Law Enforcement Against Film Piracy Through the Telegram Platform Based on Law Number 28 of 2014 Concerning Copyrights

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Abstract

The regulation of law enforcement on Copyright is regulated in Law no. 28 of 2014 concerning Copyright. Film is the result of someone’s intellectual work in which copyright is attached. One of the deviations from copyright in films is to reproduce and notify films through social media, one of which is through Telegram by streaming or downloading, where by downloading films for free that do not have permission from the creator of the work. The consequences of film piracy can have a negative impact on the Creator, both economically and morally. The purpose of this study is to analyze related to law enforcement against film piracy through Telegram. This research uses a normative juridical approach and this research uses a statutory approach and a conceptual approach. The results of the study show that although there is already a law that regulates copyright, law enforcement against film piracy is not running as it should. Law enforcement is influenced by factors of legislation, law enforcement, society, and culture. The most influencing factors are society and culture, where people still do not know and realize the importance of copyright in film.

Key words: copyright, film piracy, intellectual works, law enforcement, telegram.

Introduction

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations, in accordance with Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright. So that the regulation of law enforcement on Copyright is regulated in Law no. 28 of 2014 concerning Copyright.

In this era of globalization, advances in technology and information make it easier for people to get information. With the advancement of technology and information, more and more people are using internet access for social media. With the number of uses of social media that are widely used by the community, especially among young people who are very familiar with social media, but sometimes the use is used for purposes that are considered useless or sometimes even considered to have committed acts against the law, such as watching movies through social media through social media. facebook, youtube and telegram which release a lot of movies without going through a subscription such as Netflix, Disney plus, iflix, mola, HBO, Fox Movies and so on.
As a copyrighted work, the film is an intellectual property and is attached to the creator. Based on Article 1 paragraph 1 of Law Number 33 of 2009 concerning Film, Film is a work of art and culture which is a social institution and mass communication media which is made based on cinematographic rules with or without sound and is shown. (Wiratama et al., 2022)

The form of copyright infringement basically revolves around two main things. The first is intentionally and without rights to publish, reproduce, or give permission for it. (Marlionsa & Sukihana, 2018) The second is intentionally exhibiting, distributing, or selling to the public a work or goods resulting from copyright infringement. (Geriya, 2021) One of the deviations from copyright in films is to reproduce and notify films through social media, one of which is through Telegram by streaming or downloading, where by downloading films for free that do not have permission from the creator of the work. (Raharja, 2020)

On the Telegram platform, the way to watch movies is very easy, for example, if you want to watch the movie “Pengabdi Setan 2”, you can view or search for it by typing “Film PENGABDI SATAN 2” and there will be lots of groups or channels about the movie and you can download and watch it. No need to spend money to pay for movies but only with quota capital. (Widiyono, 2021)

Even though there is a new Copyright Law to replace the old Copyright Law, in fact in society there are still many copyright infringement acts that occur. Such as reproducing and announcing a film without permission which results in a negative impact on the creator, both economic and moral losses. (Ginting, 2020)

Based on the description of the background above, film piracy is a very serious copyright infringement, so it is necessary to enforce the law against film piracy. So the focus of writing this article is how to enforce the law against film piracy through the Telegram platform.

**Method**

The research method used is normative juridical. The types and sources of data used are secondary data. (Widyastono, 2007) Data collection is carried out mainly by document study techniques (library research and online research) by taking an inventory of the secondary data needed, both in the form of primary, secondary and tertiary legal materials, then conducting historical searches and synchronization between these legal materials. (Seta, 2020)

The primary legal materials used consist of statutory regulations, official documents, books related to the analysis of the sociology of law, especially on law enforcement against film piracy. Secondary legal materials used include: scientific works, research results and literature related to the substance of the research. Tertiary legal materials, namely materials that support information on primary and secondary legal materials, including data from newspapers, journals, dictionaries, encyclopedias. (M.Hum & M.H, 2022) This research is basically related to analyzing how Law Enforcement Against Film Piracy through the Telegram platform.

**Results & Discussion**

**Law Enforcement Against Film Piracy Through Social Media Telegram Platform**

Based on the We Are Social report, the number of active users of social media in Indonesia in 2014–2022 was 191 million people in January 2022. This number has increased by 12.35% compared to the previous year which was 170 million people. Seeing the trend, the number of social media users in Indonesia continues to increase every year (M. Ivan Mahdi, 2022). However, its growth has fluctuated since 2014–2022. The highest increase in the number of social media users reached 34.2% in 2017. However, the increase slowed to 6.3% last year. The number has only increased again this year. Meanwhile, Whatsapp is the most widely used social media in Indonesia. The percentage was recorded at 88.7%. After that, there are Instagram and Facebook with percentages of 84.8% and 81.3%, respectively. Meanwhile, the proportion of TikTok and Telegram users is 63.1% and 62.8%, respectively (M. Ivan Mahdi, 2022). With the increasing number of social media users in Indonesia, related to the large number of content containing pornographic elements or content, of course this is a concern for all of us and the role of the Government, both Central and Regional Governments, which are required to prevent the manufacture, distribution, and use of pornography. Etymologically, pornography means a writing related to prostitution problems and the writing is mostly in the form of fiction (fictional stories) whose material is taken from sexual fantasy, pornography usually does not have a plot and character, but has a detailed description of sexual activity, often in a way that prolonged and sometimes very challenging (Asrini Hanifah, 2009).

In the big Indonesian dictionary, Pornography means:

a. Erotic depiction of behavior by painting or writing to arouse lust.
b. Reading material that is intentionally and solely designed to arouse lust in sex. Many pornography actors take refuge in the name of art.
According to Cak Kandar, art is an act or process of creation that is intentionally made to increase the creativity of human intelligence that meets aesthetic, artistic, philosophical and moral elements. While pornography is an act that aims to create lust (Asrini Hanifah, 2009).

Cyberporn, a term formed from the words "cyberspace" and "pornography". In the Merriam Webster Online Dictionary the definition of cyberporn is stated: "Pornography accessible online especially via the Internet", namely pornography that can be accessed online, especially via the internet. So it is clear that cyberporn is taken from the word cyberspace as the place where it is spread, and pornography is the content or context. So it can be concluded that cyberporn is the loading of pornographic elements in a space on the internet network called cyberspace or cyberspace. Cyberporn itself, which in terms of content or pornographic elements is the same as the definition of pornography that has been described, but what distinguishes it is in terms of the distribution media and there are some uniqueness of the cyberporn (Asrini Hanifah, 2009).

Pornography on the internet is related to possessing, creating, importing, displaying, publishing and/or distributing pornography. Pornography on the internet is also related to the content of the site that is presented to its accessor, so the Convention on Cybercrime from the European Union categorizes this pornography in the category of Content-related offenses contained in Title 3, article 9. An interactive global communication network through internet relay chat facilities (chattiny). ) can be used to disseminate information about pornographic stories or images (both for the dark side and the bright side of pornography) or also called cybersex. There are two forms of cybersex in chat rooms, namely Computer mediated interactive masturbation in real time and Computer mediated telling of interactive sexual stories (in real time) with the intent of arousal.

In Indonesia, the prohibitions and restrictions on pornography are regulated by the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography, the Pornography Law. As explained in Article 4 Paragraph (1) of the Pornography Law, everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography which explicitly contains:

a. intercourse, including deviant intercourse;
b. sexual violence

c. masturbation or masturbation;
d. nudity or an impressive display of nudity;
e. genitals; or
f. child pornography

It is further explained in Paragraph (2), namely:

Everyone is prohibited from providing pornographic services that provide explicit nudity or the appearance of nudity, explicitly display genitalia, exploit or exhibit sexual activity, or offer or advertise, either directly or indirectly, sexual services.

The threat to this article is regulated in Article 29 of the Pornography Law which states that anyone who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4 Paragraph (1) shall be sentenced to a minimum of 6 (six) months in prison and a maximum of 12 (twelve) years and/or a minimum fine of Rp. 250,000,000 (two hundred and fifty million) and a maximum of Rp. 6,000,000,000 (six billion).

The Indonesian government itself has established a law that regulates Electronic Information and Transactions (UU ITE), namely Law Number 11 of 2008 concerning Electronic Information and Transactions. In addition to the ITE Law, it is also regulated in the Criminal Code (KUHP), especially Article 282 paragraphs (1) and (2), Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law No. Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting. However, law enforcement carried out by law enforcers in ensnaring perpetrators of pornography on the internet (cyberporn) as a cybercrime has not been effective in Indonesia.

According to Moeljatno, basically a crime is a basic understanding in criminal law. Crime is a juridical understanding as well as to provide a definition or understanding of legal terms, so it is not an easy thing to provide a definition or understanding of the term criminal act. The discussion of criminal law is intended to understand the meaning of crime as a sanction for offenses, while sentencing is related to the basics of justification for the imposition of crimes and theories about the purpose of punishment. It should be stated here that criminal is a juridical term which has a special meaning as a translation of the Dutch language "straf" which can be interpreted as "punishment" (Moeljatno, 1987).

Crime is a juridical definition, unlike the term "evil act" or "crime" (crime or Verbrechen or misdaad) which is defined criminologically and psychologically. Regarding the content of the definition of a crime, there is no unity of opinion among scholars. As a general description of the definition of crime or criminal act put forward by Djoko Prakoso that juridically the definition of crime or criminal act is "an act that is prohibited by law and the violation is subject to sanctions", further Djoko Prakoso stated that criminologically a crime or criminal act is "an act that
violates the norms that apply in society and gets a negative reaction from the community, and psychologically a crime or crime is "an abnormal human act that is against the law, caused by factors such as: psychological factors of the perpetrator of the act (Djoko Prakoso & Agus Imunars, 1987).

Every criminal act committed by a person is basically obliged to take responsibility for his actions. Criminal liability is intended to determine whether a defendant is responsible for a crime that has occurred or not, if it turns out that his actions are against the law and the defendant is able to take responsibility, then that person can be punished. According to Roeslan Saleh, whether or not a person is convicted of an act depends on whether at the time of committing the act there was an error or not, whether the person who committed the criminal act did have an error then of course he can be subject to criminal sanctions, but if he has committed a prohibited criminal act. and reprehensible but has no fault he is certainly not punished.

According to Moeljatno, the elements of a crime are (Sudarto, 1990):

a. Deeds;
b. What is prohibited (by law);
c. Criminal threats (for those who violate the prohibition) Only human actions may be prohibited, what prohibits is the rule of law.

To prevent and eradicate the spread of pornography via computers and the internet, Indonesia already has laws and regulations that prohibit the distribution of pornography in the form of electronic information, namely Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Article 27 paragraph 1 of Law Number 11 of 2008 reads: "Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency".

Criminal sanctions will be imposed for anyone who commits an act as stated in Article 27 paragraph 1, namely a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Article 27 paragraph 1 of Law Number 11 of 2008 uses the word accessible, which means that anyone who intentionally and without rights makes accessible electronic information containing pornography or a violation of decency will be subject to criminal sanctions. In addition, Law Number 11 of 2008 also regulates the prohibition for anyone who intentionally and without rights or against the law procures or provides computer hardware or software used to facilitate the spread of pornography, because this is a prohibited act. in Article 34 paragraph (1) of Law Number 11 of 2008.

Sanctions from people who violate Article 34 paragraph (1) of Law Number 11 of 2008 are contained in Article 50 of Law Number 11 of 2008: "Everyone who fulfills the elements as referred to in Article 34 paragraph (1) shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp. 10,000,000,000 (ten billion rupiah)". The act includes the involvement of a person providing facilities in the form of computer hardware to duplicate or reproduce pornographic files on CDs or other storage media so that they can be distributed.

According to Moeljatno, it describes based on the understanding of the term criminal law which says that law enforcement is part of the overall law that applies in a country that holds elements and rules, namely (Moeljatno, 1993):

a. Determine actions that should not be carried out accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition.
b. Determine and in what cases those who violate the prohibitions can be imposed or sentenced to criminal as has been threatened.
c. Determining how the imposition of the punishment can be carried out if the person suspected of having violated the prohibition.

Conclusion

Law enforcement on Intellectual Property Rights, namely regarding Film Piracy, has been regulated by Law Number 28 of 2014 concerning Copyright. In the Copyright Act, there are 2 ways to claim rights that have been violated, namely civil and criminal. Although there is already a law that regulates copyright, law enforcement against film piracy does not work properly because it is influenced by community and cultural factors, where many people still do not know and realize the importance of copyright.

References


