

## Legal Protection of Copyright in Digital Film Piracy Cases in Indonesia (Case Study: Piracy of Keluarga Cemara Film)



Mochammad Nazmi Riyana Fikri<sup>1</sup>, Budi Santoso<sup>2</sup>

<sup>1,2</sup>Master of Law Study Program, Faculty of Law, Diponegoro University, Indonesia, 50241.

**ABSTRACT:** Technological advancements in the Globalization 4.0 era, along with the rise of the internet, are perceived as progress that brings both positive and negative consequences. One of the negative effects is the facilitation of crimes, particularly in providing unrestricted access to individuals to commit copyright violations on film works for personal gain. This issue is highlighted in the ruling of Case Number 762/Pid.B/2020/PN-Jmb. This study utilizes a normative juridical approach by examining literature or secondary data as the primary research material, reviewing laws and literature related to the topic under investigation. The research findings indicate that the case was resolved through the Jambi District Court (litigation), where Aditya Fernando Phasyah was found guilty of infringing the exclusive rights of PT Visinema Pictures, the copyright holder of the Keluarga Cemara film. He was sentenced to 1 year and 2 months of imprisonment and fined Rp. 500,000,000.00 (five hundred million rupiah).

**KEYWORDS:** Copyright; Piracy; Legal Protection.

### I. INTRODUCTION

The development of the internet in the era of Globalization 4.0 has provided significant convenience to the general public. One example of this is in the film industry, where in the past, people had to go to the cinema to watch newly released films. However, as times have progressed, many people now prefer to wait a little longer and watch these new films through various illegal streaming websites available on the internet.

Films in digital form are indeed very easy to duplicate, and the results are nearly indistinguishable from the original. The general public can then modify these duplicated works and distribute them worldwide at virtually no cost. The duplication of such films constitutes an act of piracy. One example of a case involving digital film piracy is the piracy of the film Keluarga Cemara, which was uploaded by Aditya Fernando Phasyah onto the illegal streaming site DuniaFilm21 without the permission of PT Visinema Pictures, the copyright holder of Keluarga Cemara. As a copyrighted work, a film is the result of human intellectual capabilities attached to its creator. Films are one of the objects of copyright protection under Law No. 28 of 2014. It is well understood that creating a work is not an easy task; therefore, others are obligated to respect the creation and recognize its value both socially and legally.

Copyright is an exclusive right that includes both economic and moral rights for the creator or copyright holder to benefit from the creativity they produce. Today, the majority of the Indonesian public still views copyright infringement in film piracy as neither important nor serious, as there are still people who consciously engage in this practice without realizing that they are violating the moral and economic rights of the creator or copyright holder.

#### *Problem Statement*

Based on the above issues, several key questions have been formulated:

1. How does copyright law protect against digital film piracy in accordance with Indonesian Law No. 28 of 2014?
2. How does the judge's ruling align with the imposition of penalties for film piracy conducted via internet sites by Aditya Fernando Phasyah?

### II. RESEARCH METHODS

The approach utilized in this research is a normative legal approach. A normative legal approach is conducted through the harmonization of applicable legal provisions with the norms and legal regulations that correlate with the implementation of these

## Legal Protection of Copyright in Digital Film Piracy Cases in Indonesia (Case Study: Piracy of Keluarga Cemara Film)

legal regulations in practice. In collecting data, the author employs sources from books, legal journals, and other literature related to this research, with secondary data supporting the effectiveness of this study.<sup>1</sup>

Data collection in this research is carried out through library research. Library research encompasses several processes, including the systematic identification of theories, literature discovery, and document analysis containing information pertinent to the research topic.<sup>2</sup> Data collection in library research involves activities such as searching, examining, and evaluating secondary data.<sup>3</sup> The data analysis method employs a descriptive-analytical approach, collecting detailed information through the depiction of observed phenomena, problem identification, and making comparisons or evaluations.

### III. DISCUSSION

#### A. *The Legal Protection of Copyright in Digital Film Piracy According to Indonesian Law Number 28 of 2014.*

The presence of law in society serves as a means to protect the rights and dignity of individuals or legal communities, as well as to provide boundaries for deviant behaviors within the community and the consequences that must be faced for such actions. This implies that Law No. 28 of 2014 on Copyright exists as a means of preventive legal protection to safeguard the rights of creators or copyright holders, ensuring that their creations or intellectual works are preserved and protected from various actions that could be detrimental.

Film piracy, through the duplication and dissemination of creative works by uploading them to illegal streaming sites accessible to the public for free, constitutes a violation of both moral and economic rights under copyright law.<sup>4</sup> Economic rights refer to the creator's ability to exploit the economic benefits of their copyright. Moral rights entail the obligation to attribute the creator's name when their work is used with the creator's permission. These moral rights assist creators in prohibiting any modifications or reductions of their works without the creator's consent. Copyright infringement represents a form of cybercrime, as the offenses are directed against the intellectual property rights of others in the digital realm. The acquisition of film works in Indonesia is often executed by reproducing the intellectual property of others without the consent of the copyright holder.

To ensure a sense of security and fairness for every creator regarding their creations, it is imperative that any acts of copyright infringement be addressed promptly by law enforcement agencies, providing both repressive legal protection and the enforcement of applicable laws. Law No. 28 of 2014 stipulates legal sanctions in Article 113, Paragraph 3, which states that any person who unlawfully infringes upon the economic rights of a creator in the publication, acquisition, distribution of a work or its copies, or the announcement of a work for commercial use, may be sentenced to a maximum of four years imprisonment and a fine of up to Rp. 1,000,000,000. Further, Article 113, Paragraph 4 establishes that any person who meets the criteria in Article 113, Paragraph 3 and commits such acts in the form of piracy shall be punished with a maximum prison sentence of ten years and a fine of up to Rp. 4,000,000,000.

#### B. *The Alignment of the Judge's Ruling in Sentencing for Film Piracy Committed by Aditya Fernando Phasyah via Internet Sites*

In Decision No. 762/Pid.B/2020/PN-Jmb, the panel of judges did not grant the entire indictment by the public prosecutor but only accepted the charge that Aditya Fernando Phasyah was subject to criminal penalties under Article 113, Paragraph 4 of Law No. 28 of 2014 on Copyright in conjunction with Article 55, Paragraph 1 of the Penal Code, as the second alternative charge.

In essence, the panel of judges, in delivering a verdict, must consider several factors, including legal, philosophical, and sociological considerations.

##### 1. Legal Considerations

Legal considerations represent one of the factors the panel of judges bases their decisions on, derived from the elements presented in the prosecutor's indictment during the trial and must align with the laws that have been established as mandatory components of any ruling.

Based on the judges' decision in case No. 762/Pid.B/2020/PN-Jmb, Aditya Fernando Phasyah Bin Sofyan Satria Putra has been proven, in a legally valid and convincing manner, to be guilty of committing the criminal act as outlined in Article 113, Paragraph (3) in conjunction with Article 9, Paragraph (1) letters a, b, e, and/or g of Law No. 28 of 2014 on Copyright in conjunction with Article 55, Paragraph (1) of the Penal Code. In the second alternative indictment, several elements of that article have been fulfilled, including:

##### a. Element of "Every Person"

The phrase "Every Person" in this context serves as a legal subject who acts as the perpetrator of the crime (dader). The legal subject here is the individual capable of being held accountable for their actions. Based on the facts presented during the trial, including witness testimonies and expert opinions, it is established that the

<sup>1</sup> Burhan Asofa, "*Metode Penelitian Hukum*", (Jakarta : Rineka Cipta, 2001), halaman 15.

<sup>2</sup> Mochammad Nazir, "*Metode Penelitian*", (Jakarta : Ghalia Indonesia, 2003), halaman 27.

<sup>3</sup> Suteki, Galang Taufani, "*Metodologi Penelitian Hukum : Filsafat, Teori, dan Praktik*" (Depok : Rajawali, 2020), halaman 217.

<sup>4</sup> Henry Soelistyo, "*Hak Cipta Tanpa Hak Moral*", (Jakarta : PT Raja Grafindo Persada, 2011), halaman 14.

perpetrator in this case is Aditya Fernando Phasyah bin Sofyan Satria Putra. Therefore, this element has been satisfactorily and convincingly fulfilled in accordance with the law.

b. Element of "Has Committed and Participated in the Act"

Based on the facts presented in the trial, including witness testimonies, expert opinions, and the defendant's statements, along with the evidence provided, it is evident that Aditya Fernando Phasyah, together with Robbi Bhakti Pratama, has committed the criminal act.

c. Element of "Without Rights and/or Without Permission from the Creator or Copyright Holder"

Based on witness testimonies, indications, the defendant's statements, and the evidence available in court, it is factual that Aditya Fernando Phasyah downloaded various film works from free film download sites and subsequently uploaded them to the "DUNIAFILM21" website since 2018. One of the works duplicated by Aditya Fernando Phasyah is the film *Keluarga Cemara*, owned by PT Visinema Pictures. Aditya Fernando Phasyah was unaware that the film *Keluarga Cemara* was the property of PT Visinema Pictures, and this act was conducted without rights or permission from PT Visinema Pictures, the licensed owner of the film *Keluarga Cemara*. Therefore, this element has been satisfactorily and convincingly fulfilled according to the law.

d. Element of "Violating the Economic Rights of the Creator as Stated in Article 9, Paragraph (1) Letters a, b, e, and/or g (which states that the Creator or Copyright Holder has economic rights to conduct a. publication of the Work, b. duplication of the Work in any form, e. distribution of the Work or its copies, and/or g. announcement of the Work) for Commercial Use"

Regarding this element, the legal subject involved has committed the crime as defined, specifically the duplication of a work in any form. Duplication refers to reproducing a creative work, which is considered a violation because it is done without the permission of the copyright holder. Duplicating a creative work for commercial use is also categorized as infringing upon the exclusive rights of the copyright holder, which are divided into moral and economic rights. Consequently, this element has been satisfied in accordance with the law.

### 2. Philosophical Considerations

In delivering a ruling, the judges do not solely base their decisions on matters presented during the trial and applicable laws, but also on the principles of truth and justice. In this regard, the judges' implementation of these principles requires not only knowledge but also extensive and good experience to address values that may be overlooked in society.

Philosophical considerations pertain to the aspects of truth and justice. In this case, the judges consider that the verdict rendered is an effort to rehabilitate the behavior of the individual through the process of sentencing, so that upon completing their sentence, the defendant may rectify their actions by refraining from committing any further crimes in any form, as well as expressing remorse for their actions to prevent recurrence.

From a criminological perspective, it is observed that Aditya Fernando Phasyah's non-compliance with the law is not merely due to a lack of knowledge regarding existing regulations but is also influenced by various external factors. One argument posits that Aditya Fernando Phasyah's ability to violate the law is attributable to the surrounding environment and social circle that encouraged him to commit the crime.

From a psychological perspective, it is essential for the judges to comprehend the psychological condition of the defendant, Aditya Fernando Phasyah, not only at the time he committed the crime but also regarding his psychological state after undergoing the complete legal process. This understanding relates to the impact or consequences faced by Aditya Fernando Phasyah following the judicial process.

In the context of positive law, achieving social justice through the judges' rulings can ensure fairness concerning the interests of the defendant, Aditya Fernando Phasyah, as well as his social environment. A decision by the judges that aligns with the principles of social justice will guarantee protection for Aditya Fernando Phasyah without undermining legal certainty.

Thus, the judges' interpretation that led to the imposition of a sentence of 1 year and 2 months of imprisonment, along with a fine of Rp. 500,000,000.00 (five hundred million rupiah), stipulating that if the fine is not paid, it will be replaced with a month of imprisonment, is considered an appropriate punishment for Aditya Fernando Phasyah.

### 3. Sociological Considerations

Sociological considerations emphasize the utility of the law for society. The judges' decision regarding Aditya Fernando Phasyah must not contradict the laws applicable in the community. The ruling must fulfill the fundamental values essential for minimizing societal unrest.

The imposition of a short-term prison sentence on Aditya Fernando Phasyah could have adverse effects, particularly concerning his future. At least two negative impacts that he must face upon returning to society after serving his sentence are dehumanization and stigmatization.

## Legal Protection of Copyright in Digital Film Piracy Cases in Indonesia (Case Study: Piracy of Keluarga Cemara Film)

### a. Dehumanization

Dehumanization refers to a mindset or behavior that diminishes and negates human dignity by excessively labeling someone negatively.

### b. Stigmatization

Stigmatization involves labeling someone with a negative mark for having experienced criminal punishment. This form of social punishment is often regarded as more severe than the sentence imposed by the court, as it tends to last much longer, potentially for a lifetime.

Based on the judges' considerations, one aspect that led to Aditya Fernando Phasyah not receiving maximum penalties, as stipulated in Article 113 Paragraph 3 of Law No. 28 of 2014, is his acknowledgment and remorse for his actions, along with a promise not to repeat such behavior.

The losses incurred from the piracy of the film *Keluarga Cemara* impact not only PT Visinema Pictures but also the Indonesian state due to the loss of potential tax revenue. One witness, Angga Dwimas, the CEO of PT Visinema Pictures, stated during the trial that the material and immaterial losses amounted to between 2.8 billion rupiah and 7 billion rupiah. Moreover, the Indonesian film industry is adversely affected by these immaterial losses, particularly regarding the fate of film workers. Therefore, the imposed fine appears inadequate compared to the losses experienced by PT Visinema Pictures or the state. However, this stands in contrast to the principle of *ultimum remedium*.

Generally, the principle of *ultimum remedium* emphasizes that Indonesian criminal law proclaims itself as a last resort for enforcing the law. This principle also embodies the objective that criminal sanctions should be directed towards the appropriate offenders, recognizing that perpetrators possess human rights, including the right to justice, the right to rehabilitation, and the right to life.

The application of the *ultimum remedium* principle should serve as a middle ground that benefits all parties involved PT Visinema Pictures as the victim, Aditya Fernando Phasyah as the perpetrator, and society at large. In enforcing the law regarding copyright violations, this principle aims to provide benefits to Aditya Fernando Phasyah as a perpetrator in terms of self-improvement. Given that criminal sanctions are severe and harsh, they should be considered a last option when other sanctions (civil sanctions) are deemed insufficient.

As stated by the author in the discussion above, the panel of judges in Decision Number 762/Pid.B/2020/PN-Jmb imposed a criminal penalty on the defendant Aditya Fernando Phasyah for 1 (one) year and 2 (two) months, along with a fine of IDR 500,000,000.00 (five hundred million rupiah), with the stipulation that if the fine is not paid, it will be replaced with an imprisonment sentence of 1 (one) month. This decision was made in accordance with juridical, philosophical, and sociological considerations regarding legal certainty, legal utility, and justice in the context of societal life in Indonesia.

## IV. CONCLUSION

Law Number 28 of 2014 serves as a preventive legal protection effort to safeguard the rights of creators or copyright holders, ensuring that their creations or works are preserved and protected from various actions that may cause harm. One such action is the procurement and piracy of films, which violates the exclusive rights of the creator, divided into moral rights and economic rights. Law Number 28 of 2014 imposes penalties on anyone violating these exclusive rights. Article 113, Paragraph 3 states that violations of the exclusive rights of the creator are punishable by imprisonment for a maximum of 4 years and a fine of up to IDR 1,000,000,000.00, while Article 113, Paragraph 4 states that violations of the exclusive rights of the creator in cases of piracy are punishable by imprisonment for a maximum of 10 years and a fine of up to IDR 4,000,000,000.00.

In Decision Number 762/Pid.B/2020/PN-Jmb, the panel of judges considered several factors in imposing the criminal penalty. First, the juridical consideration aligned with statutory regulations, wherein Aditya Fernando Phasyah violated Article 113, Paragraph 3 of Law Number 28 of 2014 on Copyright, fulfilling the elements of the article, including the elements of "every person," "having committed and participated in the act," "without rights and/or without the permission of the creator or copyright holder," and "committing violations as described in Article 9, Paragraph 1, letters a, b, e, and g." The second consideration was the philosophical aspect, requiring the conscience of the judges in delivering the decision; Aditya Fernando Phasyah acknowledged and regretted his actions, promising not to repeat them. The judges also took into account the psychological aspect of Aditya Fernando Phasyah, who violated the law not only due to ignorance of regulations but also due to factors related to his social environment. The final consideration was sociological, emphasizing the legal utility for society. The judges must also consider the community factor, namely the environment in which the law applies, along with the interests of Aditya Fernando Phasyah, who would also suffer negative consequences upon returning to society after serving his prison sentence, facing dehumanization and stigmatization. These three considerations led to the imposition of a criminal penalty on the defendant Aditya Fernando Phasyah for 1 (one) year and 2 (two) months, along with a fine of IDR 500,000,000.00 (five hundred million rupiah), with the provision that if the fine is not paid, it will be replaced with an imprisonment sentence of 1 (one) month, reflecting the

## Legal Protection of Copyright in Digital Film Piracy Cases in Indonesia (Case Study: Piracy of Keluarga Cemara Film)

juridical, philosophical, and sociological considerations that fulfill legal certainty, legal utility, and justice in societal life in Indonesia.

### V. RECOMMENDATIONS

Based on the conclusion drawn from the panel of judges' decision in the copyright infringement case against Aditya Fernando Phasyah, which violated Law Number 28 of 2014, several recommendations can be made:

**Enhancement of Public Legal Awareness Regarding Copyright.** In this regard, copyright violations, particularly in the form of film piracy, often occur due to a lack of public knowledge about the relevant legal provisions. Therefore, more intensive education should be implemented through campaigns, seminars, or outreach programs across various societal layers regarding copyright and the legal penalties for violations.

**Restorative Approaches in Law Enforcement.** The judges' considerations reflect philosophical and sociological elements that emphasize the restoration of the defendant and the social impact following the imprisonment period. As a further step, restorative justice approaches could be further developed in cases of copyright infringement, focusing on repairing relationships between the infringer, the creator, and society, while encouraging compensation or restitution for affected creators.

**Improvement of Surveillance Technology and Prevention of Piracy.** Film and other works are often pirated through digital media. Therefore, the development of more sophisticated technology to detect and prevent the distribution of pirated content, such as the use of watermarking, blockchain, or digital monitoring, needs to be strengthened. The government and copyright holders can collaborate with digital platforms to reduce the incidence of violations.

### REFERENCES

- 1) Asofa, B. (2001). *Metode Penelitian Hukum*. Jakarta: Rineka Cipta.
- 2) Nazir, M. (2003). *Metode Penelitian*. Jakarta: Ghalia Indonesia.
- 3) Suteki, G. T. (2020). *Metodologi Penelitian Hukum : Filsafat, Teori dan Praktik*. Depok: Rajawali Press.
- 4) Soelistyo, H. (2011). *Hak Cipta Tanpa Hak Moral*. Jakarta: PT Raja Grafindo Persada.
- 5) *Peraturan dan Keputusan*
- 6) *Undang Undang Nomor 28 Tahun 2014 Tentang Hak Cipta*
- 7) *Undang Undang Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik*
- 8) *Putusan Nomor 762/Pid.B/2020/PN-Jmb*



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.