



Tiki Taka's Strategy as an Effort to Prevent Copyright Infringement in Indonesia: *E-Commerce Platforms* on Digital Era

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Abstract

The spread of the internet in social life means that there are more and more violations of creations, it is difficult to identify anyone who commits violations, and it is not easy to protect a creation in digital form. If these violations are not addressed, they can have a negative impact on the industry and creators. Violations of the economic rights of creators and copyright holders in the form of digital products/creations have been generally and openly bought and sold on e-commerce platforms in Indonesia without any real action being taken against products that violate the economic rights of creators or copyright holders of the platform the e-commerce. The aim of this research is to find out the tiki taka strategy in preventing copyright infringement in the digital era on e-commerce platforms in Indonesia. The type of research in this research is empirical legal research. Empirical legal research is "a legal research method that functions to see law in real terms and examine how law works in society." The results of the research and discussion are that in the tiki-taka strategy, creators or copyright holders are expected to be able to adapt quickly and make proactive movements. Apart from that, the tiki-taka strategy also teaches you to always be pro-active and try to defend your rights. So these rights must be maintained in order to achieve the desired goals.

Keywords: Copyright, E-commerce, Digital Era, Tiki Taka

Introduction

One of the main branches of IPR is copyright, what is meant by copyright is the exclusive right for creators to announce or reproduce their creations in the fields of science, art and literature which among others can consist of books, computer programs, lectures, lectures, speeches and other similar creations, as well as rights related to performers, such as a singer or dancer on stage, is a related right protected by copyright (Tim Lindsey, Eddy Damian, Simon Butt, 2011).

Tiki Taka's Strategy as an Effort to Prevent Copyright Infringement in Indonesia: E-Commerce Platforms on Digital Era

This concept means that the use of copyright must be based on the principle of protecting the moral and economic rights of the copyright holder (Budi Agus Riswandi, 2005). Copyright Law Number 28 of 2014 Article 1 point 1 provides the definition of copyright as the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations.

Law Number 28 of 2014 concerning Copyright Article 40 states that protected works include works in the fields of science, art, and literature, consisting of:

- a. Books, pamphlets, faces of published papers, and all other written works;
- b. Lectures, lectures, speeches, and other similar creations;
- c. Teaching aids made for the benefit of education and science;
- d. Songs and/or music with or without captions;
- e. Drama, musical, dance, choreography, puppetry, and mime;
- f. Fine art works in all forms such as paintings, drawings, engravings, calligraphy, sculptures, sculptures, or collages;
- g. Works of applied art;
- h. Architectural works;
- i. Map;
- j. Batik artwork or other motif art;
- k. Photographic works;
- l. Portrait;
- m. Cinematographic works;
- n. Translations, interpretations, interpretations, potpourri, databases, adaptations, arrangements, modifications and other works of transformation;
- o. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. Compilation of works or data, whether in a format that can be read with computer programs or other media;
- q. The compilation of traditional cultural expressions during the compilation is an original work;
- r. Video games; and
- s. Computer program.

The period of copyright protection, especially the validity period of economic rights, is regulated in Articles 58 and 59 of Law Number 28 of 2014 concerning Copyright which states:

(1) Copyright protection of works:

- a. books, pamphlets, and all other written works;
- b. lectures, lectures, speeches, and other similar creations;
- c. teaching aids made for the benefit of education and science;
- d. songs or music with or without captions;
- e. drama, musical, dance, choreography, puppetry, and mime;
- f. works of fine art in all forms such as paintings, drawings, engravings, calligraphy, sculptures, sculptures, or collages;

- g. architectural works;
 - h. map; and
 - i. batik artwork or other motif art,
valid during the life of the creator and continues for 70 (seventy) years after the creator dies, starting from January 1 of the following year.
- (2) In the event that the work as referred to in paragraph (1) is owned by 2 (two) or more people, copyright protection shall apply during the life of the creator who died last and lasts for 70 (seventy) years thereafter, starting from January 1 of the following year.
- (3) Copyright Protection of Works as referred to in paragraph (1) and paragraph (2) owned or held by legal entities is valid for 50 (fifty) years from the first announcement.

Furthermore, Article 59 provides copyright protection for works:

- a. photographic works;
 - b. Portrait;
 - c. Cinematographic Works;
 - d. Video Games;
 - e. Computer program;
 - f. Facial Papers;
 - g. Translations, interpretations, interpretations, potpourri, databases, adaptations, arrangements, modifications and other works of transformation;
 - h. Translation, adaptation, arrangement, transformation or modification of traditional cultural expressions;
 - i. Compilation of the Work or data, whether in a format that can be read with a Computer Program or other media; and
 - j. The compilation of traditional cultural expressions as long as the compilation is an original work, valid for 50 (fifty) years since the first announcement was made.
- (2) Copyright protection for works of applied art shall be valid for 25 (twenty-five) years from the first announcement (Ashibly, 2016).

Literature Review

One aspect of special rights in Intellectual Property Rights is economic rights. Economic rights are the right to obtain economic benefits on intellectual property. It is said to be an economic right because Intellectual Property Rights are objects that can be valued with money. The economic right is in the form of a profit of a sum of money obtained due to the use of own Intellectual Property Rights or due to use by other parties under a license. Economic rights are taken into account because Intellectual Property Rights can be used/utilized by other parties in industry or trade that brings profits. In other words, Intellectual Property Rights are objects of trade. The type of Economic Rights in each classification of Intellectual Property Rights can vary. In copyright, there are more types of economic rights when compared to patents and trademarks (Abdulkadir Muhammad, 2007).

In Article 9 paragraph 1 of Law Number 28 of 2014 concerning Copyright, the Creator is given rights, namely moral and economic rights. The economic rights of the Creator consist of:

Tiki Taka's Strategy as an Effort to Prevent Copyright Infringement in Indonesia: E-Commerce Platforms on Digital Era

- a. Publishing works;
- b. The multiplication of creation in all its forms;
- c. Translation of works;
- d. Adapting, arranging, or transforming creation;
- e. Distribution of the work or copies thereof;
- f. Creation performance;
- g. Announcement of creation;
- h. Communication of creation; and
- i. Rental of creation.

The development of the times has also made the form of creation develop. The influence of the internet network and digitalization changes creations that were originally in conventional form can turn into digital form. In its digital form, it makes it easy to disseminate and distribute by utilizing the internet network. The digital era and digital creation cannot be avoided, due to the fact that it has become a common thing that can no longer be separated from life. Digital products/creations have been generally traded and already have their own consumers/markets. If avoided, it can actually inhibit growth. Digital products are becoming popular among the public because they have advantages over physical products, digital products are considered more efficient and more practical than physical products that require special storage space to store their products compared to digital products that do not require a physical place to be stored, the method of getting digital products by downloading is also an added value because it is fast and easy to get (Khwarizmi Maulana Simatupang, 2021).

Behind this convenience there are risks that can occur. This convenience is actually used by parties who are not authorized to disseminate/distribute by parties who do not have rights unlawfully, it is easy for a creation to be changed, modified, and others. The spread of the internet in public life makes more and more violations of creation, it is difficult to identify anyone who commits violations, it is not an easy thing to protect a creation in digital form. If these violations are not addressed, it can have a negative impact on the industry and on creators (Simatupang, 2021).

Violations of the economic rights of creators and copyright holders in the form of digital products/creations have been publicly and blatantly traded on *e-commerce platforms in Indonesia without any concrete action against products that violate the economic rights of creators or copyright holders of the e-commerce platform*.

In practice inside *e-commerce* There are still many copyright violations. Based on research by the Indonesian Publishers Association, as many as 54.2 percent of publishers found pirated books from their works sold through *Online marketplace* during the Covid-19 pandemic. The actual loss in this industry is certainly greater considering that the number of IKAPI members in 2019 was around 1,600 publishers and has increased to 1,900 in April 2021. This does not include member publishers of other organizations, such as the Indonesian Higher Education Publisher Affiliate (APPTI) (Fiery Andrian, 2023).

When it comes to strategy *tiki taka* (Diego Ismail, 2023) in the prevention of copyright infringement in the digital age on *e-commerce platform* in Indonesia, of course, there needs to

be an active role of creators, copyright holders and also owners *e-commerce platform* and the government in terms of controlling the situation in order to prevent copyright infringement.

Based on the background description above, the purpose of this study is to find out how *tiki taka* strategy in preventing copyright infringement in the digital era on *e-commerce platforms* in Indonesia?

Research Methods

The type of research in this study is empirical legal research. Empirical legal research is “a method of legal research that serves to see the law in a real sense and examine how the law works in the community”. Because this study examines people in life relationships in society, the empirical legal research method can be said to be sociological legal research. It can be said that legal research is taken from facts that exist in a society, legal entity or government agency (Muhaimin, 2020).

The subject studied in empirical legal research, namely legal behavior (*Legal Behavior*) that is, the actual behavior of individuals or communities in accordance with what is considered appropriate by the rules of applicable law. The object of study in this study is compliance with the law and the implementation (implementation) of legal rules (Muhaimin, 2020).

While the approach used is the legal psychology approach, which is an approach in empirical legal research, where law is seen in human psychology. Human psychology certainly concerns compliance and public awareness of the law, such as people doing unlawful acts (Muhaimin, 2020).

Results And Discussion

The philosophical foundation of IPR began with the idea of appreciation for creators or inventors for their intellectual creations that were useful to society in Aristotle politics during the fourth century BC (Rahmi Jened Parinduri Nasution, 2013). Furthermore, the discussion of the philosophical basis for the need to protect one's creation, began by John Locke in the school of natural law. John Locke, a prominent English philosopher of the 18th century, posited that copyright law grants exclusive property rights to a creator's copyrighted work, natural law requires individuals to supervise his or her works and be fairly compensated for contributions to society. According to the theory of natural law, the creator has the moral right to enjoy the fruits of his labor, including the profits generated by his intellect. In addition, because the creator has enriched society through his creation, the creator has the right to get a reward commensurate with the value of his donation. So copyright, gives exclusive ownership rights to a creator's work. This means maintaining the natural laws of individuals to supervise their works and being fairly compensated for their contributions to society. In addition to John Locke, Frederick Hegel developed the concept of "Right, Ethic and State" which is essentially the existence of personality. Wealth, among other material things, is the means by which one can objectively express one's own and personal will. Personality as a force that gives itself the ability to recognize itself and translate its freedom externally to exist as an idea. For this reason, according to Hegel, a property at a certain stage must be a private thing (private) and private wealth (private property) becomes a universal institution. This is the basis for the justification of IPR (Widyo Pramono, 2012).

In Indonesia today, Copyright Law Number 28 of 2014 is in force which is a positive law in the field of copyright. In the context of creations, copyright protection is needed to encourage appreciation and build public attitudes to respect one's rights to the work they produce. The

Tiki Taka's Strategy as an Effort to Prevent Copyright Infringement in Indonesia: E-Commerce Platforms on Digital Era

attitude of appreciation is indeed more touching on the moral dimension. While the attitude of appreciation boils down to the economic aspect. The latter is common in logic *Reward cycles*. After all, copyright protection is directed at allowing the use of the work to take place in an orderly manner and providing economic benefits to the creator (Soelistyo, 2011).

In this all-digital era, works that are usually in physical form can turn into digital form. With the internet, the dissemination or distribution of digital works becomes easier and faster. Digital creation today has become common and cannot be separated from everyday life. Digital products/creations have been generally traded and already have their own consumers/markets (Ujang Badru Jaman, Galuh Ratna Putri, 2021).

One of the means of copyright commercialization is either done by the creator or copyright holder himself or gives permission to other parties (licenses) to announce, distribute, duplicate his work through *e-commerce platforms*.

E-commerce are business activities related to consumers, manufacturing, *Service Providers* and intermediary traders using computer networks, namely the internet. *E-commerce* It is a term that is often used when related to the internet, where no one knows clearly the meaning of *e-commerce* aforementioned. According to Piana and Fathurohman *e-commerce* is a business transaction that involves the exchange of value carried out through digital technology (No Title, n.d.).

However, the wrong use of digital technology opens a loophole for copyright infringers to commit copyright infringement, especially in *e-commerce platform* in Indonesia. Paul Goldstein stated that this digital technology revolution cannot be contained, because digital technology has clear or clear sound characteristics (*Fidelity*), compact or compressed (*compression*) and malleable (*malleability*). The new environment of the digital world will pose a new problem for copyright. Not only does it facilitate the publication, distribution and reproduction of a copyrighted work so as to achieve the economic interests of a copyrighted work, but on the other hand the digital world also facilitates the criminal act of copyright in the digital world (Widyo Pramono, 2012).

The violations of economic rights in the digital world (*digital internet medium*) are as follows:

- 1) Reproduction, occurs during the recording of material on the content provider's computer, in the process of transmission (including data storage), retention at the server site, in the transmission process from the server site and in RAM or *hard disk*, and on the screen when accessing the computer. Reproduction can also occur when copyrighted material is duplicated through one particular process into another: for example where a sound or image recording is transmitted from a server site, and can also come from a copy (e.g. from the CD burning process) made from transmission data;
- 2) Adaptation: Digital processes allow adaptation of material by addition, removal and modification of protected material. Such a process may violate the author's right to adapt his work. Dissemination of altered works via the internet or similar *online* services may violate local rules in terms of criminal offences against adaptation of a work;

- 3) The distribution, right to distribute copies of a work or other subject is addressed in national law, and is also guaranteed in the WIPO agreement and the EC *Information Society Directive*. This right includes the distribution of *hard copies* (books, tapes, floppy disks etc.);
- 4) Communication/*On demand Availability*, in the context of violations on the internet and services *Online Other* (Widyo Pramono, 2012).

Infringement and exploitation of economic rights without permission (license) from creators and copyright holders are increasingly rife and without any concrete action from *e-commerce platforms that facilitate online commerce* (e-commerce), for example copyright infringement of books, music and / or songs, software be it video games or computer programs, and cinematography in digital form is still traded today and Many consumers have bought these products without a single creator or copyright holder getting economic benefits from their work.

One *e-commerce platform* the largest in Indonesia is Shopee, in the first quarter of 2023 the number of visits to shopee will reach 158 (one hundred fifty eight) million visitors. This year is expected (transactions) *e-commerce* can reach Rp.600 trillion to Rp.700 trillion in Indonesia (Setyowati, 2023).

The Shopee e-commerce platform has policies related to intellectual property rights, namely the policy of prohibited and restricted goods, including:

- 1) Publications, books, movies, videos and/or video games that do not comply with applicable laws in the country of sale and/or delivery;
- 2) Potentially infringing items: Items including but not limited to replicas, counterfeit goods, and unauthorized imitations of products or goods that may harm users, infringe copyrights, certain trademarks, or other intellectual property rights of third parties (Shopee, 2023).

Furthermore, business actors who violate Shopee's Intellectual Property rights policy will be given penalties in the form of:

- 1) Blocking and/or delisting of products;
- 2) Termination of exclusive profits; and
- 3) Account restrictions.

The e-commerce platform Shopee opened the intellectual property infringement portal in response and response to intellectual property rights infringement with a note that this report is only for intellectual property rights owners and authorized agents/law firms by the owner who can use the Intellectual Property Rights (IPR) Portal.

In the provisions of Law Number 28 of 2014 concerning Copyright, criminal provisions regarding violated offenses are stipulated, namely complaint offenses, where those who can complain are parties who feel aggrieved, namely the creator or recipient of a work recognized by the Copyright Law after announcement or recording of the copyright.

Copyright law enforcement problems can only be carried out by the creator or copyright holder because the provisions stipulated in the Copyright Law are complaint offenses, different from ordinary offenses where copyright law enforcement can be carried out by the police, prosecutors or courts for alleged copyright infringement. In addition to criminal provisions, the

Tiki Taka's Strategy as an Effort to Prevent Copyright Infringement in Indonesia: E-Commerce Platforms on Digital Era

Creator or holder of copyright or related rights may also bring civil claims for copyright infringement.

Therefore, it needs a strategy from the creator or copyright holder to protect his work on *e-commerce platforms* so that creators and copyright holders are not economically harmed, one of which is the *tiki taka strategy*.

The philosophical basis of *tiki taka* is to control the game, lure the opponent to open up his defense by playing short, accurate and fast passes, focus on the situation and adapt quickly to the opponent's strategy and dominate possession which causes the opponent to become frustrated so that it will open the gap to win the game.

If it is related to copyright as an effort to prevent copyright infringement in the digital era on e-commerce platforms in *Indonesia*, it needs strong and continuous cooperation between creators, copyright holders, the government and also e-commerce service providers to jointly take concrete actions in dealing with copyright infringement that occurs in *e-commerce*.

In the tiki-taka strategy, the creator or copyright holder is expected to be able to adapt quickly and make dynamic movements. In addition, the tiki-taka strategy also teaches to always be proactive and try to defend the rights you have. So that the right must be maintained in order to achieve the desired goal.

Creators or copyright holders can supervise and take action on their works in *e-commerce* if there is copyright infringement. Creators or copyright holders can make reports of copyright infringement in *e-commerce* through the IPR reporting portal provided by each e-commerce. Furthermore, the *e-commerce* party investigates the complaint quickly and if it is proven to have committed copyright infringement, then the product being traded must be removed (*take down*) and for business actors to be given strict warnings and sanctions. Furthermore, the government's role in this case is the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (Kemenkumham) to make preventive efforts by providing intellectual property rights awareness education for creators, copyright holders, business actors and *e-commerce*.

Business actors who trade products from copyright infringement must be narrowed their space for movement, so that these businesses can provide education about the importance of respecting the work of others and if they want to trade a copyrighted work does not conflict with existing laws and regulations, let alone by stealing the rights of others.

The tiki taka strategy teaches us to master the situation on the field in order to control the game so that the movement of the opponent becomes defensive and increasingly urgent and can create opportunities to achieve the goal of preventing copyright infringement in *e-commerce platforms* in Indonesia.

For example, what is done by *e-commerce* Tokopedia by helping more than 5,100 Intellectual Property Rights (IPR) holders fight copyright infringement throughout the past year. The number has increased more than 18 times compared to 2021. IPR holders on Tokopedia can report violations through the IPR Reporting Portal. "In 2022, the success rate of removing products that violate IPR and are reported through the portal is 99 (ninety-nine) percent. In addition, Tokopedia also has an IPR Protection Team that monitors IPR violations in Tokopedia. They acquire skills training. Tokopedia has also collaborated with the Directorate

General of Intellectual Property of the Ministry of Law and Human Rights (Kemenkumham) since October 2022. Tokopedia becomes *Marketplace* the first in Indonesia committed to supporting IPR protection (PayPal, 2019).

Conclusion

Based on the description above, the following conclusions can be drawn: In the tiki-taka strategy, the creator or copyright holder is expected to be able to adapt quickly and make dynamic movements. In addition, the tiki-taka strategy also teaches to always be proactive and try to defend the rights you have. So that the right must be maintained in order to achieve the desired goal. Creators or copyright holders can supervise their work in e-commerce, if there is a violation, the creator or copyright holder can make a report of copyright infringement in e-commerce through the IPR reporting portal provided by each e-commerce. Furthermore, the *e-commerce* party investigates the complaint quickly and if it is proven to have committed copyright infringement, then the product being traded must be removed and for business actors to be sanctioned. Furthermore, the government's role in this case is the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (Kemenkumham) to make preventive efforts by providing intellectual property rights awareness education for creators, copyright holders, business actors and *e-commerce*.

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Tiki Taka's Strategy as an Effort to Prevent Copyright Infringement in Indonesia: E-Commerce Platforms on Digital Era

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