

Legal Analysis of Movie Reviews on Social Media in Terms of Positive Law**Anwar Hafidz Amrullah¹, Alfi Taufiq Asyidqi², Shofiyyah Mardiyah Hasya³**Magister Kenotariatan Universitas Padjadjaran¹²,Fakultas Hukum Universitas Padjadjaran³anwar23001@mail.unpad.ac.id¹²³

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ABSTRAK

Seiring dengan kemajuan teknologi sejatinya telah mempermudah akses terhadap film melalui berbagai platform digital. Akan tetapi, untuk mendapatkan akses terhadap platform tersebut masyarakat perlu berlangganan secara rutin yang dimana hal ini tidak semua masyarakat dapat melakukannya. Hal ini membuat munculnya fenomena ulasan film di media sosial yang sering kali menampilkan cuplikan film yang selanjutnya dimonetisasi sehingga mengakibatkan terjadinya potensi pelanggaran terhadap hak cipta. Penelitian ini menggunakan metode penelitian yuridis normatif dengan mengumpulkan bahan hukum melalui studi kepustakaan. Lebih lanjut, hasil penelitian ini menunjukkan bahwa praktik ulasan film sejatinya diperbolehkan selama penggunaannya sesuai dengan prinsip penggunaan yang wajar (fair use) sebagaimana diatur dalam Pasal 43 hingga Pasal 51 UU HC. Berdasarkan prinsip tersebut praktik ulasan film juga tidak dapat dikategorikan sebagai pelanggaran hak cipta selama memenuhi beberapa syarat, yakni bersifat tidak komersial dan ada izin dari pencipta. Selain itu, mengenai ulasan film juga tidak dianggap menjadi pelanggaran hak cipta jika dalam ulasan tersebut telah mencantumkan sumbernya secara lengkap dan tidak merugikan pencipta. Akan tetapi, perlu diperhatikan bahwa terhadap ulasan film di media sosial yang melanggar ketentuan hak cipta pada dasarnya dapat menimbulkan akibat hukum baik dalam lingkup perdata maupun pidana.

Kata Kunci: Ulasan Film, Hak Cipta, Fair Use**ABSTRACT**

Along with the advancement of technology, it has actually facilitated access to movies through various digital platforms. However, to get access to these platforms, people need to subscribe regularly, which not all people can do. This has led to the emergence of the phenomenon of movie reviews on social media which often feature movie trailers which are then monetized, resulting in potential copyright infringement. This research uses normative juridical research methods by collecting legal materials through literature studies. Furthermore, the results of this study show that the practice of movie reviews is actually allowed as long as its use is in accordance with the principle of fair use as stipulated in Article 43 to Article 51 of the HC Law. Based on this principle, the practice of film reviews also cannot be categorized as copyright infringement as long as it meets several conditions, namely non-commercial and permission from the creator. In addition, movie reviews are also not considered to be copyright infringement if the review has included the source in full and does not harm the creator. However, it should be noted that movie reviews on social media that violate copyright provisions can basically lead to legal consequences both in civil and criminal scope.

Keywords: Movie Reviews, Copyright, Fair Use**A. Introduction**

Modernization and globalization have resulted in significant developments in various fields, including the economy, society, and culture. Indonesia, a developing country, has been striving to advance in various fields, including information technology (the internet), because advancements in this area directly or indirectly impact human life.¹ However, technological

¹ Eko Rial Nograho and Wahyu Priyanika NP, "Liability of Copyright Holders for Unlawful Copyright Infringement Actions," JIPRO: Journal Of Intellectual Property 2, no. 2 (2019): 23-27

and digital advancements also have impacts that transcend national boundaries; as a result, the Internet has become increasingly important in daily life, such as online shopping, obtaining services, and accessing information.² All services and features on the internet contain copyrights, such as music, photography, and films. Issues such as piracy and plagiarism arise over time.³

The rapid advancement of life, particularly in the economic domain at both national and international levels, has influenced the evolution of Intellectual Property Rights (IPR), notably in Copyright. Consequently, robust legal protection of copyright is essential to provide a conducive environment for the growth and advancement of creativity in science, art, and literature.⁴ Technology is developing rapidly, but this progress is not always good as it can lead to new legal problems. Consequently, legislation is necessary to mitigate the adverse impacts of technological progress. Gustav Radbruch thinks that the objective of law is to provide clarity, fairness, and societal benefit. Consequently, the legislation must be established.⁵ Technology is developing rapidly, but this progress is not always good as it can lead to new legal problems. Therefore, laws must exist to overcome the negative effects of technological advancements. According to Gustav Radbruch, the purpose of law is to create certainty, justice, and benefit for society. Therefore, the law must exist.⁶

The need to protect the intellectual property of creators drives the application of intellectual property rights (IPR) law. This is because Intellectual Property Rights (IPR) pertain to the safeguarding of ideas and information with economic worth, seen as private property that may be held and managed like other forms of private property. Intellectual Property Rights (IPR) are regarded as intangible property rights.⁷ David I. Brainbridge defines *intellectual property* as the entitlement to property resulting from human creativity and intellectual capabilities manifested in diverse useful works.⁸ Modern society's technological, cultural, and economic advancements could not have been possible without the protections afforded by intellectual property rights (IPR). Art, literature, technology, trademarks, industrial designs,

² Ni Made Rian Ayu Sumardani and Made Sarjana, "Legal Protection for Cinematographic Work Creators Related to Online Film Piracy," *Kerta Semaya* 4, no. 2 (2016): 4.

³ Dewa Gede Yudi Putra Wibawa and I Gusti Ayu Agung Ari Krisnawati, "Mediation Efforts in Resolving Copyright Infringement Disputes," *Kertha Wicana: Journal of Legal Studies* 8, no. 10 (2019): 1-15.

⁴ Ramadhio Adi Prasetyo, *Intellectual Property Rights (Copyright) as an Object of Inheritance in Civil Law*, (Yogyakarta: Universitas Islam Indonesia, 2022), 75.

⁵ Mirza Mar Ali dan Priliyani Nugroho Putri, "Legal Protection of Intellectual Property Rights on Copyright of Game Among Us Characters in Indonesia," *Padjajaran Law Review* 9, no. 2 (2021): 2.

⁶ Sunaryati Hartono, *Development Economics Law*, (Bandung: Bina Cipta, 1982), 10.

⁷ Ni Ketut Supasti Dharmawan et al, *Textbook of Intellectual Property Rights (IPR)*, (Yogyakarta: Deepublish, 2016), 19.

⁸ *Ibid.*

trade secrets, and even plant variations are all included under this protection. Creators are duly acknowledged by this idea, which bestows onto them the sole right to use their work.⁹

The types of artificial intellectual property that need to be protected are regulated in the TRIPs Agreement. This includes copyright, also known as copyright, which is obtained as a result of the creation of works, and encompasses all forms of models and expressions. Indonesia has adopted the TRIPs Agreement through Law Number 28 of 2014 on Copyright. Articles 5–7 explain copyright as an essential and exclusive right of the creator, including the right of the copyright owner to display their identity on copies of their work. Articles 8–19 explain economic rights. Article 40 paragraph (1) of Law 28/2014 divides works protected by law into several categories, including cinematographic works regulated in section a quo letter m. Cinematographic works are artistic and cultural works consisting of a collection of visual images combined into an object or other items so that they can be used as a medium for mass communication of moving images (moving images) or combined into an object or other items so that they can be used as a medium for mass communication of moving images (moving images). This copyright is granted automatically without the need for registration of the creation of the work, and is not limited by the provisions set forth by the law. Moral rights and economic rights consist of copyright according to Indonesian law.¹⁰

Indonesia is a country based on law and participates in ratifying intellectual property rights, as mentioned in the Preamble of the Constitution of the Republic of Indonesia: "Participating in the establishment of a world order based on freedom, eternal peace, and social justice." Consisting of two words, "*hak*" and "*cipta*," copyright is defined as the result of human creation made using the resources available to them, namely thoughts, knowledge, and experiences from various global agreements.¹¹

In general, cinematography is everything about film, or filmmaking, including form, style, function, meaning, production, process, and audience. In this context, the world of cinematography encompasses aesthetic understanding through a complex combination of acting, photography, optical technology, visual communication, the film industry, ideas, ideals, and imagination. As a work of cinematography, a film is a visual story created in the form of a movie and involves various technical aspects and aesthetic understanding during the production process. In this case, films can be categorized into several types, such as

⁹ David Edyson, "Legal Protection of Intellectual Property Rights," *Journal of Citizenship* 8, no.1 (2024): 930.

¹⁰ Anak Agung Gede, "Legal Regulation of Reviewers' Actions on Cinematographic Works Based on Intellectual Property Law", *Journal Kertha Desa* 11, no. 5 (2023) : 2333

¹¹ Regent et al., "Copyright Infringement in Cinematography in Indonesia: A Legal Study from the Perspective of the Berne Convention and Copyright Law," *Indonesia Law Reform Journal* 4, no. 1 (2021): 111-121.

documentaries, advertisements, narratives, and cartoons. Cinematography can be made in the form of optical discs, celluloid film, video tapes, video discs, or other media that can be played. Film as a work of cinematography has copyright for fifty years from the first announcement. The Indonesian film industry is currently developing very rapidly.¹²

The term “movie” refers to a live image. Cinema is a term often used to describe movies collectively. The name “cinema” comes from the word “kinematic”, which relates to movement. Film consists of a liquid layer of cellulose, referred to as celluloid by filmmakers. Film, as a cultural artifact that can be shown with or without audio, serves as a mass communication medium that sends important messages to viewers. In addition to having entertainment purposes, movies have educational, informational, and creative purposes. From an economic point of view, movie viewing can encourage the development of the creative economy, which is an economic development based on the talents, skills and abilities of individuals to produce creative power.¹³ Copyright is a new type of intellectual property due to technological advances. One of them is the film industry that is very popular with all circles in society, movies are included in the object of copyright and protected in Indonesian law as in article 40 of Law No. 28 of 2014 concerning Copyright.

One of the forms of copyright that is advancing at a rapid pace is the film known as the work of film methods. Examples of copyrighted technical works of cinema include animated features, news reports, commercials, biopics, soap operas, and other scripted visual works. Cinematic technical works may be recorded on video tape, liquid tape, video cassette, or any number of other specialized media formats for later playback in theaters, cinemas, television, or other venues. It takes a certain kind of individual to make a film method work. Creators who are masters in their craft often participate in this type of activity. Numerous individuals are engaged in the production of a film, including but not limited to authors of books and stories (if the film is based on a novel), directors, performers, voice actors, cinematography, graphic design, producers, photography, advertising, and so on.¹⁴

Film reviews have existed since the early 19th century, starting with the writings of academics and film experts published in print media and film journals. At that time, movie reviews and criticism were still looked down upon by the public. Lopate even said in his writing

¹² Mega Megahayati et al, “Legal Protection Of Cinematography Against Unauthorized Acces By Telegram Application Users Based On The Copyright Law And The Information And Electronic Transaction Law In Indonesia”, *Ajudikasi : Journal Of Law* 5, no. 1 (2021) : 4

¹³ Gede Denna Singadana, ” Copyright Protection of Copyrighted Works of Films Pirated as Cinema Trailers,” *Journal of Legal Studies Research* 4, no.1 (2024): 33.

¹⁴ Liza Anggrayni dan Rizki Tri Anugrah Bhakti, *Legal Protection of Copyright Holders of Cinema Movies Screened on Social Media*, (Mataram: Universitas Putera Mataram, 2020), 5.

that film reviewers in the early 19th century were embarrassed to spend their time and energy thinking about new things too seriously.¹⁵

As the development of film technology can be easily accessed anywhere through official platforms that have obtained permission to publish these films such as Netflix, Weetv, etc. However, to access these official platforms, a fee is required which is not cheap where consumers, if they want to access these official platforms, must subscribe every month, which not all people can afford to pay every routine, this is used by users who subscribe to the official film platform to make a plot of footage of films made in reviews then uploaded to social media such as TikTok and YouTube then the uploads are monetized so that uploaders of film reviews on social media get benefits in the form of adsense , namely profits in the form of money through advertisements that appear on the uploaded film reviews. This can trigger losses to film copyright holders where people do not need to watch movies because there are already uploaders of movie reviews on social media that affect the economic rights of the copyright holders and potentially infringe on the copyright of the uploader of the summary of the films as in article 113 paragraph 3 of Law Number 40 of Law Number 28 of 2014 concerning Copyright. For this reason, the perpetrators of the film review need to be considered because it can cause harm to the creator's holder if the film review is carried out arbitrarily, as for the two identifications in the article published by the author, namely first how legal arrangements regarding the protection of copyright holders in movie reviews on social media based on positive law in indonesia and second how the legal consequences for film review makers on social media if published reviews violate copyright provisions based on positive law in indonesia.

B. Research Methods

This study employs a normative legal methodology that places an emphasis on citations from existing library collections. The data used in this journal paper are qualitative in nature and were gathered via a meticulous examination of the text's visual elements in conjunction with secondary source materials such as books, scientific publications, and relevant legislation. This text presents the results of an analysis performed on the obtained data.¹⁶

C. Result and Analysis

¹⁵ Fadhillah Pijar Ash Shiddiq , “Application of the Fair Use Doctrine to the Unauthorized Viewing of Film Footage in Movie Review Videos on the Youtube Platform in Indonesia,” *Journal Technology and Economic Law* 2, no.2 (2023): 284.

¹⁶ Alfi Taufiq Asyidqi and Nabila Safitri, “Legal Remedies for Debtor Parties for Errors in Debt Assessment by the Curator Under Bankruptcy Law,” *Jurnal Tana Mana* 4, no. 2 (2023): 232.

1. Legal Arrangements Regarding the Protection of Copyright Holders in Movie Reviews on Social Media Based on Positive Law in Indonesia

A movie review is a written composition that articulates an individual's opinion and evaluation of a seen film.¹⁷ Movie review text also functions to provide detailed information from a movie. In the film writing text, there are several things that will be analyzed such as the title of the film, the content of the film and the advantages and disadvantages of the film. Film reviews, like plot summaries, are based on positive law in Indonesia. One article of the UUHC states that "Copyright arises automatically based on the declarative principle after a creation is realized in real form without reducing restrictions in accordance with the provisions of laws and regulations." This means that once a work of art is created, the creator's exclusive right to it automatically comes into existence. Then there's Article 8, which deals with economic rights, and that's who gets to reap the rewards: the creator's exclusive rights or copyright holders.

Indonesian positive law acknowledges the Fair Use principle to maintain an appropriate equilibrium between the interests of rights holders and users of copyrighted works, employing fair use as a criterion for constraining and excluding the exclusive rights of the creator. The rights or legal protections given to individuals or groups are advantageous to the whole community, not alone to the recipients. People do not live alone; instead, they are always interacting with others. In order not to collide with each other, there needs to be rules and protection.¹⁸ *Fair use* is any restricted and transformative use of copyrighted work or materials. U.S. copyright law recognizes fair use as a notion that allows some limited uses of copyrighted works without seeking the owner's permission.¹⁹

A copyright concept known as "*fair use*" holds that members of the public should be able to freely utilize excerpts from copyrighted works in order to provide constructive criticism and commentary. Articles 43–51 of Indonesia's Copyright Law outline the notion of fair use; to be exempt from copyright infringement, an activity must be non-commercial and have the creator's consent, among other requirements. When properly citing the source and without

¹⁷ CNN Indonesia, "Definition, Characteristics, and Examples of Movie Review Texts," <https://www.cnnindonesia.com/edukasi/20240226172400-569-1067504/definition-traits-and-examples-text-review-film#:~:text=CNN%20Indonesia%20%2D%2D-,Teks%20ulasan%20film%20adalah%20teks%20atau%20tulisan%20yang%20berisi%20pendapat,sebuah%20film%20yang%20telah%20ditonton, diakses pada tanggal 2 Desember 2024>

¹⁸ Kemala Atmajo, "Fair Use dan Fair Use Dealing dalam UU Hak Cipta," <https://nasional.sindonews.com/read/1018283/18/fair-use-dan-fair-dealing-dalam-uu-hakcipta-1675918947>, diakses pada tanggal 2 April 2023

¹⁹ Sulasno and Inge Dwivismiar, "Application of Fair Use of Copyrighted Material on the Internet," *Jurnal Humani* 11, no.2 (2021): 425.

infringing on the owner's rights, using, retrieving, duplicating, or altering a work in whole or in significant part is not deemed a copyright infringement. The Copyright Act's Rule 44(1)(a) governs the 'reasonable interests' of copyright exceptions, which are based on the fair distribution of a work's economic advantages.²⁰ Article 43 delineates acts that do not constitute copyright infringement, including: a. announcement, distribution, communication, and/or reproduction of the state emblem and national anthem in their original form; b. announcement, distribution, communication, and/or reproduction of any material conducted by or on behalf of the government, unless otherwise legally protected, a statement on the Work, or when the Work is announced, distributed, communicated, and/or reproduced; c. taking actual news, either in whole or in part from news agencies, broadcasting organizations, and newspapers or other similar sources provided that the source must be fully mentioned; d. the production and distribution of copyrighted work via information and communication technology media, whether non-commercial or for profit, is permissible if the creator or associated parties do not express any objections to such activities; e. reproduction, announcement, and distribution of portraits of national leaders with dignity and fairness per regulations.

Article 44 of the UUHC states that: a. the use, retrieval, reproduction, and/or modification of a work and/or a product of Related Rights in whole or in significant part shall not constitute a Copyright infringement if the source is fully cited or enumerated for that purpose education, research, scientific writing, reports, criticism or reviews without prejudice to copyright; security and the administration of government, legislature, and justice; lectures for education and science; free performances without harming copyright. b. facilitating access to a Creation for those who are blind, visually impaired, or have reading disabilities, as well as users of braille, audiobooks, or other formats, does not constitute a Copyright infringement provided the source is fully cited, unless it is for commercial purposes. c. in the instance of a Creation as an architectural work, the modification mentioned in paragraph (1) must not be deemed a Copyright infringement if it is executed for reasons of technical implementation.

Based on the regulations, it has been mentioned that to make movie reviews that will be uploaded to social media to protect copyright holders, limits are set, Article 46 of the Copyright Law stipulates the principle of fair use, which states that " "Reproduction for personal use of a Creation that has been announced is limited to one (1) copy and may be executed without the consent of the Creator or Copyright Holder." Consequently, the Law permits individuals to

²⁰ Margaritha Rami Ndoen and Hesti Monika, "The Principle of Fair Use of Cover Versions of Songs in the United States of America," *Paulus Law Jurnal* 1, no. 1 (2019): 3.

reproduce artworks, provided that the reproduction remains within acceptable bounds. The explanation encompasses many elements: a. temporary reproduction of a work is legal if it meets the conditions; b. transmission or creation of the work digitally in a storage medium; c. any person may transmit the work with the authorization of the creator. using tools for re-display.²¹

The theory of *fair use* in copyright law allows for the limited use of copyrighted content without the copyright holder's consent for purposes like criticism, commentary, news reporting, education, scholarship, and research.²² Thomas Reuters contends in his analysis of the Folsom vs. Marsh case that the doctrine of fair use permits the utilization of copyrighted works without securing authorization from the copyright holder. This doctrine constitutes a limitation and exception to the exclusive rights possessed by the creator or copyright holder. Activities such as commentary, criticism, parody, news reporting, research, teaching, library archiving, and scholarly benefit may be classified as restrictions on copyright, provided they satisfy four requisite factors to qualify as fair use under the doctrine.²³

The act of *Fair Use*, if explored with a broad perspective, can actually provide good benefits to copyright holders. For example, in a movie review video, a content creator takes and broadcasts a snippet of the movie without permission. In a narrow perspective, the Copyright holder is harmed because the film is not exclusive, some parts of it can be watched by the public without having to buy a movie ticket which then contributes royalties to the Copyright holder. However, when viewed from a broader perspective this can actually provide benefits to both the public and the Copyright holders themselves. For the public, this benefit is in the form of supporting opinions in choosing a movie to watch or avoid. Meanwhile, for Copyright holders, these video reviews can help promote their creations to the public and can even encourage the public to watch the reviewed movies.²⁴

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²¹ Directorate General of Intellectual Property Ministry of Law and Human Rights, *Intellectual Property Handbook*, (Jakarta: Dirjen KI Kemenkumham, 2016), 15.

²² Candra Irawan, *The Politics of Indonesian Intellectual Property Rights Law*, (Bandung: CV. Manar Maju, 2011), 194.

²³ Rima Duana; Nina Herlina and Alis Yulia, "Fair Use of Copyright on Dna-BTS Song Cover by Hibe Labels Against YouTube Content Creator Midi-Midi," *Galuh Justisi* 11, no. 1 (2023): 90.

²⁴ Fadhillah Pijar Ash Shiddiq, *Op Cit*, 287.

Copyright holder. However, when viewed from a broader perspective this can actually provide benefits to both the public and the Copyright holders themselves. For the public, this benefit is in the form of supporting opinions in choosing a movie to watch or avoid. Meanwhile, for Copyright holders, these video reviews can help promote their creations to the public and can even encourage the public to watch the reviewed movies.²⁵ Article 44 paragraph (1) letter a of the Copyright Law No. 28 of 2014 regulates the "fair use" of copyright exceptions based on the balance in enjoying the economic benefits of a creation. The Indonesian legal system adopts the Anglo-Saxon principle of fair use, which is a legacy of the system in Continental Europe. Although there are differences in legal systems, the importance of copyright exceptions is still unclear regarding its parameters.²⁶

According to the author, when viewed from a broader perspective, fair use actions taken by movie reviewers can benefit copyright holders. For example, if a movie reviewer provides too many snippets of the movie so that it informs most of the plot of the movie without the copyright holder's permission, it can be detrimental to the copyright holder. However, if the movie reviewer receives royalties for the review, the copyright holder may be protected.

One of the keys to achieving a balance between these two is to create a clear dividing line between exclusive rights and Fair Use.²⁷ This can be realized in the drafting of certain guidelines that are clear but not too restrictive. Guidelines need to be made in a flexible legal instrument, given that Fair Use is essentially a flexible doctrine. This flexibility is essential to deal with needs that are not predicted in advance. These guidelines will serve to regulate matters that have not been well described by the UUHC. According to the author, these guidelines should be made at the level of Ministerial Regulation. Ministerial Regulations that contain technical matters and can be more easily amended if there are changes and developments in Fair Use, making it a good instrument in providing regulations related to *Fair Use*.²⁸

The fast technological growth in Indonesia, which is currently in the digital industry 4.0 age, has made life simpler for humans in every aspect of society, including the Indonesian film business. Online video critics have recently emerged on sites like YouTube, Telegram, TikTok, and many more. The term "reviewer" refers to an individual or organization that writes or edits

²⁵ *Ibid.*

²⁶ Bambang Pratama, "Fair Use Vs Fair Use in Copyright" <https://business-law.binus.ac.id/2015/01/31/fair-use-vs-penggunaan-yang-wajar-dalam-hak-cipta/>.

²⁷ Abraham Bell and Gideon, "The Dual Grant Theory of Fair Use," *The University Of Chicago Law Review* 83, (2016): 1055.

²⁸ Fadhillah Pijar Ash Shiddiq, *Op Cit*, 289.

a critical analysis of a film. The problem is that a lot of movie critics post their reviews online for financial gain.²⁹ In order not to cause harm to the owner of the creator, the film reviewer still pays attention to the use of the principle of fair use, the film reviewer and several provisions to fulfill the principle of fair use are fulfilled by the film reviewer, namely If the use of film footage is transformative (for example, adding analysis, commentary, or criticism), Use for educational, research, or parody purposes, film reviews must be creative not fully take footage from the film to be reviewed, use footage of the fillm to be reviewed using short films and review the film must be with a discussion on the film being reviewed

2. Legal Consequences for Film Review Makers on Social Media If Published Reviews Violate Copyright Provisions Based on Positive Law in Indonesia

In the current era of digitalization, many people, both regular viewers and professional critics, post movie reviews on social media as one of their forms of expression. However, during the process of creating and publishing film reviews, reviewers may face legal consequences if they violate copyright.

Every legal action carried out by a capable legal subject will have legal consequences. Legal consequences are juridical consequences that can be attached to the subject of law as well as to the results or products of its actions. Actions that violate norms or laws will have implications for juridical sanctions, because basically Indonesia is a legal state that adheres to the positivism school. Positivism views that written laws made by the authorities (legislature) will be binding and must be obeyed by the community, any opposition to the law will lead to legal sanctions. Positive law is the current law or in the sense of legislation that is currently in force.

Copyright, as defined in Article 1 number 1 of Law No. 28 of 2014 on Copyright (hereinafter referred to as the Copyright Law), constitutes the exclusive right of the creator that arises automatically under the declarative principle once a creation is manifested in tangible form, without diminishing the limitations set forth by applicable laws and regulations.³⁰ The definition states that the creator's exclusive rights, encompassing both moral and economic rights, originate under the declarative principle, which asserts that copyright protection automatically commences upon the tangible realization of a creation.³¹ So that the right is only

²⁹ Anak Agung Gde Agung Satrya Udayana, "Legal Arrangements Against Reviewer Actions of Cinematographic Film Works Under Intellectual Property Law," *Jurnal Kertha Desa* 11, no.5 (2023): 2333.

³⁰ Law of the Republic of Indonesia Number 28 of 2014 Concerning Copyright, Article 1 number 1

³¹ Dina Nurusyifa, "Declarative Principles in Copyright Regulation in Indonesia," *Unes Law Review* 6, no. 2 (2023): 6364

owned by the copyright holder with the condition of subjectivity (original and already fixed), and the creator will get legal protection.

In cases where someone uses film clips, background music, or supporting elements, the work is protected by copyright law, and the creator or copyright holder has exclusive rights to announce, expand, and distribute it, as well as grant permission to others to use it under certain conditions. Copyright infringement can occur if someone uses a film, music, or other protected elements without permission or exceeds the limits of fair use. Some types of copyright violations that can occur during film reviews on social media are as follows: a. the use of film clips without permission surpasses the boundaries of fair use; b. Re-uploading the entire film or most of its scenes in the form of a "reaction video" or "summary"; c. Using music or film soundtracks without the permission of the copyright owner; d. Uploading or copying review content from other critics without providing the appropriate label.

Copyright holders, as delineated in Article 1, number 4 of the Copyright Act, may include the author as the copyright owner, the party that has legally acquired rights from the creator, or other entities that get subsequent rights from the legally recognized party.³² The creator, in this instance, refers to an individual or a group of individuals who independently or collaboratively produce a unique work manifested in a tangible form. The Copyright Act serves as a legal framework to safeguard copyright holders from conduct that may jeopardize their rights, including piracy, unauthorized replication, theft, and other crimes.

Today, the digital era has given others the freedom to access any work or information, and share information with the public. As described in the background of this study, the impact of digitalization there are phenomena on social media regarding movie reviews without the permission of copyright holders, of course this will harm copyright holders both directly and indirectly, especially the economic benefits of a work / creation that is only obtained by the reviewer who should be the right of copyright holders.

Movie reviews will be allowed in the eyes of the law if the film reviewer has received permission from the copyright holder or received a license to use his work in a review and has been promised about the economic benefits of movie reviews on social media that usually comes from ad-sense whether the profits will fully be the rights of the reviewer or the rights of the copyright holder, or they each get a share of the economic benefits, it goes back to the agreement between the copyright holder of the film and the film reviewer. Under some circumstances, the Copyright Holder or Related Rights Owner may provide another party

³² Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, Pasal 1 angka 4

formal permission to use his creativity or Related Rights product economically. This authorization is known as a license. Royalties are a kind of economic compensation for the use of a creation's or related rights' economic rights in products received by the creator or owner of those rights. According to Article 1, number 21 of the Copyright Law, copyright holders will receive these royalties in the form of economic benefits.

Any individual exercising economic rights over a work must have authorization from the inventor or copyright holder, who has the economic right to: Publishing a work is the only prerogative of the artist to disseminate or replicate his/her creation; Duplication of work refers to the reproduction of a creator's work by any method, in any form, whether permanently or temporarily; Creation translation, which is the work of the person who translates the translated work; Adaptation, arrangement, or transformation of a work, Adaptation, arrangement, or transformation of a work is the activity of changing the original work with the permission of the creator or copyright holder; Distribution of the work or its copies, Distribution of the work or its copies is the activity of disseminating the work or its copies to the public. Distribution of the work can be done by selling, renting, or other forms; Performance of creation, Performance of creation is a performance that is the result of copyrighted works protected by copyright; Announcement of work, The announcement of a work refers to the process of distributing it to others via any medium, enabling it to be perceived audibly, visually, or textually. The announcement of a work may be executed by reading, broadcasting, exhibiting, selling, circulating, or distributing, using digital media or other instruments; Communication of works, Communication of works is the transmission of a work to the public via cable or other media. Communication of a work can also be defined as making the work available for public access; Leasing of works. Creation leasing is the right to commercially lease an original work or a copy thereof to the general public. This right is regulated under copyright.³³

Based on the phenomenon of movie reviews, the form of infringement that is often encountered is the duplication of some parts (*scenes*) of the film pieces they review and publish on social media to gain economic benefits from the commercial use of the creation, this can be referred to as an attempt at copyright piracy that clearly violates the law. Piracy in the Copyright Law is the duplication of creations and/or rights products.

Regarding what does not constitute copyright infringement, if a work is used, retrieved, duplicated, or altered in whole or in substantial part for research, education, scientific writing, report preparation, writing criticism, or review of an issue without harming the creator's or

³³ Article 9 paragraphs 1 and 2 of Law Number 28 of 2014 concerning Copyright

copyright holder's reasonable interests, or for security reasons, government administration, legislative, or justice, or for free performances that do not infringe on the creator's reasonable interests, then it is not considered copyright infringement.³⁴

Film critics use copyrighted material without authorization may encounter several legal repercussions, including civil responsibility, wherein the copyright owner may initiate a civil case to seek restitution for damages sustained due to the infringement. In this case, copyright holders have the right to request the cessation of the use of their work as well as compensation for losses suffered. The form of termination of the use of the work of the copyright holder of a film in the case of infringement of film reviews based on Article 56 of the Copyright Law, the legal consequences that can be received by the film reviewer is that the content of the film review can be withdrawn or closed from circulation on social media by the electronic system so that it cannot be accessed by the public. Article 56, paragraph 1 of the Copyright Law stipulates that the Minister responsible for telecommunications and informatics may, upon the reporter's recommendation, restrict access to content and/or user rights that infringe copyright and/or related rights in electronic systems, rendering electronic system services inaccessible.³⁵

Copyright holders can submit takedown requests on platforms like YouTube, Instagram, and TikTok due to the rules/policies of the Digital Millennium Copyright Act (DMCA). If a report containing infringing content is received, the content may be removed from the platform, and the reviewer's account may face sanctions or even permanent closure if the infringement is repeated. Film reviewers can avoid copyright infringement by using film clips in limited amounts (for example, short clips with limited duration that do not reveal the entire plot), using freely licensed material or obtaining permission from the copyright owner if they want to use film elements in their reviews, using an opinion and analysis-based review concept without excessively including film clips, and including a disclaimer.

Furthermore, film reviewers who infringe copyright may face criminal penalties; if found guilty of copyright violation, they could be subjected to imprisonment and fines under the Copyright Act.³⁶ Paragraphs 3 and 4 of the Copyright Law underscore that any individual who, without authorization or consent from the copyright holder, violates the economic rights of the creator by publishing or reproducing the work in any format is committing an infringement. The distribution of the Creation or its replicas, or the promotion of the Creation for commercial

³⁴ Ujang Badru Jaman.; Galuh Ratna Putri and Tiara Azzahra Anzani, "Urgency of Legal Protection of Digital Works Copyright," *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 3, no. 1 (2021): 14.

³⁵ Pasal 56 ayat 1, Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright

³⁶ Antan Yuniar, "Legal Protection of Intellectual Property Rights against Copyright Based on Law Number 28 of 2014 concerning Copyright," *Doktrin: Jurnal Dunia Ilmu Hukum dan Politik* 2, no. 2 (2024): 180.

objectives, will incur a penalty of four years' imprisonment and/or a maximum fine of Rp1,000,000,000 (one billion rupiah).³⁷ Any individual who meets these criteria in the context of piracy will be subject to a penalty of imprisonment for ten years and/or a maximum fine of Rp. 4,000,000,000 (four billion rupiah).³⁸

Based on the description above, the legal consequences that can be borne by makers of movie reviews that violate copyright in accordance with positive law in Indonesia are civil and/or criminal consequences. civilly film reviewers who are proven to violate the limits of using copyrighted works of the creator owner can be charged with compensation as described in article 1365 of the Civil Code, namely Every act that violates the law and brings harm to others, obliges the person who caused the loss because of his fault to replace the loss, Because in the making of the movie review can have an impact on public interest in the movie made by the creator, what if the film reviewer violates and potentially cause harm to the creator, based on this the author argues that the making of the movie review should adhere to the principle of prudence in which the film reviewer must know completely and deeply the film that will be made the movie review. Movie review makers on social media should be careful in using copyrighted material. Violating copyright provisions not only has the potential to harm the owner of the work but can also result in severe legal sanctions for the reviewer. Therefore, it is important to always obtain permission or use non-copyrighted material before publishing reviews on social media platforms.

D. Conclusion

Movie reviews published through social media should actually comply with the provisions of copyright protection as stated in the HC Act. The practice of movie reviews is permissible if it adheres to the concept of fair use, which governs the limitation and exclusion of artists' exclusive rights as outlined in Articles 43 to 51 of the HC Law. According to these articles, film reviews do not constitute copyright infringement if they satisfy certain criteria, including being non-commercial and obtaining permission from the artist. Furthermore, movie reviews that include the use, retrieval, replication, and/or modification of a work and/or associated rights goods are not deemed copyright infringement, provided they fully cite the source and do not detrimentally affect the originator.

Furthermore, film reviews are also allowed as long as the film reviewer has received permission from the copyright holder or a license to use his work in a review. However, it

³⁷ Article 1 paragraph 3, Law of the Republic of Indonesia Number 28 of 2014 Concerning Copyright

³⁸ Article 1 paragraph 4, Law of the Republic of Indonesia Number 28 of 2014 Concerning Copyright

should be noted that movie reviews on social media that violate copyright provisions can basically lead to legal consequences in both civil and criminal scopes. In the civil sphere, the copyright holder of the movie copyright can file a lawsuit for compensation in the form of stopping the use of his copyrighted work and compensation for losses incurred. As for the criminal scope, film reviewers who are proven to have committed a copyright crime may be subject to imprisonment and/or fines as stipulated in Article 113 paragraph 3 and paragraph 4 of the HC Law.

Although movie reviews are a creative way to express oneself and provide knowledge to the audience, they can violate copyright in some cases. Mistakes occur when a reviewer uses many film clips without permission or without providing sufficient added value, such as analysis, criticism, or commentary that can transform the film. Additionally, discussing the plot without providing a new perspective can also be considered a violation, especially if the content of the review replaces the experience of watching the original film. In addition to the excessive use of clips, other elements such as background music, posters, or promotional photos can also violate copyright if used without permission. Some electronic platforms even have automatic systems that can detect copyright-infringing videos and issue warnings or even remove them. Copyright holders can also file lawsuits or seek compensation if their works are used illegally. Content creators must understand the concept of "fair use" or copyright exceptions applicable in each country to avoid copyright infringement in film reviews. Film clips should only be used to support analysis rather than just showcasing interesting scenes. Additionally, reviews can help ensure that the use of copyrighted material is transformative and does not harm the rights holders. By understanding and applying these principles, reviewers can continue to produce informative content without violating copyright.

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