

Copyright Limitations within Film Review Content on YouTube Under Law Number 28 of 2014

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Abstract

The development of technology makes access to information and communication easier. YouTube is a video sharing platform that widely used to share information about the world of entertainment, including films. This research aims to examine the suitability of video review content uploaded on social media platforms with the principle of copyright limitations as stipulated in the Copyright Act. This research uses normative juridical method with statutory approach and concept approach. The results show that video review content can meet the principle of copyright limitation on the condition that it does not activate the monetisation feature provided by YouTube. The monetisation feature is a form of commercialisation that violates copyright limitations in accordance with the provisions stipulated in the Copyright Act.

Keywords

Film Review Content, Monetization, Copyright Limitation

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Abstrak

Perkembangan teknologi membuat akses informasi dan komunikasi semakin mudah dilakukan. Termasuk dalam media informasi dan komunikasi merupakan internet serta media sosial. *YouTube* sebagai media sosial untuk berbagi video merupakan platform yang ramai digunakan untuk saling berbagi informasi mengenai dunia hiburan, salah satunya film. Penelitian ini bertujuan untuk mengkaji kesesuaian konten *review* film yang diunggah di platform *YouTube* dengan prinsip pembatasan hak cipta sebagaimana yang diatur dalam Undang-Undang Hak Cipta. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan undang-undang dan pendekatan konsep. Hasil penelitian menunjukkan bahwa konten *review* video dapat memenuhi prinsip pembatasan hak cipta dengan syarat tidak mengaktifkan fitur monetisasi yang disediakan oleh *YouTube*. Fitur monetisasi merupakan bentuk komersialisasi yang melanggar pembatasan hak cipta sesuai dengan ketentuan yang diatur dalam Undang-Undang Hak Cipta.

Kata kunci

Konten *Review* Film, Monetisasi, Pembatasan Hak Cipta

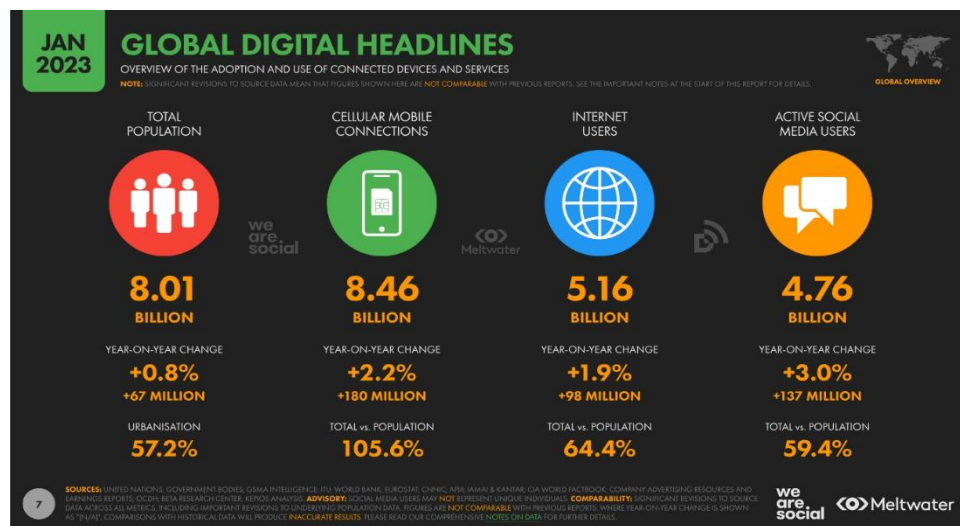
Introduction

Humans have entered the digital era, where almost all aspects of life use digital versions. The development of information and communication technology has changed the landscape of human life that was originally only done conventionally, can now be done digitally. Information can be accessed anytime and anywhere in just seconds. Communication can be done regardless of distance, region, and time difference.

Starting with the need for humans to communicate with each other while being separated by distance, a lot of research was done to fulfil this need. Scientists are competing to find the latest inventions, starting from radio, television, computers, and successively until the invention of the internet. The invention of the internet became a milestone of the digital revolution until the creation of gadgets, a type of technological advancement that allows

humans to more easily access information and communicate.¹ It is evident that the internet is always growing day by day. The figure below (Figure 1) shows the growth of internet users in the world, which is quoted from an infographic released by Data Reportal. Internet users are growing to reach 5.16 billion worldwide.

Figure 1. Statistics of internet users in the world



Source: datareportal.com

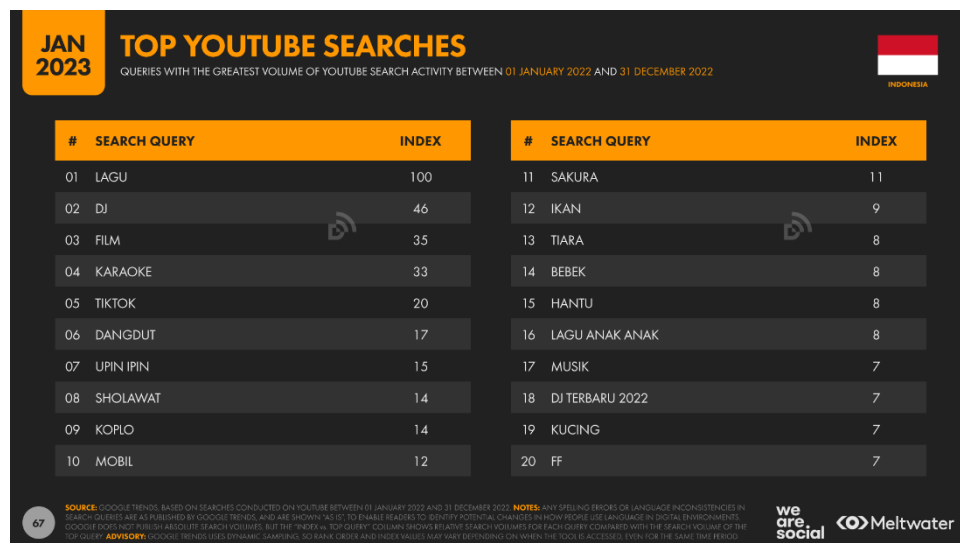
The high usage of digital sites is based on several reasons besides accessing information and communication, such as uploading work and sharing it. Sites such as YouTube are examples of user-generated content (UGC) where users are free to create and upload their own content.² In addition to being a video-sharing site for entertainment, many YouTube users utilise the site to share and receive information. One form of information that is widely shared and received is titled video review, where a person makes a video about a certain media or object which he then analyses and/or comments on. Video review have proven to be of interest to many viewers because they are an informative summary for anyone before going to the original media, where someone will review something that is not theirs by providing comments and/or judgements in the form of a video.

¹ Zukhrufillah, Irfani. 2018. 'Gejala Media Sosial Twitter Sebagai Media Sosial Alternatif'. *Al-I'lam: Jurnal Komunikasi Dan Penyiaran Islam* 1 (2): 102–9. <https://doi.org/10.31764/jail.v1i2.235>.

² Earnshaw, Rae. 2017. *State of the Art in Digital Media and Applications*. Cham: Springer International Publishing. <https://doi.org/10.1007/978-3-319-61409-0>.

During its development, the video-sharing site YouTube, which falls into the category of social media, has created various benefits for its users.³ YouTube has contributed to expressing the ease of sharing and receiving digital information expressively and freely. This is not only among family and close friends but also on a global scale, including strangers. This trend of video review content on YouTube has given rise to many similar channels that focus on a single topic, one of which is film. Many YouTube users intentionally search for the keyword "film" to get both the release of the film itself and a review of it before watching it live. Although the keyword "film" is not very much searched, it can be said to be quite popular because it ranks 3rd in searches on YouTube, this can be seen in Figure 2 below.

Figure 2. YouTube keyword statistics in Indonesia



Source: datareportal.com

As the number of current YouTube users continues to increase, YouTube's partnership feature now allows channels that meet the requirements to apply for partner cooperation through the YouTube Partner Program (YPP) which allows monetisation.⁴ The monetisation feature itself is a feature where YouTube will provide advertisements from related stakeholders into videos belonging to partnering channels. This is one of the fields

³ Chandra, Edy. 2018. 'YouTube, Citra Media Informasi Interaktif atau Media Penyampaian Aspirasi Pribadi'. *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 1 (2): 406–17. <https://doi.org/10.24912/jmishumsen.v1i2.1035>.

⁴ Wibowo, Hamid Sakti. 2020. *Cara Express Menjadi YouTuber Sukses*. Semarang: Tiram Media.

of economic income for partners. The amount of video review content is a very lucrative opportunity for many channels to partner with YouTube by uploading related videos.

However, it's important to note that most video review content on YouTube focuses on other people's copyrighted works, such as films, music, paintings, and games. These works have copyrights attached to them and their creators. Copyright itself is one of the important components of civil law relating to creativity and intellectual property,⁵ so things like this can be sensitive for some parties. Referring to Law Number 28 of 2014 on Copyright Article 1 point 1, copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realised in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.

When a video review uses someone else's copyrighted work such as a film, the channel owner should pay attention to copyright and the laws that govern it. This is because problems can arise when the creator and/or copyright holder has strict rules regarding the use of the work. When the use and utilisation of other people's copyrighted works without regard to copyright occurs massively like this, then people will increasingly not understand that their actions can be categorised as violations of the law. The original creator may suffer the loss of not being recognised and/or compensated when his/her copyrighted work is disseminated and used unlawfully. So, it can be said that the video reviewer ignores the copyright of a copyrighted work that they review. It should be understood that copyright is a very important and high-value element for the creator.⁶

However, the problem is when the use of copyrighted works exceeds what is required in copyright law. Unauthorised use of a copyrighted work is allowed if it is within the limits

⁵ Ramli, Tasya Safiranita, Ahmad M. Ramli, Rika Ratna Permata, Ega Ramadayanti, and Rizki Fauzi. 2020. 'Aspek Hukum Platform E-Commerce dalam Era Transformasi Digital'. *Jurnal Studi Komunikasi dan Media* 24 (2).

⁶ Naqsyabandi, Andrie Ayuni, Muhamad Amirulloh, and Tasya Safiranita Ramli. 2023. 'Penerapan Hak Cipta Bundle of Rights Dalam Putusan Mahkamah Agung Nomor 41PK/Pdt.Sus-HKI/2021 Mengenai Pelanggaran Hak Cipta Atas Cover Lagu "Lagi Syantik" Antara Nagaswara Dan Gen Halilintar'. *Innovative: Journal of Social Science Research* 3 (3): 2787–2799.

required in Article 44 of Law Number 28 of 2014 on Copyright. However, the activation of the monetisation feature indirectly becomes another goal besides the things allowed in copyright limitations. So, does the film review content qualify the concept of copyright limitations or not? Furthermore, does the monetisation feature provided by YouTube fall under the term commercialisation as intended in the Copyright Act?

Research Method

The type of research used is normative juridical, where the author in researching based on existing legal rules also sees the facts that occur.⁷ In this research, the author will examine whether the content of film review on YouTube is included in fair use under copyright law in Indonesia. In this research, the author also uses data obtained from interview activities as complementary data, not the main data. The research approach taken is to use a statute approach and conceptual approach. The research is conducted by applying theoretical concepts in analysing phenomena that occur related to the research topic. The technique of retrieving legal materials in this research was carried out through documentation techniques. Documentation is done by collecting and recording files or documents that have to do with the material discussed.⁸ Legal materials are obtained from primary legal materials and secondary legal materials obtained through literature studies. Primary legal materials in the form of The Berne Convention for the Protection of Literary and Artistic Works and Law Number 28 of 2014 on Copyright, while secondary legal materials in the form of literature and applicable laws on copyright limitations and their implementation in digital sites in Indonesia based on copyright law as well as the results of interviews conducted via text. Legal materials that have been obtained will then be analysed qualitatively by reducing legal materials to fit the topic under study, and presenting them descriptively, then drawing conclusions based on legal materials that have been presented inductively.

⁷ Sinaga, Masyanti, Achmad Busro, and Dewi Hendrawati. 2016. 'Tinjauan Yuridis Atas Penggunaan Klausula Eksonerasi dalam Perjanjian Baku Perusahaan Jasa Pengiriman Barang Oleh PT Citra Van Titipan Kilat (TIKI)'. *Diponegoro Law Journal* 5 (2): 1–12.

⁸ Soekanto, Soerjono. 2014. *Pengantar Penelitian Hukum*. 3rd ed. Jakarta: Universitas Indonesia.

Result and Discussion

Intellectual property rights are a form of ownership rights to copyrighted works that involve the effort of thought. The creation of a work must involve effort, time, energy, and a long thought process-so the creator's rights to his or her work must be protected. The main purpose of protecting intellectual property rights is to honour creators who have translated their ideas into a copyrighted work.⁹

Copyright is one form of intellectual property right. Although copyright is one form of intellectual property rights, it is different from other forms of intellectual property rights that are constitutive; copyright is declarative. The declarative nature means that a creator automatically get legal protection for his work as soon as it is completed.¹⁰

Global Copyright Law and Indonesian Copyright Law

The Paris Convention for the Protection of Industrial Property, enacted in 1883, was the starting point in the formation of international copyright law. The Convention generally governs a wide range of industrial property aspects, including patents, trademarks, industrial designs, copyrights, service marks, trade names, geographical indications, and prevention of unfair competition. By providing a structured and standardised framework on a global scale, the Convention creates an important foundation for the protection of creative works and intellectual property.

In the following years, in 1886, The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) was established, which became a key factor in the development of international copyright arrangements. The Berne Convention specifically covers the protection of artistic and literary works, as well as the rights attached to their creators. The Berne Convention is an attempt to provide a means for creators to obtain protection for their works on an international scale. The enactment of the Berne Convention

⁹ Swari, P. Dina Amanda, and I Made Subawa. 2018. 'Perlindungan Hukum Lagu yang Diunggah Tanpa Izin Pencipta di Situs YouTube'. *Kertha Semaya: Journal Ilmu Hukum* 6 (10): 1–15.

¹⁰ Hasnadiba, Daria. 2023. 'Perlindungan Hukum Terhadap Pencipta Lagu Atas Perubahan Lirik Tanpa Izin Pemegang Hak Cipta di Aplikasi TikTok'. Sarjana, Bandar Lampung: Universitas Lampung.

has increased global understanding of the importance of copyright recognition and protection. The Berne Convention endeavours to raise the minimum standards of protection that member states should provide to creators and their works.¹¹ It can be said that the Berne Convention acts as an international standard in the regulation of copyright law.

Copyright regulation in Indonesia first adopted the Dutch colonialism heritage law, namely Auteurswet 1912 Staatsblad No. 600. The Netherlands is a country with a civil law legal system, as well as Indonesia. Copyright is referred to as auteursrecht (Dutch) and the interests of the creator are more important than the copyrighted work in a country with a civil law legal system.¹² Auteursrecht emphasises the creator and the concept of moral rights that are inherent in the creator and last forever. Moral rights are the basis of copyright principles in continental European countries, including the Netherlands and the colonies of Indonesia.¹³ The concept of moral rights is then regulated in Law Number 28 of 2014 on Copyright Article 5, Article 6, and Article 7.

After independence, Auteurswet 1912 Staatsblad No. 600 was revoked by Law No. 6 of 1982 on Copyright because it was no longer in accordance with the needs and principles of national law. Through Presidential Decree Number 18 of 1997, Indonesia ratified The Berne Convention for the Protection of Literary and Artistic Works. Until now, the Indonesian government has passed the copyright law by undergoing several amendments and currently in force Law Number 28 of 2014 on Copyright. Some of the amendments made to the copyright law shows a commitment to copyright protection. This proves that

¹¹ Schow, Ethan. 2023. 'Updating the Berne Convention for the Internet Age: Un-Blurring the Line Between United States and Foreign Copyrighted Works'. *Brigham Young University Journal of Public Law* 37 (2): 385–413. <https://digitalcommons.law.byu.edu/jpl/vol37/iss2/7>.

¹² Jened, Rahmi. 2017. *Interface Hukum Kekayaan Intelektual dan Hukum Persaingan: Penyalahgunaan HKI*. Jakarta: Rajawali Pers.

¹³ Nurusyifa, Dina. 2023. 'Prinsip Deklaratif dalam Regulasi Hak Cipta di Indonesia'. *UNES Law Review* 6 (2): 6361–67.

the Indonesian government is actively adjusting copyright law to technological developments and global trends.¹⁴

1. Principles of Copyright

Copyright has the following principles in its regulation:

- a. Protection is for ideas that have taken form. This means that copyright protection is granted when a copyrighted work has taken concrete form and its creator can be identified.¹⁵
- b. Copyright arises automatically. That is, protection is granted from the first publication of the copyrighted work. This is the meaning of the nature of copyright, which is declarative.¹⁶
- c. It does not require record keeping or formalities. Copyrighted works do not need to be registered to obtain copyright protection.¹⁷
- d. Copyright as a creation is a legally recognised right that must be separated and must be distinguished from the physical creation.¹⁸

¹⁴ Liu, Fanny, Jennifer Kayla Esfandiary, Salsa Putri Nabila, Ferdinandus Kaki Rangga, M. Ivan Julianto, and Mustaqim. 2024. 'Perlindungan Hukum Terhadap Hak Cipta Buku yang Dicitak Secara Illegal dan Diperjual-Belikan Secara Massal'. *Jurnal Pendidikan Tambusai* 8 (1): 5488–97.

¹⁵ Nugroho, Eko Rial, and Wahyu Priyanka NP. 2019. 'Tanggung Gugat Pemegang Hak Cipta Terhadap Perbuatan Melawan Hukum Pelanggaran Hak Cipta'. *JIPRO: Journal of Intellectual Property* 2 (2): 23–37. <https://doi.org/10.20885/jipro.vol2.iss2.art3>.

¹⁶ Sugianto, Charnia Pandey, Karel Yossi Umbroh, and Roy V. Karamoy. 2021. 'Tinjauan Yuridis dalam Mempublikasikan Foto yang Mengandung Hak Cipta Tanpa Izin Ditinjau dari Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta'. *Lex Privatum* 9 (3): 65–75. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33247>.

¹⁷ Fila Asmara, Callesta Aydelwais De, Zaenal Arifin, and Fahrudin Mubarak Anwar. 2023. 'Penyelesaian Sengketa Hak Cipta Antara Pencipta Lagu dan Penyanyi'. *Jurnal USM Law Review* 6 (2): 860–72. <https://doi.org/10.26623/julr.v6i2.7499>.

¹⁸ Ahmad, Rafliyanto, Muthia Cherawaty Thalib, and Waode Mustika. 2023. 'Tinjauan Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta dan Hukum Islam Mengenai Kedudukan Hak Cipta'. *Jurnal Ilmu Sosial, Humaniora Dan Seni* 1 (3): 496–503. <https://jurnal.minartis.com/index.php/jishs/article/view/814>.

- e. Economic benefits. The purpose of copyright law is to stimulate the emergence of creations that can provide economic benefits to the creator.¹⁹
- f. Copyright is not an absolute right, but an exclusive right; that is, only the creator has the right to his work; unless it is authorised by him to be used by other parties.²⁰
- g. Freedom of contract. Creators and/or copyright holders are free to determine the content of agreements related to their work.²¹
- h. Enforcement. Creators and/or copyright holders can take legal action to challenge unauthorised use of their works. Although a work does not need to be registered to obtain copyright protection, it would be better if it is registered with the Director General of Intellectual Property Rights to strengthen evidence in case of a dispute.²²

Copyright as an exclusive right authorises the creator to regulate the use of his work. Included in this authority allows the creator to impose restrictions on the use and utilisation of his/her work by the public, especially unauthorised use and utilisation. However, there is an important point that needs to be underlined that copyright is not a right to monopolise. Copyright is a right to prevent unauthorised use and utilisation by other parties.²³ The

¹⁹ Suriyadi. 2020. 'Pelanggaran Hak Ekonomi Terhadap Pemanfaatan Lagu yang Terdaftar oleh Konten Kreator YouTube'. *El-Iqtishady* 2 (2): 33–47.

²⁰ Syauqi, M. 2023. 'Analisis Perlindungan Hak Cipta Terhadap Asset Graphic Design pada Media Internet Dalam Perspektif Haq Ibtikar'. Undergraduate Thesis, Banda Aceh: Universitas Islam Negeri Ar-Raniry Banda Aceh.

²¹ Dahan, Lovelly Dwina. 2021. 'Perlindungan Hukum Terhadap Pemegang Hak Cipta Berdasarkan Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta'. *Eksekusi: Journal of Law* 3 (2): 102. <https://doi.org/10.24014/je.v3i2.13358>.

²² Wulandari, Almira Sheila, and Febri Jaya. 2021. 'Penggunaan Karya Cipta Lagu dalam Konten Video Kreatif TikTok: Bagaimana Perlindungan dan Upaya Hukumnya?' *Jurnal Komunitas Yustisia* 4 (3): 762–72. <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/41982>.

²³ Ujang Badru Jaman, Galuh Ratna Putri, and Tiara Azzahra Anzani. 2021. 'Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital'. *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 3 (1): 9–17. <https://doi.org/10.52005/rechten.v3i1.22>.

purpose of the existence of copyright is to give credit to a copyrighted work so that it can increase the value of its levels and encourage the attraction to be developed further.²⁴

2. Principles of Copyright Limitations

Although copyright is an exclusive right attached to the creator, but there are restrictions in the enactment of copyright. In Law Number 28 of 2014 on Copyright Article 1 number 1 stipulates that, copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realised in a tangible form without reducing the restrictions in accordance with the provisions of laws and regulations.

Article 44 paragraph (1) also provides more specific rules on copyright limitations. The use, taking, duplication, and/or alteration of a work and/or related rights product in whole or in substantial part shall not be deemed an infringement of copyright if the source is mentioned or fully stated for the purpose:

- a. education, research, writing scientific papers, preparing reports, writing criticism or reviewing a problem without harming the reasonable interests of the creator or copyright holder;
- b. security and the administration of government, the legislature and the judiciary;
- c. lectures that are for educational and scientific purposes only; or
- d. a performance or performance that is free of charge provided that it does not prejudice the reasonable interests of the creator.

Copyright Limitations and Human Rights

Copyright is one form of protection of human rights. Law Number 39 of 1999 on Human Rights Article 1 number 1 stipulates that:

"Human rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected

²⁴Mahila, Syarif. 2018. 'Keberadaan Hak Kekayaan Intelektual Seni Batik Jambi di Kota Jambi'. *Jurnal Ilmiah Universitas Batanghari Jambi* 18 (3): 565–74.

by the state, law, government, and everyone for the sake of honour and protection of human dignity."

One form of human rights is the right to self-development, which is regulated in the third part of Law Number 39 of 1999 on Human Rights. Article 13 stipulates that:

"Everyone has the right to develop and benefit from science and technology, art and culture in accordance with human dignity for the welfare of his or her person, nation and mankind."

Every person who produces an intellectual work has the right to legal protection, in line with the provisions of Article 27 of The Universal Declaration of Human Rights:

- 1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- 2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Basically, copyright limitations aim to provide a balance between individual rights with the rights of society.²⁵ The current copyright protection system is directed to create a balance between the interests of individuals with the interests of the general public. The balance is sought through the granting of exclusive rights for creators of intellectual works while maintaining the interests of society through the provision of restrictions on copyright protection.

1. Copyright Limitations Parameters Viewed from Utilitarianism Theory

Jeremy Bentham initiated the utilitarianism theory which argues that the purpose of law is to provide the greatest benefit and happiness to as many people as possible. Therefore, utilitarianism theory places expediency as the main purpose of law. The measure is the greatest happiness for as many people as possible. In this case, happiness and benefit are

²⁵ Kastowo, C. 2017. 'Rekonstruksi Konsep Fungsi Sosial Hak Cipta Sebagai Hak Milik'. *Justitia et Pax* 31 (2): 1–10. <https://doi.org/10.24002/jep.v31i2.1341>.

defined as the same. The judgement of whether the law is fair or not depends on whether the law can provide happiness to humans. The greater happiness of the greatest number.²⁶

Basically, the use of a work does not violate copyright law if the source is clearly stated by fulfilling several requirements. The general requirement is that as long as the act does not harm the exclusive rights owned by the creator, then the act can be considered lawful. When looking at copyright limitations from the perspective of utilitarianism theory, the idea is centred on the idea that copyright law is designed to maximise the happiness and welfare of society as a whole.

Copyright limitations from the perspective of utilitarianism theory emphasise the balance between the rights of the creator and the public interest. This balance can be achieved by having a limit on the duration of copyright protection and the scope of copyright protection, which allows free public use of the copyrighted work after a certain period of time or under certain circumstances. This perspective ensures that the benefits of the copyright work are widely shared and that the public can access the copyright work.²⁷

Film Review Content Reviewed from Indonesian Copyright Law

Actually, the film review activity has been around for a long time and was initially limited to reviews through writing only with the aim of criticism. The first film review was written in The New York Times newspaper in 1896.²⁸ As technology developed and film became a common entertainment medium, many media outlets began to review films more frequently. At first, these reviewers were journalists who were transferred from the sports section or other sections of the newspaper. However, soon film reviewers emerged who were dedicated to providing related coverage. Up to this point, film review has focused on criticism. Once film review came to television and were not just limited to written media, things started to change. Instead of just criticism, reviews also began to discuss the focus of the film: Is the

²⁶ Jeremy, Bentham. 1843. The Works of Jeremy Bentham. Edited by John Bowring. Vol. 3. Indianapolis: Liberty Fund, Inc. <https://oll.libertyfund.org/titles/bowring-the-works-of-jeremy-bentham-vol-3>.

²⁷ Bottis, Maria Canellopoulou. 2018. 'Utilitarianism v. Deontology: A Philosophy for Copyright'. Corfu.

²⁸ Frey, Mattias. 2014. The Permanent Crisis of Film Criticism: The Anxiety of Authority. Amsterdam: Amsterdam University Press. https://doi.org/10.26530/OAPEN_576930.

film enjoyable? Is the film worth watching? Technology continued to evolve and television was not the pinnacle of mass media anymore after the advent of the internet. The internet made film review more democratic for the public. Anyone who has an opinion about a film can make it public far more widely with anyone who wants to see it-or even those who have no plans to see it.²⁹

Basically, the use of a work does not violate copyright law if the source is clearly stated by fulfilling several requirements. The general requirement is that as long as the act does not harm the exclusive rights owned by the creator, then the act can be considered lawful. In the opinion of Risa Amrikasari, an Intellectual Property Rights Consultant at the Intellectual Property Advisory Services (IPAS) Institute, the activity of reviewing films and getting rewards from them has no relation to copyright issues. She limits the scope of a film review to writing, so it has nothing to do with copyright even if the review is published in commercial media - or not. Film review can potentially infringe copyright if they use official film posters or, if done digitally and online, use clips from films without the permission of the creator or copyright holder.³⁰ This opinion is valid if the review is done in writing and does not display a direct part of the work being reviewed. However, the problem is when the review is done in the form of a video and directly displays part of the copyrighted work-specifically the film-reviewed.

In accordance with positive law, it is permissible to use works without the author's permission. A film review is generally done by people dedicated to doing so. YouTube as the most popular video sharing platform is a place for people to share their reviews of things, including films. As users grew, YouTube turned into a site that provides commercialisation for users. Some channels can now enable YouTube's monetisation feature to earn revenue

²⁹ New York Film Academy. 2014. 'History of Smackdown: The Evolution of Film Criticism'. New York Film Academy. 14 May 2014.

³⁰ Amrikasari, Risa. 2019. 'Jenis-Jenis Ciptaan yang Terdapat dalam Suatu Karya Film'. Hukumonline.Com. 15 March 2019.

from uploaded content. There are also many channels that specifically focus on movie review content with the aim of earning income by activating the monetisation feature provided.

1. YouTube Monetisation

YouTube's monetisation feature can be categorised as a form of commercialisation because commercialisation is the process of creating ideas, products, or services into market commodities that aim to make a profit.³¹ According to the *Kamus Besar Bahasa Indonesia*, commercialisation means the act of making something into source of income.

Monetisation is nothing new. For a long time, free TV and radio broadcasts have been funded by advertising. Furthermore, print mass media rely on print advertising in addition to paid services. Some key points in the concept of monetisation:³²

- a. Monetisation turns a non-generating thing into a source of income.
- b. Monetisation often gives rise to new methods of finding sources of revenue.
- c. Website owners monetise their sites by providing space for advertisers.
- d. Extended monetisation by selling user data to the highest bidder.

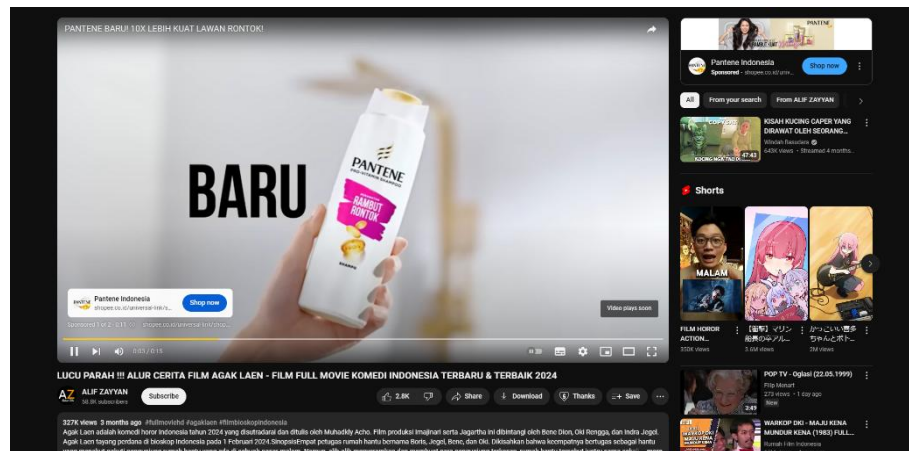
Referring to YouTube's official help page, users need a minimum of 4,000 watch hours in the last 12 months and have a minimum of 1,000 subscribers to join the YouTube Partner Program (YPP) to finally activate the monetisation feature for each content in their channel. In addition to ads at the beginning of a video, YouTube also offers ad placements in the middle of videos that are 8 minutes or longer.

YouTube monetisation involves turning video content that is free in nature into a commodity that can generate revenue by displaying ads. This process involves turning non-revenue-generating content into a revenue-generating asset, and such activity is key to commercialisation.

³¹ Kenton, Will. 2020. 'What Is Commercialization, Plus the Product Roll-Out Process'. Investopedia. 30 December 2020. <https://www.investopedia.com/terms/c/commercialization.asp>.

³² Ganti, Akhilesh. 2024. 'Monetize: What It Means, How It Works, Types, and Examples'. Investopedia. 21 February 2024.

Figure 3. The adverts that YouTube shows before the video starts and the banner adverts on the right



Source: YouTube app screenshot

2. Film and Substantial Part of Film

In accordance with Article 40 paragraph (1) of Law Number 28 of 2014 on Copyright, protected works include creations in the fields of science, art, and literature, one of which is books, pamphlets, pamphlets of published works, and all other written works as well as cinematographic works. Films played in cinemas are included in cinematographic works and are protected by copyright as stated in Law Number 28 of 2014 on Copyright Article 40 paragraph (1) letter m. In the explanation of the article, it is stated that cinematographic works are creations in the form of moving images, among others: documentary films, advertising films, reportage, or story films made with scenarios, and cartoon films. Cinematographic works can be made on celluloid tapes, video tapes, video discs, optical discs, and/or other media that allow them to be shown in cinemas, big screens, television, or other media.

Film is a medium of artistic expression for its creators to convey their ideas through a series of storylines. As a form of creative art, films have the ability to communicate messages to the public. Basically, films and other cinematographic works consist of a collection of copyrights. The screenplay, pictures, music, videos, and so on that make up a film are protected by copyright exclusively.³³

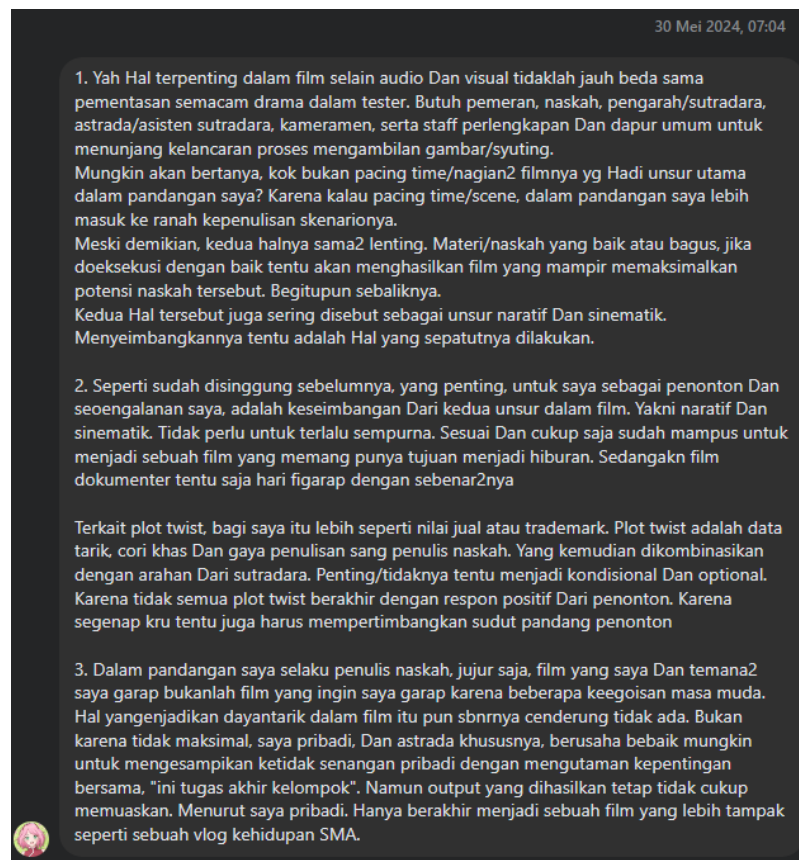
³³ Amrikasari, Risa. 2019. 'Jenis-Jenis Ciptaan yang Terdapat dalam Suatu Karya Film'. Hukumonline,Com. 15 March 2019.

As a form of cinematographic work, film has several elements in it. To get a better understanding of film elements, an interview was conducted with Lailatul Mukjizah. She is a student of Universitas Negeri Yogyakarta in Educational Technology Study Programme who has occupied several essential positions in filmmaking, such as script writer, director, production unit, script continuity, artistic team, and makeup wardrobe. According to the interview results, there are two main elements in the film, namely narrative elements and cinematic elements. Narrative elements consist of story, plot, characters, purpose, conflict, and time and space. Meanwhile, cinematic elements consist of mise en scene which contains everything that appears on the screen, such as actors, makeup, wardrobe, artistry, lighting, cinematography which contains shot types, camera movements, etc. (Interview conducted on Tuesday, 4 June 2024). In some of these film elements, there must be one that is the most important and differentiates it from other films, or what can be called a substantial part.

The meaning of the word substantial in the *Kamus Besar Bahasa Indonesia* is core; real - and according to the explanation of Article 44 paragraph (1) of Law Number 28 Year 2014, the word substantial means the most important and distinctive part that characterises the work. Substantial part refers to any copied or communicated part of the copyright work. A very small amount, but a distinguishing part of a work can be considered a substantial part.

Until now, Law Number 28 of 2014 on Copyright has not explained in more detail about the substantial part of a copyrighted work other than mentioning that the substantial part is an important part and characterises the work. In the context of the substantial part of the film, the author seeks to provide a deeper understanding of the substantial part by conducting interviews. In Lailatul Mukjizah's opinion, the whole film is the substantial part. However, in general, the storyline is the most important because films are often judged by their plots. Even by laypeople. Meanwhile, other elements are often only considered in detail by people who are focused on that field.

Figure 4. One of the informants' opinions



Source: Screenshot of chatbox with informant

To get a better understanding of the substantial part of the film, interviews have been conducted with three other informants:

- a. Adam Dwi Cahyono is an alumnus of Universitas Jember in Television and Film Study Programme. He has experience in filmmaking since vocational school, specifically in the artistic department. In his opinion, all film elements are important because they are interrelated with each other. However, he also believes that the artistic part of the film can be the most substantial one because it provides a place where other film elements can live in (Interview conducted on Wednesday, 29 May 2024).
- b. Syifa Talitha Firdausi is a student of Universitas Multimedia Nusantara Jakarta. She is working on an animated film for her final project and has the role of director in the process. In her opinion, the elements of a film are interrelated and all are substantial parts. However, she emphasises on the 3-act structure or story structure because it is the main

element that will bring the audience into the film (Interview conducted on Thursday, 30 May 2024).

- c. Anisha Rizki Utami is an alumnus of Universitas Islam Negeri Sunan Kalijaga in Department of Sociology of Religion. She experienced filmmaking when she was in high school and served as a screenwriter. In her opinion, narrative elements and cinematic elements are important to have a balance. She also added that plot twist can be the selling point/trademark of a film. A plot twist presents a surprise effect or an unexpected storyline (Studio Antelope, 2022). The plot twist becomes the attraction, characteristic, and writing style of the scriptwriter which is then combined with the direction of the director (Interview conducted on Thursday, 30 May 2024).

3. Film Review Content

The main focus of the problem in the act of reviewing the internet media is the difference that occurs between *das-sollen* and *das-sein*, the expected law and the reality that occurs in society. With the development of existing technology, reviews can be done not only in written form anymore, but can also be done in video form. Reviewing films has become something that can be done by anyone, anywhere, and anytime; even within a few days of the film's release. The act of reviewing can also be done by taking a few snippets from the film being reviewed and is often done without the consent of the film's copyright owner.³⁴

The author argues that the act of reviewing a film is justifiable because it directly benefits the creator and the public. First, the film reviewer directly introduces a film to the public and disseminates it. People who initially did not know, became aware and had the possibility to watch the film directly and legally. Secondly, film reviewers provide an opportunity for people who do not have easy access to entertainment, to be able to watch films. This shows an attempt to realise justice because after all, access to entertainment is one of the rights owned by anyone and not by certain groups only.

³⁴ Udayana, Anak Agung Gde Agung Satrya, and Anak Agung Istri Eka Krisna Yanti. 2023. 'Pengaturan Hukum Terhadap Tindakan Reviewer dari Karya Sinematografi Film Berdasarkan Hukum Kekayaan Intelektual'. *Kertha Desa* 11 (5): 2333–45.

Conclusion

Film review content on YouTube may fulfil the copyright limitations principle, but it depends on its purpose. Such review content may be considered a "fair use" and satisfy the copyright limitations principle if it aims to merely provide information and reviews without explicitly displaying the parts of the film that discourage viewers from watching the film legally due to the cost involved. Film review content may be deemed to be non-compliant with the copyright limitations principle if its purpose is to gain economic benefit, especially if it features substantial parts of the film that discourage viewers from watching the film legally anymore.

The author concludes that as long as the creator of the film review does not activate YouTube's monetisation feature as a form of commercialisation, his or her use of the official film clip falls within the terms of the copyright limitations and can be considered not to infringe copyright. As long as the creator does not object and feels that his or her reasonable interests have not been infringed, then a film review does not infringe copyright.

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