



Juridical Analysis of Music Uploaded on Tiktok Media in View of Intellectual Property Law

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ABSTRACT

The use of technology, especially the internet today shows tremendous development. Almost all people use social media as a container or their means of communication or just expressing themselves. There are so many types of social media currently available in Indonesia. One of the social media available in Indonesia and currently also experiencing significant developments and trends is Tiktok social media. The form of Tiktok social media in the form of these videos, often when users create Tiktok videos it uses songs as the background sound of the video. This research will discuss about how the legal protection of Tiktok application users against copyright holders of songs uploaded on Tiktok? How to resolve disputes if there are legal problems? This study uses normative juridical research methods with secondary data. Based on the results of the study, it was concluded that there is a form of legal protection of Tiktok application users against copyright holders for songs uploaded on Tiktok, including in the form of a cooperation agreement contained in User Generated Content. Of course, this form of legal protection is based on the provisions of applicable laws and regulations in the form of special rules for musical works and recording artists that are part of Intellectual Property Rights.

INTRODUCTION

The development of technology in today's era shows that people can now be said to be "literate" to the use of technology, especially the internet. Asosiasi penyelenggaraan Jasa Internet Indonesia (APJII), said that 73.7 percent or about 196.7 million people in Indonesia have started literacy and become internet users based on data in the second quarter/20201. The phenomenon of today's society that now understands and is literate about technology is influenced by several factors. One of the factors that influence this is the globalization factor. The effect of globalization where all things are now becoming more practical and fast-paced is one of the factors that causes people to now

understand and be literate about technology, especially the internet. This era of globalization is dynamic and fast. So, if we are not responsive to this, then we will miss the information and become backward. This situation is also what ultimately forces people, whether they like it or not, to begin to understand and be literate about technology, especially the internet. Because, if people are not responsive to the phenomenon of globalization, then they will miss the information and become backward.

The use of technology, especially the internet today shows tremendous development. Maybe in ancient times we know that only certain people can use and access the internet and not everyone can access the

internet. Now, everyone can access the internet. Children, adolescents, to parents today can not be denied that in one day they must access and use the internet. Supported also by other factors such as the number of providers that provide internet services at affordable prices and technology to access the internet such as gadgets that currently have many variants at affordable prices, making all people today can access the internet easily. Today's society in using internet access it is used in many activities. For example, for workers using internet access in the form of electronic mail and using chat applications instead of SMS to facilitate the productivity of their work. However, the widespread and prevalent community use in this internet access is the use of social media. Almost all people use social media as a container or their means of communication or just expressing themselves. There are so many types of social media currently available in Indonesia. One of the social media available in Indonesia and currently also experiencing significant developments and trends is Tiktok social media. Tiktok, also known as Douyin, is a Chinese social network and music video platform launched in September 2016 by Zhang Yiming, one of the founders of Tiktok. This Tiktok social media application is an application that provides a place for users to be able to freely express themselves. Tiktok social Media is a social media in the form of videos. That is, Tiktok users allow their users to create and share their homemade videos. So, this Tiktok social media is in the form of a video where users can be free to be creative, maybe make some kind of content or video with a maximum duration of 15 seconds and then they can upload the video through their Tiktok account, where the video can also later be seen by other Tiktok users and if other users like the video made, they can press the heart-shaped button as a sign of liking the video or content that has been created.

Tiktok's form of social media in the form of these videos, often when users create Tiktok videos it uses songs as the background sound of their videos. The background sound is used for support in the video. For example, Tiktok users want to create dancing video content where dancing activities require an exciting and fun atmosphere. Therefore, the background sound used in the video is a collection of songs with supporting genres as well. The majority of Tiktok users in creating video content always use background sounds taken from songs by famous singers or bands. The problem is, this Tiktok application has not implemented strict and perfect regulations regarding the use of these

songs that are inserted into the Tiktok video. There have been several cases or reports stating that Tiktok violated the copyright of the song. According to Article 1 Number 1 of Law Number 28 of 2014 concerning copyright (hereinafter referred to as UUHC) which reads, "copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in real form without reducing restrictions in accordance with the provisions of legislation." Copyright is one part of intellectual property rights (hereinafter referred to as IPR) that provides protection for works that are realized or produced in the form of works of art such as songs, films, photographs, paintings, dance, computer programs and other sebagainya². This copyright arises because the person who created the work has the right to his creation, and to get legal protection that can certainly register with the Directorate General of intellectual property, but without registered copyright on the work remains attached to the person who created the work. In copyright itself, there are economic rights and moral rights, where economic rights and moral rights remain as long as a work is still protected by copyright. As for the so-called economic rights is the right to gain an advantage over IPR, it can be said as an economic right because IPR includes an object that can be valued with money. Whereas moral rights themselves arise because basically everyone has the obligation to respect and appreciate the copyrighted work of others, others cannot at will take or change someone's copyrighted work to be on his behalf. Therefore, it is necessary to have permission first to the creator of the song whether their song is allowed to be used in the Tiktok video.

Based on the exposure of the above problems, the author takes several problem formulations as follows; How is the legal protection of Tiktok application users against copyright holders of songs uploaded on Tiktok? How to resolve disputes if there are legal problems?

METHOD

This research method is normative juridical approach using legislation, conceptual approach, principles and related theories. This study uses secondary data consisting of primary legal materials, in the form of legislation related to research problems.

RESULTS AND DISCUSSION

Dispute Resolution In Case Of Legal Problems

According to Article 95 paragraph (1) of the Copyright Law describes the form of disputes, among others: disputes in the form of against the law, license agreements and tariff disputes in the withdrawal of rewards or royalties.

Based on Article 95 paragraph (1) of the Copyright Law, the resolution of copyright disputes can be done through alternative dispute resolution, arbitration, or court. Explicitly Article 95 paragraph (2) and Paragraph (3) of the Copyright Law states that the court authorized to handle the settlement of copyright disputes is the Commercial Court. Courts other than the Commercial Court are not authorized to deal with the resolution of copyright disputes. Based on the explanation of Article 27 paragraph (1) of Law No. 48 of 2009 concerning judicial power ("judicial power law"), the Commercial Court is one form of special court located within the General Court.

In the Civil Code, law enforcement against copyright infringement can be seen through the application of Article 1365 of the Civil Code which states: "Every unlawful act, which brings harm to others, requires the person who for his fault published the loss, compensate the loss." From the article, it can be seen that in order to achieve a good contribution in conducting a lawsuit based on unlawful acts, the requirements or elements of unlawful acts must be met. For copyright infringement that occurs, in accordance with article 1365 of the Civil Code, there must be sanctions that can be applied, among others:

1. Determination of damages to parties deemed to have violated;
2. Termination of activities of acts, reproduction, distribution, and sale of illegal (pirated) creations that are the result of copyright infringement;
3. Confiscation and destruction of illegal goods that are the result of copyright infringement.

Further, in Article 99 paragraph 3 of Law No. 28 of 2014 concerning copyright, it is explained that at the request of a party who feels aggrieved due to copyright infringement, The Creator, copyright holder, or owner of related rights may apply for a provincial decision or an interim decision to the Commercial Court:

a. Request the confiscation of Works made by announcement or duplication, and/or duplication tools used to produce creations resulting from copyright infringement and Related Rights products; and/or

b. Stop the announcement, distribution, communication, and / or reproduction of works that are the result of copyright infringement and related product rights.

Criminal legal efforts can be taken by the creator, because in criminal legal efforts in resolving cases of violations of the copyrighted works of music recognize the existence of ordinary law (Appeal and Cassation) and extraordinary legal efforts (review in the public interest) in terms of injustice in the court decision felt by one of the litigants. Criminal law efforts in resolving cases of violations are quite effective compared to civil law efforts, where civil law efforts are more focused on the process of compensation only different in resolving cases through criminal law efforts that cause a deterrent effect, namely body confinement for perpetrators of crimes or violations.

CONCLUSION

The legal protection of TikTok application users against copyright holders of songs uploaded on Tiktok includes a cooperation agreement contained in User Generated Content. Of course, this form of legal protection is based on the provisions of applicable laws and regulations in the form of special rules for musical works and recording artists that are part of Intellectual Property Rights. With this rule, a legal relationship will arise which will then give birth to legal consequences in the form of rights and obligations for Tiktok application users and copyright holders. The form of accountability from application users to copyright holders for songs uploaded on TikTok consists of moral rights responsibility and economic rights responsibility. Regarding the form of dispute resolution in case of legal problems of TikTok application users in this case, namely committing copyright violations, among others, which can be pursued through mediation, arbitration, or through a lawsuit mechanism in court (the authority to resolve intellectual property disputes in the form of copyright is pursued through the Commercial Court).

The TikTok application, which is being loved by various circles in Indonesia today, turns out that in legal protection for Intellectual Property Rights (HKI) holders, especially Copyright against Song users on the TikTok application, there is still a fairly large gap, because as previously stated that in the terms and conditions Tiktok seems to allow IPR violations. To respond to the occurrence of this IPR violation, the role of various related stakeholders is needed, in this case Tiktok must be even more

assertive, and educate their service users in an innovative and easy-to-understand way so that the message regarding IPR violations can be conveyed properly, and revsi against terms and conditions in order to provide a deterrent effect for users who use songs as the background of their videos without permission from the copyright owner. In addition, the government also conducts education on IPR to the community which is a preventive effort that can be done. If various preventive efforts have been carried out but there are still rampant violations, then the next step is to carry out strict law enforcement and provide a deterrent effect.

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