



Analysis of Bigo Live Application Abuse as a Form of Copyright Infringement

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Abstract

Bigo Live as one of the broadcast applications in the form of live streaming video for android smartphone users can be misused and become a violation of copyright in the field of copyrighted films (cinematography). The actor recorded a film that was being shown in theaters and the film was broadcast live using the Bigo Live application. Research problems: (1) What are the legal consequences of the abuse of the Bigo Live application in cinema as a violation of the copyright protection of a film (cinematography)? (2) What is the criminal responsibility for the perpetrators who violate the copyright protection of a film (cinematography)? The problem approach used in this study is empirical juridical, with speakers from Bandar Lampung Police and Criminal Law Lecturers at the Faculty of Law. Data collection through literature studies and field studies. Data analysis is done qualitatively. The results of this study indicate: (1) The legal consequences of the abuse of the Bigo Live application in cinema as a form of violation of the copyright protection of a film (cinematography) include the legal consequences for the perpetrators and legal consequences for copyright holders. The legal consequence for the perpetrator is that the perpetrator can be subject to criminal sanctions, either imprisonment or fines for violations committed without the right to broadcast the film through the Bigo Live application. Meanwhile the legal consequences for the copyright owners are to obtain legal protection for violations of their copyright rights that are misused by others. (2) Criminal liability against perpetrators who commit violations of copyright protection of a film (cinematography) is based on an element of error and intentional conduct, the ability of the defendant to be responsible, there is no justification and forgiving for the defendant in violating the protection of rights copyright a film (cinematography). Suggestions for research are: (1) The public who use internet-based media applications to be morewise and responsible in using the media (2) The criminal responsibility for the perpetrators of crimes in order to provide guidance efforts so as not to repeat their mistakes in the future.

Keywords: Abuse; Bigo Live Application; Copyright Infringement.

A. Introduction

The enactment of Law Number 28 of 2014 which amends Law Number 19 of 2002 concerning Copyright, demonstrates the government's efforts to continue to protect works owned by copyright holders. The copyright holder is the creator as the copyright owner, or the party who receives the rights from the creator or other parties who receive further rights from the party receiving the rights. Article 1 Number (1) of the Copyright Law states that the definition of copyright is an exclusive right for an Author or the right recipient to publish or reproduce his work or to grant permission for it without reducing restrictions according to the prevailing laws and regulations.

Based on the two articles above, it is known that copyright is a monopoly right to reproduce or announce the prevailing laws and regulations.¹ Copyright as an absolute right, can be defended against anyone and can prosecute infringement. Absolute rights have a reverse side (passive side), that for everyone there is an obligation to respect these rights.² In accordance with the regulation regarding copyright, ideally the copyright owner gets legal protection for his work, considering that copyright is a monopoly right to reproduce or publish works owned by the creator or other copyright holders which in its implementation pay attention to the prevailing laws and regulations.

The Copyright Law is enforced inseparably from the basic idea of the copyright law system, which is to protect the form of work that is born because of human intellectual abilities which are deposits of feelings. Based on this basic idea, copyright can be defined as a natural right and according to this principle is absolute, and its rights are protected as long as the creator lives and for several years thereafter. As an absolute right, basically this right can be defended against anyone, who has that right can sue for violations committed by a work that is owned by the creator or other copyright holders which in its implementation pays attention to anyone. An absolute right has a reverse side (passive side), that for everyone there is an obligation to respect that right.

The concept of copyright protection is not an idea that is owned by the Indonesian people, because the concept of copyright which is exclusive and intangible (immaterial) is very different from the concept of the Indonesian nation which generally under the umbrella of the communal view understands objects as tangible (material) goods.³ This means that the Indonesian people generally understand objects as real goods, can be seen, touched and as real objects. This understanding of the Indonesian people greatly influences the implementation of the Copyright Law in Indonesia, both from reports and various press reports, since the last few years it has become increasingly common to hear about the growing and widespread of copyright violations. The background of the violation of all of these basically revolves around the desire to seek financial gain quickly by ignoring the interests of the Copyright Holders. The impact of these violation activities has been enormous for the order of the nation's life in the economic and legal fields.

Protection in copyright law shifts to prioritize the protection of the publisher. This shift brought a change that then protection did not only concern the field of books, but expanded its protection to cover the fields of drama, music, and artistic work. After the development of technology, works of cinematography, photography, sound recording, and broadcasting, are also protected under copyright. In the beginning, the definition of copyright was far different from the rights of the author (author right, *droit d'auteur*, *diritto d'autore*) which showed the total rights owned by the author or creator of a copyright work. According to the concept of *droit d'auteur*, the author's rights consist of moral rights and economic rights. This concept developed rapidly during and after

¹Budi Agus Riswandi. M. Syamsudin. *Intellectual Property Rights and Legal Culture*, Raja Grafindo Persada. Jakarta. 2004. p. 3.

²Muhamad Djumhana and R. Djubaedillah. *Intellectual Property Rights (History, Theory and Practice in Indonesia)*. Citra Aditya Bakti. Bandung. 1993. p. 45.

³H. OK Saidin. *Legal Aspects of Intellectual Property Rights (Intellectual Property Rights)*, RajaGrafindo Persada. Jakarta. 2003. p. 47.

the French Revolution of 1789. This concept is based on the principles of natural law. A creator is seen as having a natural right over what he creates.⁴

Protection of copyright is regulated in Article 2 Paragraph (2) of Law Number 19 Year 2002 jo. Law Number 28 of 2014 concerning Copyright which states that the creator or copyright holder of cinematographic works and computer programs has the right to give permission or prohibit other people who without their consent from renting out the work for commercial purposes.

The reality that occurs in society still shows that there are copyright violations that can damage the order of life in general, especially creativity to create. One of them is copyright infringement in the field of film copyright (cinematography) which is carried out by recording the film that is being shown in the cinema and then by the recording actor the film is broadcast live using Bigo Live Media.

A case in point is a spectator who has a Bigo Live account named Rini Orin who records the screening of the film Warkop DKI Reborn in the cinema. Bigo Live is an Android-based application and the I phone or I phone Operational System (IOS) operating system which is popular in Indonesia. Rini Orin's account does live streaming via the Bigo application in the cinema so that people can watch this film without having to go to the cinema. Of course this action includes piracy and copyright infringement. Falcon Pictures will also report this incident to the authorities. They hope that this case will be handled in accordance with the prevailing laws and regulations.⁵

Based on the description above, the author will carry out research and put it in a thesis entitled: Analysis of Misuse of the Bigo Live application as a form of copyright infringement.

Based on the above background, the problems in this study are as follows: What is the legal consequence of the abuse of the Bigo Live application in theaters as a form of violation of the copyright protection of a film (cinematography)? And what is the criminal responsibility for the perpetrator who violates the copyright protection of a film (cinematography)?

B. Research methods

The approach to the problem in this study uses a normative juridical approach and an empirical juridical approach. Data collection was done by using literature study and field study techniques. The data analysis in this research is qualitative analysis.

C. Results and Discussion

1. Legal Consequences of Misuse of Bigo Live Application in Cinemas as a Form of Violation of the Copyright Protection of a Film (Cinematography)

Film (Cinematography) is basically a work of art and culture which is a social institution and mass communication media made based on cinematographic principles with or without sound and can be shown. As a copyright work, the film is part of intellectual property and inherent rights in the Creator. This right is called copyright.

⁴Sophar Maru Hutagalung. Copyright Position and Role in Development. Akademika Pressindo. Jakarta. 1994. p. 6.

⁵ <http://style.tribunnews.com/2016/09/09/parah-audiences-this-record-warkop-dki-reborn-wearing-bigo-live-in-cinema-netizens-are-furious>

Copyright is the exclusive right of an Author that arises automatically based on the declarative principle after a Work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. The rights inherent in a Creator are economic rights and moral rights. Economic rights are rights owned by an Author or Copyright Holder to obtain economic benefits for a work,

A film producer in the process of realizing the idea of a film story into a real form, must spend capital to support the making of a film. Capital referred to consists of natural resources, human resources, science and technology, and funds. Therefore, the state should provide legal protection as a form of appreciation for the creation of a work. When a film has been announced and gets good appreciation from the audience, this is an opportunity for irresponsible parties to take advantage of the popularity of the film to commit copyright violations, one of which is by misusing the Bigo Live application by broadcasting the film live. currently playing in theaters using the Bigo Live application.

Harto Agung Cahyono⁶explains that someone who wants to take advantage of the economic rights of a work in any way must obtain approval from the Author or Copyright Holder by entering into a License agreement and then paying a certain amount of royalties as a form of counter-achievement for the granted economic rights of an Author. However, in reality the perpetrators of abuse of the Bigo Live application did not pay attention to this, but instead broadcast the film that was being broadcast live. This clearly violates the exclusive rights of the creator or copyright holder of the film, which causes economic loss.

Law Number 28 of 2014 concerning Copyright has regulated the provision of criminal penalties for those who commit copyright violations, namely by being sentenced to a maximum imprisonment of 10 (ten years) and a fine of Rp. 4,000,000,000 (4 billion rupiah). Adverse effects that can be caused are material and immaterial losses suffered by the Creator. On the one hand, the Creator or Copyright Holder does not receive economic benefits in the form of royalties for the use of the Work as well as moral rights in the absence of inclusion of the Creator's name on the site as something attached to the Work.

Film as an intellectual property must be protected by law so as not to eliminate the rights owned by its creator. Law enforcement on copyright carried out by the government and judiciary is carried out through the making of regulations in order to create legal protection for filmmakers, in this case the producers. Through the description above, it has explained the current problems and violations of Copyright via the internet are still ongoing today and the perpetrators of such Copyright violations should be sanctioned as a result of the actions they have committed.

Harto Agung Cahyono⁷argues that with the development of information technology, especially the internet, legal protection of copyright needs to be regulated by statutory regulations to provide legal certainty for film creators. Legal Protection Legal protection is an effort to protect someone's interest by allocating a power to him to act in his interest. The nature of legal protection can be preventive and repressive.

⁶The results of the interview with Harto Agung Cahyono as Kasatreskrim Bandar Lampung Police. Friday, 19 October 2018.

⁷The results of the interview with Harto Agung Cahyono as Kasatreskrim Bandar Lampung Police. Friday, 19 October 2018.

Preventive legal protection is given when a regulation is made, the goal is to prevent arbitrariness by the government. The community is involved so that the formulated regulations can be mutually agreed upon. Meanwhile, repressive legal protection is legal protection given after a regulation has been made in a definitive form. People who are proven to have violated the regulations made can be subject to sanctions by law enforcement agencies authorized by law to take action against them. Forms of sanctions that can be given are criminal, civil and administrative law.

The basis for implementing copyright protection is the exclusive right owned by the creator or copyright recipient to publish or reproduce a work without reducing the existing limitations in the laws and regulations. Protection of a creation is basically protecting the expression of ideas or ideas, not just protecting ideas. Copyright is born after the copyright work has been created, registration is not an obligation. The creation is original or original, is not a novelty and a creation is made based on the results of certain creativity and skills as expressed in expressions or ideas.

In addition, related to the use of information media, Law Number 11 Year 2008 concerning Electronic Information and Transactions also further regulates copyright protection in the information system. Films that are processed or entered into a computer or similar device are referred to as electronic documents. This is contained in Article 25 of Law Number 11 of 2008 concerning Electronic Information and Transactions that electronic information and / or electronic documents compiled into intellectual works, internet sites and intellectual works contained therein are protected as intellectual property rights based on the provisions laws and regulations.

2. Criminal Liability to Perpetrators Who Violate the Protection of the Copyright of a Film (Cinematography)

Criminal liability is basically an implementation of a person's responsibility to accept any risks or juridical consequences that arise as a result of a criminal act he has committed. This criminal responsibility demands the ability to take responsibility for the perpetrator. In principle, criminal responsibility is the same as talking about mistakes which are a fundamental principle in criminal law, which argues that there is no crime without error.

With regard to the ability to be responsible in which everyone will be held accountable before the law for what has been done. In this case not everyone can become a subject of criminal law, because what can only be a legal subject is on the condition that the person must be competent in carrying out legal actions in another sense being able to distinguish what is good and what is not good, including in violations of copyright protection a film (cinematography).

Erna Dewi⁸describes several groups of people who by positive law have been declared incapable or inadequate to act alone in carrying out legal actions, but they must be represented and assisted by others. Those who are declared incapable of carrying out legal actions by themselves are people who are minors or who are not yet mature according to the law, and people who are not healthy in mind (crazy). Apart from these two groups, everyone can / is capable of taking legal actions and can be held accountable.

⁸ Results of Interview with Erna Dewi as Lecturer in Criminal Law, Faculty of Law, University of Lampung, Wednesday, October 17 2018

There are things that cause a person cannot be convicted, for several reasons, namely:

- a) Justification reasons, namely reasons that eliminate the unlawful nature of an act, so that what the defendant does becomes an appropriate and correct act.
- b) Excuse reasons, namely reasons that eliminate the guilt of the defendant, the act committed by the defendant is still against the law so it is a criminal act, but he is not sentenced because he has no fault.
- c) The reason for eliminating prosecution, here is because there is neither justification nor excuse, so there is no thought about the nature of the act, but the government considers that on the basis of utility / benefit to society, on the other hand there is no prosecution.

The reasons for the annulment of punishment are divided into (a) The reasons that are in the mind of the defendant, namely Article 44 of the Criminal Code, (b) The reasons that are outside the defendant's mind, namely Article 48, Article 49, Article 50, Article 51 of the Criminal Code and (c) Liability in criminal law. Certain provisions which result in a person being unable to be held accountable for a criminal act committed by the provision of criminal abolition as contained in Article 44, Article 48, Article 49 Paragraph (1), Article 49 Paragraph (2), Article 50, Article 51 Paragraph (1) and (2).

Harto Agung Cahyono⁹ states that the law enforcement process for violations of copyright protection of a film (cinematography) is generally carried out in the context of the criminal justice system in Indonesia, which includes the investigation process by the Police, prosecution by the prosecutor and the imposition of a sentence / judge's decision by the District Court. Investigation of violations of copyright protection of a film (cinematography) is carried out by the Police, in accordance with the provisions of Article 1 Paragraph (13) of the Law

Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, an investigation is a series of actions by an investigator in terms and according to the manner stipulated in law to seek and collect evidence which with that evidence sheds light on the criminal act that has occurred and in order to find the suspect.

According to Article 1 Paragraph (10) of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, investigators are officers of the State Police of the Republic of Indonesia who are authorized by law to carry out investigations. Auxiliary Investigators are Police officers who are appointed by the Head of the State Police of the Republic of Indonesia based on rank requirements and given certain powers to carry out investigative tasks regulated by law.

Investigations are carried out to find and collect evidence which in the first stage must be able to provide conviction, even though it is still temporary, to the public prosecutor about what actually happened or about the criminal act that had been committed and who the suspect was. The objective of a concrete investigation can be specified as an action taken by the investigator to obtain information about what crime was committed, when the crime was committed, with what the crime was committed,

⁹The results of the interview with Harto Agung Cahyono as Kasatreskrim Bandar Lampung Police. Friday, 19 October 2018.

how the crime was committed, why the crime was committed and who made it or the violation against it. copyright protection of a film (cinematography).

The prosecution for infringing the copyright protection of a film (cinematography) was carried out by the prosecutor. After the evidence is collected and the suspected suspect has been found, the investigator will evaluate carefully whether it is sufficient evidence to be submitted to the Public Prosecutor (prosecutor) or it is not a criminal act. If after going through the stages investigation investigators argue that the incident is a violation of the copyright protection of a film (cinematography) then The investigator sends a Notification Letter for the Commencement of Investigation which is followed by sending the case file by the investigator to the Public Prosecutor for research within 3 (three) days and if based on the research results the case file has met the requirements, the Public Prosecutor will immediately issue a P-21P (Notification of case files already complete) and within 5 (five) days of the submission of the suspect and evidence by the public prosecutor to submit a criminal case to the District Court for prosecution. On the other hand, if the investigator believes that the incident is not a criminal act, then the investigation is terminated by law. The public prosecutor will notify the termination of this investigation and the suspect or his family.

The next stage is trial and conviction by Court Judges for violations of the copyright protection of a film (cinematography) in the context of law enforcement. The criminal justice system is a judicial network that uses criminal law as its main means, both material criminal law, formal criminal law and criminal implementation law. However, this substantial institution must be seen in a social framework or context. Its overly formal nature if it is based solely for the sake of legal certainty will bring disaster in the form of injustice. Thus, for the sake of what is said to be precise justice, material measures, which are clearly based on general principles of justice must really be considered in law enforcement.

Criminal liability for violations of the copyright protection of a film (cinematography) can be seen from the form of error, namely intentional (*dolus*) and negligence (*culpa*), apart from these two forms of error which are the inner relationship of the perpetrator and his actions, the Criminal Code knows no kind. another mistake. The mental attitudes related to actions that cause reproach are as follows:

a) Deliberate (*dolus*)

Deliberate is an act that is wanted and known. This means that someone who acts on purpose must be desired what is done and what is done must also be known. Intentional as referred to is the simplest form of deliberation, intentionally stating intentionally as the intention if the maker wants the result of his actions, he never commits his actions if the maker knows that the consequences of his actions will not occur.

Be intentional with an awareness of certainty. Intentionally with the awareness of certainty is the maker to believe that the intended result will not be achieved without the result that is not intended, or according to the theory of will, if the maker also wants the effect or things that participate in influencing the occurrence of the result which can be described as a result. which cannot be avoided, then that person does it deliberately with the certainty of happening.

Intentionally with the awareness that it is very likely to occur / deliberately conditional / *dolus eventualis*, is to happen if the maker continues to do what he wants even though there are other possible consequences which he really does not want to occur, if even though the (totally undesirable) result is desired instead of stopping his action, then it happened deliberately. Two conditions are required for deliberate action: (1) The defendant is aware of the possibility of a consequence / condition which may constitute an offense, as evidenced by his intelligence which can be concluded, among others, from experience, education / society in which the defendant lives (2) His attitude towards this possibility should arise. , can be approved or dare to bear the risk, can be proven from the statements of the defendant around the act, make no effort to prevent unwanted consequences. Based on the explanation above, if a criminal actor knows that his act is against the law and deliberately violates the copyright protection of a film (cinematography) then he must be held accountable for the act before the law.

b) Negligence / negligence (*culpa*)

Negligence (*culpa*) lies between deliberate and coincidence, after all *culpa* is seen as lighter than intentional, therefore *culpa*, *culpa* is a *quasidelict* so that the penalty is reduced. *Culpa* includes (careful) thinking, lack of knowledge or direction, and the matter of *culpa* here clearly refers to a person's psychic abilities and therefore it can be said that *culpa* means not or lacking real suspicion (first the possibility of arising) the fatal consequences of that person's actions even though it's easy to do and because it should be done.

Culpa not only appears as an element of error in omission offenses, but also in other ordinary offenses (commissions), sometimes in the provisions of Articles 359 and 360 of the Criminal Code, the matter of action is not touched upon, thus implying that various acts are covered in it. The offense of omission, although only in relation to physical conditions with action, is that both involve letting go (not doing). Also in the case of *culpa* for ordinary offenses (commissions), a person's psychic abilities are not used, even though these abilities should be used.

D. Conclusion

The conclusions of this study can be described as follows:

1. The legal consequences of the abuse of the Bigo Live application in the cinema as a form of violation of the copyright protection of a film (cinematography) include legal consequences for the perpetrator and legal consequences for the copyright holder. The legal consequence for the perpetrator is that the perpetrator can be subject to criminal sanctions, either imprisonment or a fine for the offense he has committed without the right to broadcast films through the Bigo Live application. Meanwhile, the legal consequence for copyright owners is that they get legal protection for violations of their copyright that are misused by others.
2. Criminal liability for offenders who violate the copyright protection of a film (cinematography) is based on the existence of an element of error and deliberate action in committing a criminal act, the ability of the defendant to be responsible, there is no justification or excuse for the defendant in committing an infringement of copyright protection. film (cinematography).

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