



# *Legal Liability Of The Provider Of A Digital Platform Based On User Generated Content For Copyright Infringement*

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**Abstract**—The problem that occurs in social media practices is that there are many copyright violations committed by platform users, especially content creators. When a copyright violation occurs by a content creator, of course the person who is harmed is the owner/copyright holder of a work that is misused by the content creator for commercial purposes. The problem is that social media users and content creators are ordinary people who often do not understand copyright law issues. Here the question naturally arises, what is the role of User Generated Content (UGC)-based digital service providers in preventing misuse of other people's copyrighted works on the UGC platforms they manage. And what is the legal responsibility for digital service providers for copyright violations that occur on their platforms?

This normative legal study relies on primary and secondary legal sources, namely research that pertains to the standards outlined in statutory rules. By employing two research methodologies, specifically the statutory approach and the conceptual approach.

This study produces a conclusion that platforms providing UGC services are obliged to ensure that there are no copyright violations on their platforms and are responsible if there are copyright violations committed by content creators / users on their platforms, both criminally and civilly.

**Keyword**—Liability, Provider, User Generated Content, Copyright.

## I. INTRODUCTION

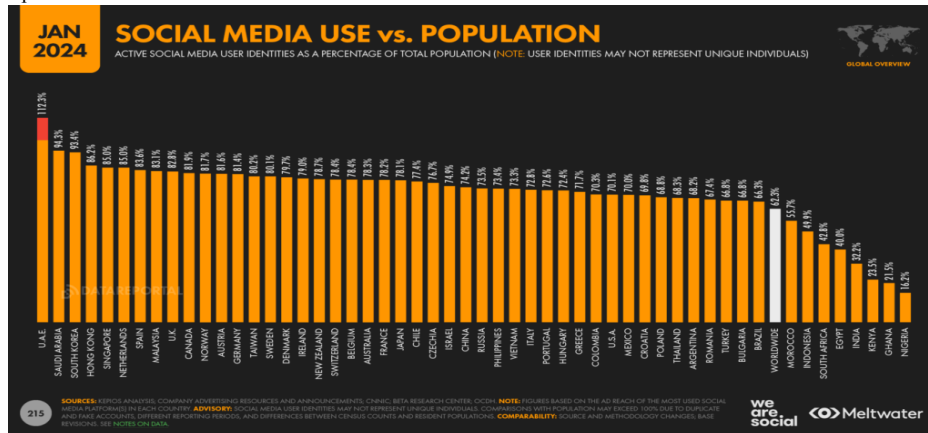
The digital age has caused people's behavior to change in all areas of life. New technology has created a new thing. Copyright protection is a part of intellectual property rights (IPR), just like in other areas. The advent of Internet technology has marked the digital age. People perceive the Internet as a technology that presents both challenges and opportunities for innovation. In today's digital age, actions like downloading, uploading, and sharing files have become everyday realities. In the context of today's Internet technology, a wide range of digital works include electronic books, graphics, tables, images, films, music, and songs, as well as various other types of digital work.

The impact of information technology developments on the existence of IPR is one of the most observed consequences today. Intellectual property rights closely link to the protection of creative enterprises and financial investment in these enterprises. According to the World Trade Organisation (WTO), Trade-Related Aspects of Intellectual Property Rights (TRIPs) are agreements on trade-related intellectual property rights. TRIPs cover copyright, patents, trademarks, industrial designs, integrated circuit protection, trade secrets, and geographical indications of the origin of goods. Copyright, formerly known as copyright, is a study of intellectual property rights aimed at protecting artistic works created by writers, artists, authors, musicians, theatre authors, filmmakers, and software. (software). [1]

In addition to having benefits, increased use of the Internet has posed risks to copyrights and inventions owned by intellectual property rights holders. The IPR problem is increasing due to some of the Internet's technical features. [2] Copyright piracy was one of the problems that emerged. Intellectual property rights are vital in the modern world, as they involve laws relating to technology, economics, and the cultural arts. The copyright legal system is inherent in the modern order of life, especially with the application of copyright law to digital products.

A social media platform is one of the information technology applications that aims to enhance human creations interactively, such as by listening to voices, writing comments, uploading pictures, and making videos. [3] Social media-based user-generated content (UGC) is an ideal place to enjoy and develop their creations. User-generated content refers to all types of content about products or services created by users on an online platform. UGC can be text, images, videos, or reviews on a website. UGC has become an important component in the marketing world. [4]

The number of UGC-based social media users reached 49.9% of the Indonesian population registered as active on social media. [5] Data such as the number of followers accounts, the amount of "likes" content, the quantity of comments from other users, and the frequency of content sharing reveal users' competition for a viral reputation.



Source: We Are Social report 2024 (<https://wearesocial.com/uk/>)

Fig. 1 : Active Social Media User in the World

The Copyright Act No. 28 of 2014 in Indonesia provides legal protection for intellectual property. Copyright includes both the financial and ethical entitlements. Economic rights encompass the entitlement to derive financial advantages from one's labour, whereas moral rights pertain to the ownership of copyright that naturally belongs to the creator. [6] Social media content generated by users can be classified as a form of creative work according to the Copyright Act. [7] Consequently, if a work is monetarily exploited, it is considered an economic right, but the ownership of the work is a moral right of the artist. If UGC's social media platforms publish content that infringes upon existing copyrighted works, copyright may protect it.

In the activity of the UGC social media platform, there are several parties involved. The first is the Electronic System Organiser (ESO), the second is the user or user of the social media platform, including the content creator, and the third is the owner or copyright holder.

One of the problems with social media practices is the large number of platform users who violate copyright, especially content creators. When a content creator violates copyright, the owners or copyright holders of the abused work for commercial purposes bear the consequences. The problem is that both social media users and content creators are part of the general public. This raises questions about ESO's role in preventing the use of other people's creations on the UGC platforms they manage. How is ESO responsible for copyright infringement on their platform? This draws our attention because the current Copyright Act does not explicitly regulate ESO's legal liability for copyright infringement. The Minister of Communications and Informatics has issued a letter No. 5 of 2016, which outlines the limitations on the liability of platform providers and traders (merchants) who trade through electronic systems based on user-generated content (UGC).

II. LITERATURE REVIEW

A. Legal Responsibility Theories and Concepts

Legal responsibility is closely connected to the ideas of rights and obligations. The idea of rights focuses on both rights and responsibilities. There is generally an agreement that a person's rights are always connected to their responsibilities to other people. The idea of being legally responsible is alike the idea of having a legal obligation. A person is legally responsible for certain activities and will face a penalty if they break the law.

The concept of legal liability is related to the concept of a legal obligation; as stated by Hans Kelsen in his theory of legal responsibility, "a person is legally responsible for a certain act or that he bears legal responsibilities, subject means that he is responsible for sanctions in the case of contrary acts". [8] If an

individual is legally responsible for a specific action, they may be subject to penalties if they engage in a contradictory action. The offender usually faces retribution for their own deeds, thereby taking on accountability. [9]

Hans Kelsen divided legal liability into four (four) categories: [8]

1. Individual culpability refers to the responsibility an individual has for an offence they have personally committed.
2. Collective culpability, on the other hand, pertains to an individual being held responsible for a violation committed by another person.
3. Responsibility is attributed when an individual willfully commits an offence with the aim of causing harm.
4. Absolute liability refers to an individual being held accountable for a breach that occurred accidentally or due to unforeseeable circumstances.

The theory of legal liability focuses more on the meaning of obligation derived from the terms of the invitation legislation; hence, the term "theory" refers to liability. [10] When something undesirable occurs, a liability is a state in which a person must bear the consequences of his actions. He may face pursuit, criticism, or punishment for his actions.

In general, legal liability can be divided into two forms:

#### 1) Civil legal liability.

Civil law liability includes legal culpability for wrongful performance and unjustified death. An earlier agreement can impose civil law responsibility for new performance, resulting in rights and obligations. The parties must consent to the conclusion of a contract. In the legal relationship between the parties based on the contract, if a party is charged with an obligation and fails to perform or breaches that obligation, it may be declared negligent and sued for civil liability based on a discharge. According to Article 1338 (1) of the civil law book, *"all legally concluded agreements shall be valid as the law of those who make them."*

While civil law liability for acts against the law (onrechtmatige daad) is predicated on the existence of a legal relationship, rights, and obligations, In Indonesia, the notion of acts against the law is based on Article 1365 of the Code of Civil Law, which states that *"Every act that breaches the law and causes loss to another person obliges the person who has caused the loss because of his fault to compensate for such loss."*

#### 2) Criminal liability.

Criminal liability is a duty to pay the compensation that the offender will receive from a person who has been violated, and the culpability committed does not only involve a legal matter but also the moral ideals or damage that exist in society. Criminal liability is known in the foreign language as toereken-baarheid, "criminal responsibility," or "criminal responsibility." We use criminal liability to determine if we can hold a person criminally accountable for an act they committed.

In terms of criminal culpability, the Criminal Code's Article 1, Paragraph 1, specifies that "an act is a criminal act only if it is prescribed in a provision of the law." The illegal conduct must have the specific consequence of causing harm to the interests of others, implying that there must be a causal and consequential relationship between the offence and the loss of certain interests. [11]

#### B. Basic Concepts of Copyright Protection as Intellectual Property

Copyright is the exclusive right of the creator or copyright holder to control the use of their work or the output of a specific concept or piece of information. Copyright is defined as "the right to copy" or "the legal right to enjoy a work." Additionally, copyright holders can restrict the use of their works and prevent their unlawful use. For reasonable reasons, the exclusive copyright has a limited duration. This is because exclusive rights include monetary values that are not available to all individual. [12]

According to Patricia Loughan, copyright is a form of ownership that grants owners exclusive rights to control the use of intellectual works. These categories include works of art, music, drama, sound recordings, films, radio, and television broadcasts, as well as written works reproduced through publication. [13]

McKeough and Stewart went on to clarify that copyright protection is the right of creators (artists, musicians, and filmmakers) to use their work without allowing others to reproduce it. McKeough and Stewart went on to clarify that copyright protection is the right of creators (artists, musicians, and filmmakers) to use their work without allowing others to reproduce it. [13]

Copyright is a sort of intellectual property right that applies to a variety of assets, including immovable and moveable objects. [14] This indicates that copyright is a transferable right. Copyright integrates the notion of property rights, ensuring protection against infringement; other countries also recognize copyright as a property right. [15] This act will eliminate any ambiguity regarding the legal status of copyrighted items under property law. Within this particular framework, copyright pertains to an individual's entitlement to a specific entity and the capacity to safeguard those entitlements from individuals with malicious intentions. [14]

According to Wirdjono Prodjodikoro, the right to justice is absolute. In this case, if there is an interference by a third party, the owner of the right to the object can protect his rights against whoever is also in charge of it, and this person of the intrusion can be claimed by the right holder of the thing on the basis of that right. [16]

Based on this principle, copyright is an absolute natural right, with its rights guaranteed throughout the creator's life and for several years thereafter. Being an absolute right, the holder can defend it against anyone and sue for any violations committed by others. Therefore, absolute rights have a reciprocal, or passive, aspect, which means that every individual has an obligation to respect such rights. [17]

Under the Civil Law System, copyright protection grants the creator exclusive rights to use their work, save as specified in the restriction regulations. Copyright protection is a dimension of moral rights coming from the Creator's personal and intellectual relationship with his creation, as well as a dimension of economic rights connected to the creation's use or exploitation. [18]

According to Article 1, Paragraph 1, of the Copyright Act No. 28 of 2014, copyright is an exclusive right. The creator or copyright holder has exclusive rights, which means that no one else can do anything with that right except with the author's permission.

Copyright contains two types of rights, namely moral rights and economic rights. According to Article 4, moral rights are inherent rights that belong to the Creator forever:

1. Proceed to either include or exclude his name from the copy in relation to Use the work for the public;
2. using an alias or pseudonym;
3. Modify the creation to align with societal norms;
4. Modify the work's title and sub-title.
5. Protect their rights when the work is distorted, mutilated, or modified. or actions that jeopardize one's honor or reputation.

Article 5 Paragraph 1 of the Copyright Law prohibits the transmission of moral rights while the creator is still alive. However, upon the creator's death, legislative rules allow for the transfer of these rights through a will or other means. When the recipient receives a transfer of moral rights, they have the option to either waive or renounce them, depending on the terms of the agreement. Meanwhile, economic rights are the rights owned by a creator to obtain profits from his creation.

### III. METHOD

The researcher in this investigation utilizes a normative legal research methodology to understand the concept of law, whether it is defined by statutory regulations or by standards and norms that guide positive human conduct. This legal research of a normative nature relies on primary and secondary legal sources, specifically focused on the examination of norms present in statutory regulations.. Using two research approaches: the legislative approach and the conceptual method. The author explores primary legal materials to better understand the availability of positive law in Indonesia that protects content owners' copyright on UGC social media platforms. The findings of this study are qualitative in nature, with conclusions in the form of responses to questions about the scope of UGC-based digital platform providers' legal obligations and liabilities for copyright infringement on their platforms.

### IV. RESULT AND DISCUSSION

#### *A. Legal issues arise concerning the legal obligations and responsibilities of UGC digital service platform providers in relation to copyright infringement.*

An official legislative body has decided or codified a rule of law, also known as a positive law, to regulate the behavior of an individual or group of individuals. In a society, rules establish guidelines for permissible and impermissible actions. Providing protection and legal certainty. Usually, a rule of law takes the form of a law, a government rule, a local rule, or any other formal form that is applicable in a specific jurisdiction. The law is generally the highest in a country and serves as a reference for interpreting and applying other rules of law. Generally, a rule comprises two main components: (1) a rule that outlines specific rules and prohibitions, and (2) a sanction that enforces the rule's violation. [19]

The rule of law plays an important role in shaping and influencing the behavior of individuals and groups in society. Awareness of relevant laws and penalties can encourage individuals and groups to behave in accordance with the limits of the values and norms in force. [20] The law enforcement system encompasses various institutions such as the police, the prosecution, the courts, and other institutions. These various mechanisms are necessary to ensure the fair and equal implementation of rules throughout society.

While legal laws serve as guides and constraints on societal behavior, their practical application and enforcement can be difficult. A society may apply and enforce the rule of law differently due to corruption, misuse of authority, and prejudice. As a result, the existence of social control mechanisms, as well as fair and transparent law enforcement, becomes critical to achieving social justice through the application of legal laws. [21]

An organization or company known as a user-generated content platform provider (UGC) develops and manages a digital platform that enables users to create original content for a specific brand, which consumers then publish on social media or other communication channels. UGCs come in a variety of forms, including pictures, videos, reviews, testimonials, or even podcasts. Some popular examples of UGC platform providers are Instagram, Twitter, TikTok, and others.

The organization, as a platform provider, is responsible for the platform's security, performance, and sustainability. They must ensure that the platform operates properly, is secure from cyberattacks, and is free from content or behavior that violates applicable regulations or laws. They also have an important role in regulating the interactions and transactions that take place on the platform. However, with the advancement of technology and the variety of activities carried out by users, the tasks and responsibilities of platform providers have become increasingly complex. Because of their position as the hub of transactions between the two sides, platform providers have to deal with major issues such as data protection, transaction security, illegal content, and copyright infringements. [22]

Platform providers face a huge challenge in maintaining the fairness and integrity of the platform while meeting various legal and ethical obligations because, legally, they serve as intermediaries but also have legal responsibility for what happens within them, especially if they contribute to or facilitate illegal activity. [23]

Analysis of legal cases shows that UGC platform providers often face difficulties in determining their legal liability for illegal acts occurring on their platforms, especially in connection with piracy or copyright infringement.

Article 28C (1) of UUD 1945 clearly establishes the fundamental right, namely the right to develop through its basic needs and to obtain the benefits of art in order to improve the quality of life and human well-being. This right provides a strong foundation for the recognition of intellectual works in the field of art, in which the works of art (especially music and song) grant the right of their creators to be able to use them to meet their own needs. Furthermore, the constitutional rule indicates that the government, or the state, is responsible for protecting such constitutional rights through legal instruments.

One of the articles in the Copyright Act that contains a precaution is Article 10, which prohibits the Trade Center Administrator from allowing sale and/or disposal resulting from copyright infringement, whereas the sanctions for such prohibition are formulated in Article 114. The sound of such a provision in its entirety is as follows:

Article 10

*Trading place managers are prohibited from allowing the sale and/or duplication of goods resulting from violations of Copyright and/or Related Rights in the trading place they manage.*

Article 114

*Every person who manages a trading place in any form who intentionally and knowingly allows the sale and/or duplication of goods resulting from violations of Copyright and/or Related Rights in the trading place he manages as intended in Article 10, shall be punished with a fine of up to Rp. 100,000,000. .00 (one hundred million rupiah).*

Articles 10 and 114 of the Copyright Law don't protect fair legal certainty because they're not broad enough. Articles 10 and 114 of the Copyright Law fail to adequately address and keep pace with the rapid advancements in technology, which is unacceptable. Technological advances, particularly in the information sector, have resulted in the violation of the constitutional rights of copyright owners and holders. However, UGC platform providers can easily evade legal responsibility, as the article's formulation does not serve as a basis for ensnaring UGC platform providers. Trading place managers in this article are still defined as physical trading managers, not yet touching on digital platforms.

Furthermore, the UGC Digital Service Provider Platform can refuse to be responsible by arguing that the content that violates copyright originates and is uploaded by UGC so that the consequences and legal responsibility remain with the UGC concerned, where this argument is based on the Circular Letter of the Minister of Communication and Information Technology, Number 5 of 2016 concerning Limitations of Liability of Platform Providers and Traders (Merchants) Trading Through Electronic Systems (Electronic Commerce) in the Form of User Generated Content which basically regulates the limited liability of User Generated Content based platform managers in accordance with the "safe harbor" principle.

The Administrator of the Digital Services Platform cannot trap or reach the goods using UGC, as the provisions of Articles 10 and 114 of the Copyright Act exclusively determine the qualification of the Trade Place Administrator. Such a circumstance is extremely harmful to the constitutional rights of the owner or copyright holder since the formula for the hole is very narrow or does not meet the sense of justice of the community of industrial culprits in the field of copyright, particularly music and songs.

#### *B. Legal liability of UGC Digital Service Platform Providers for copyright infringement.*

Until now, digital platforms have continued to evolve from static to interactive. One example of technology development from statistics to interactive is the use of a digital service platform in the form of user-generated

content (UGC). UGC is now in demand as a publication container and as a development container for creative works. To attract a large audience, most UGC platforms allow users to upload modified songs or videos. It frequently encourages user creativity by utilizing original creations to create more unique and engaging content.

In the Act No. 11 of 2008 and Law No. 19 of 2016 on Electronic Information and Transactions, as well as the Regulations of the Minister of Communications and Informatics No. 5 of 2020 on the Organizer of Private Scope Electronic Systems of UGC, as amended by the Regulation of the Ministry of Communication and Information Technology No. 10 of 2021 on the Modification of Private Scope Electronic Systems, UGC-based digital platforms are regulated in Indonesia as Private Scale Electronic System Organizers.

In the Electronic Transaction Law and Regulations of the Ministry of Communications and Information ESO Private Scope have provided various definitions of ESO UGC, Electronic Information, and Electronic Documents, Electronic Data and Communication Content. Referring to this definition, ESO UGC is a legal subject whose governance is regulated along with the content that can be contained by it, which includes Electronic Information or Electronic Documents. UGC ESOs that enter as Private Scope ESOs are required to ensure:

- a) The Electronic System does not have any forbidden Electronic Information and/or Electronic Documents.
- b) The Electronic System does not make it easy to share electronic information and/or documents that are not allowed.

In addition, the Minister of Communication and Informatics Number 5 of 2016 issued a Circular Letter on the Limitations and Responsibilities of Platform Providers and Traders (Merchants) Trading Through User Generated Electronic Systems (Electronic Commerce). This letter aims to safeguard the legal rights of platform providers, merchants, and consumers by outlining their respective limits and responsibilities when engaging in trading activities within a UGC-based digital platform.

The Law on Electronic Transactions, the Regulation of the Minister of Communication and Information ESO Private Scope, and the Circular Letter of the Minister of Communication and Information 5/2016 have all implemented a safe harbor policy. This policy is now a common approach for developed countries to address copyright issues on platforms. Digital technology has made a lot of progress and is now very advanced. The Safe Harbor policy requires electronic system operators to take steps to prevent copyright-infringing content from being uploaded, in order to protect creators and copyright holders.

Within this framework, the "safe harbor" doctrine establishes unambiguous guidelines concerning the boundaries of liability for potential infractions. Protection must additionally ensure justice in situations where the legal entity responsible for the error is the one who commits the violation and not another person, the platform user in this instance. The individual in charge of including prohibited content should bear responsibility and accountability, not the platform provider.

Platform managers willfully disregarded and concealed the copyright protection provided by the Law on Copyright, which governs UGC-based platforms, in favor of a circular letter dated June 5, 2016 from the Minister of Communication and Information Technology that restricts the liability of platform providers and merchants trading via the UGC-based electronic system.

The Constitutional Court's decision Number 84/PUU-XXI/2023, read on February 20, 2024, provided answers to the anxieties of copyright owners and holders. The Court granted some of the requests submitted by PT Aquarius Pustaka Musik, PT Aquarius Musikindo, and Melly Goeslaw. The Court expanded the scope of the rules prohibiting the sale, display, and/or duplication of goods or results of copyright infringement in Article 10 and Article 114 of the Copyright Law. The referred expansion prohibits user-generated content (UGC)-based digital service platforms from allowing the sale, display, and/or duplication of goods resulting from copyright and/or related rights violations in the trading venues and/or digital services they manage.

The part of the decision about legal issues says that strong and clear rules are needed to protect creators and copyright holders from having their rights violated. Places where people buy and sell things and online services should not allow the selling, showing, or copying of items that break copyright laws. The action was done without the creator's permission, who owns the copyright.

We must strengthen and expand Article 10 of the Copyright Law to encompass the governance and provision of security technology for every UGC-based digital service platform. To prevent copyright infringements in Indonesia, this legislation requires digital platform administrators using user-generated content (UGC) technology to confirm that any uploaded or published content does not violate any legal statutes. Essentially, an individual, the copyright holder, or the owner of related rights must endorse any material that incorporates their copyrighted creation. This guarantees the treatment of copyright holders or owners of related rights with dignity and the protection of their economic rights.

In accordance with Constitutional Court decision No. 84/PUU-XXI/2023, platforms that offer UGC services are now subject to the regulatory requirements outlined in articles 10 and 114 of the Copyright Law. Therefore, platforms offering user-generated content (UGC) must ensure no copyright violations occur on their

systems and assume legal responsibility for any criminal or civil copyright violations committed by content creators or users on their platforms.

A person is guilty of a criminal offense if they knowingly and intentionally permit the sale and/or duplication of goods resulting from infringements of copyright and related rights in the trading place they manage, as specified in Article 10. The maximum fine is IDR 100,000,000.00 (one hundred million rupiah).

Additionally, civil liability entails the owner or copyright holder having the option to initiate legal proceedings against the UGC service provider platform, alleging an illicit act in violation of articles 10 and 114 of the copyright law, with the intention of seeking both material and moral compensation.

## V. CONCLUSION

Legally, platform providers often find themselves in ambiguous positions where they act as intermediaries but also have legal responsibilities and obligations for what happens within their platforms, especially if they contribute to or facilitate illegal activity. Therefore, the big challenge for the platform provider is how to maintain justice and integrity in their platform while meeting various legal and ethical obligations. According to the Constitutional Court Decision No. 84/Law-XXI/2023, the provisions of sections 10 and 114 of the Copyright Act also cover the platform of the UGC service provider, so that the platform is obliged to ensure that there is no copyright infringement on its platform and be liable if there is a copyright violation committed by the content creator / user on the platform both criminally and civically.

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