued to close access to the site providing pirated films, this is a mandate that comes from the Copyright Law which discusses blocking content and access related to copyright violations in multimedia media. The meaning of legal protection can be interpreted as an effort given to certain legal subjects by the state through legislation that will be enforced with sanctions that will be threatened if a violation occurs, this will be expected to be a deterrent effect for the violating party. Preventive legal protection is legal protection provided by the state which aims to prevent violations before the violation occurs. Articles 54 to 56 of the Copyright Law explain the prevention of copyright violations originating from technology, then the authorities have an obligation to supervise the creation and distribution of content, and establish cooperation and collaboration between various parties. In addition, the government also needs to supervise video recording activities using any means on cinematographic works and related rights products that are shown in public areas, such as in cinemas. Crime prevention efforts are usually repressive (eradication) after the crime has occurred. On the other hand, efforts that are rarely attempted

by the government are more focused on the preventive nature (prevention) before the violation occurs, meaning that the main target of preventive efforts is to eradicate the factors that cause violations. said, while also improving certain social conditions, but does not directly have a preventive effect on crime. Ultimately, to align the possibility of deficiencies in repressive actions, it is necessary to utilize these preventive efforts in an effort to overcome crime.¹⁹ Preventive here is intended as protection given for the purpose of preventing or distancing the actions of parties who want to commit violations of the law in the form of film piracy. This preventive effort is expected to be able to reduce cases of copyright infringement, especially in acts of film piracy carried out by the Indonesian people.²⁰ According to Rahma Melisha Fajrina in her 2022 journal entitled *Preventive Efforts in Overcoming Online and Offline Film Piracy Crimes in Indonesia*, there are several actions that can be taken as preventive efforts in overcoming the crime of film piracy as follows:²¹

1. Copyright Registration

Declarative principle, the object of copyright in obtaining direct protection if the creation has been manifested in real terms and has been announced in public, and does not have to register a creation. However, copyright registration must also be done because if there is a copyright infringement or a dispute, copyright registration will be initial evidence. Copyright registration can be submitted or applied to the Directorate of Copyright and Industrial Design at the Directorate General of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia. Copyright registration applications can be made online or manually.

The online copyright application procedure is as follows:²²

- a) Online copyright registration at e-hakcipta.go.id/index.php/register.
- b) Next, upload documents including:
 - Identity of the creator or copyright holder;
 - Registration sheet;
 - Statement letter (containing all names of creators);
 - Letter of transfer of rights, if the creator or copyright holder is a different party, and a letter of inclusion showing the identity of the copyright owners;
 - Examples of creations in the form of recordings or videos in mp4 format for cinematographic works, and synopsis scripts;
 - Power of attorney if the process is carried out through an authorized party;
 - Company Deed if the applicant is a legal entity;
 - Other documents.
- c) c. Make payments using an Automated Teller Machine (ATM) or electronic banking services.
- d) Verification of completeness of required documents
- e) Data confirmation process.
- f) Issuance of copyright certificates.

¹⁹ Soedarto, 2008, *Kapita Selekta Hukum Pidana*, Bandung, Universitas Parayangan, Bandung, h 188

²⁰ Ayuta Puspa Citra Zuama, 2020, "Menciptakan Perlindungan Hukum Yang Efektif Bagi Hak Cipta Karya Sastra Film Nasional: Utopis Atau Logis?" *Jurnal Hukum Dan Pembangunan Ekonomi*, Vol 8, No.2 2020, h 101

²¹ Rahma Melisha Fajrina, Hery Sasongko, 2022, "Upaya Preventif Dalam Menanggulangi Tindak Pidana Pembajakan Film Secara Online Maupun Offlinedi Indonesia", *Off Screen Film and Television Journal*, Vol.1 No.02 Juni 2022, h 44

²² Dirjen Kekayaan Intelektual Kemenhumham RI, "Permohonan Pencatatan Ciptaan," <https://www.dgip.go.id/menu-utama/hak-cipta/syarat-prosedur>. diakses pada Desember 2024

2. Conducting Socialization of Law Number 28 of 2014 Concerning Copyright.

One of the preventive efforts that can be done by the state is to conduct socialization regarding copyright to the wider community. Because of the many cases of film piracy via the internet such as through websites or in physical form, namely through VCDs or DVDs, of course not many people understand this. Regulations on copyright are very important because they cover many important things, therefore, socialization must be carried out effectively and seriously. The lack of public understanding regarding copyright is evident from the fact that many people still choose to use pirated film provider sites rather than using official film provider platforms. Socialization can be carried out by the government and law enforcement by utilizing digital media, such as using social media such as TikTok, Instagram, YouTube and other media that can reach the wider community to appreciate original works more and to stop using pirated or illegal products.

3. Implement blocking of content known to violate copyright

In implementing Article 56 paragraph (2) of the Copyright Law, the Minister of Law and Human Rights and the Minister of Communication and Information Technology shall make regulations to follow up on copyright infringements, in Article 15 of the Joint Regulation of the Minister of Law and Human Rights Number 14 of 2015 and also making the Regulation of the Minister of Communication and Information Technology Number 26 of 2015 concerning the Implementation of Closing Content and/or user access rights that violate copyright and/or related rights in electronic systems, it has been stated that the closing of content and/or user access rights that violate copyright and/or related rights will be announced on the official website of the ministry that organizes government affairs in the field of communication and information technology. The closing or blocking of pirated film provider sites is aimed at ensuring that content that violates copyright and/or related rights on internet sites is no longer available.

4. There is legal awareness in society

Legal awareness in society is very important for every copyright law, and legal awareness is also one of the factors that determine the effectiveness of laws and regulations in society. In other words, order in society is a tool for the success of the regulation. If society has legal awareness of copyright, then there will be a sense of respect for the work created by the creator.

5. There is legal awareness among creators

protection for creators of works has been provided by the government through regulations governing copyright, film creators should be firm in fighting for the rights they have obtained for the protection of their works. If film creators are firm in following up on a copyright infringement on their works, then law enforcement will certainly also be alert to follow up on cases regarding copyright infringement. Because in the Copyright Law it is a complaint offense so that if there is a copyright infringement the creator is negligent in not reporting the rights, then the government or law enforcement is also powerless to follow up on the violation. If there is an active effort made by the creator, then of course irresponsible parties will think again about pirating films,

because there are strict consequences from both the film creator and law enforcement.

Closing

A. Conclusion

- The creator has rights that are automatically obtained, namely exclusive rights, the creator's exclusive rights are moral rights and economic rights. The legal consequences of showing films on illegal film provider sites are that showing films on pirated film provider sites violates the economic rights of the creator or copyright holder because this results in material and immaterial losses, these losses are due to the loss of income from royalties that should be received from the sale or use of the cinematographic work itself. due to the rampant films shown on pirated film provider sites, the government also suffers losses from these actions because there is no tax paid for each film showing on pirated film provider sites. UUHC will impose sanctions on anyone who violates copyright. In showing films on pirated film provider sites, it also has an impact on the closure of sites that provide films from pirated cinematographic works by the Ministry of Communication and Information
- Factors that cause film piracy include economic factors, social factors, technological factors, law enforcement factors, and educational factors. Civil liability for perpetrators of showing films on pirated film provider sites is in Article 1365 of the Civil Code concerning unlawful acts by fulfilling the 4 elements of the article and with a lawsuit for damages in the commercial court. Criminal liability for perpetrators of showing films on pirated film provider sites is Article 113 paragraph (3) of the Copyright Act for uploaders of cinematographic works on pirated film provider sites, then the pirated film site providers are subject to Article 113 paragraph (3) and (4) of the Copyright Act. There are also preventive efforts in preventing the crime of film piracy, namely by registering copyright, socializing the Copyright Act to the public, blocking pirated film provider sites, raising legal awareness in the public, and raising legal awareness in creators.

B. Rekomendasi

- Increasing supervision of sites that show films illegally can be done with more assertive and systematic steps, including intensive blocking of sites. The authorized government needs to work with related parties to ensure that illegal sites can be immediately detected and blocked. Socialization to the public can be done intensively through various media, both offline and online. This socialization aims to provide information about the negative impacts of watching films on illegal sites, including losses experienced by copyright holders.
- The government needs to emphasize its commitment to law enforcement to protect the rights of creators or rights holders. Clear and firm law enforcement is very important so that creators are respected and piracy of creative works can be stopped. Sites that have been proven to violate statutory provisions must be firmly followed up by emphasizing the values of the Copyright Act.

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