

Legal Protection of Licensees of FIFA World Cup 2014 Brazil Broadcasting Rights Reviewed in the Study of Law Number 28 of 2014 concerning Copyright and Treaty Law

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ABSTRACT

Copyright is an essential component of Hak Kekayaan Intelektual (HKI) that provides exclusive protection to creators and rights holders, including in the context of broadcasting rights for international sports events. In the 2014 FIFA World Cup Brazil, PT Inter Sport Marketing (ISM) obtained an official license from FIFA for the Indonesian territory, including the authority to grant sub-licenses to television stations and public viewing service providers. However, in practice, numerous infringements occurred, such as hotels, restaurants, and cafés organizing public viewing events without official authorization, resulting in economic losses for the license holder. This study aims to analyze the forms of legal protection available to the licensee of World Cup broadcasting rights under Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta and contract law principles. The research employs a normative juridical method with a descriptive-analytical approach based on secondary legal materials. The findings reveal that legal protection is provided in two forms: preventive, through licensing requirements and royalty payments, and repressive, through litigation in commercial and criminal courts. This study underscores the importance of consistent law enforcement to ensure legal certainty, prevent economic losses, and strengthen perlindungan hak cipta in Indonesia.

KEYWORDS Broadcast Rights; Legal Protection of Copyright; FIFA World Cup 2014



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INTRODUCTION

Indonesia is one of the largest archipelagic countries in the world stretching from the island of Sabang to Merauke. In 2022, Indonesia has registered around 17,000 existing islands at the 2022 United Nation Group of Experts on Geographical Names (UNGEGN) meeting. As an archipelagic country, Indonesia also has a variety of cultures, languages, tribes, and traditions from various regions that can produce various kinds of goods and products that have potential economic value that can realize prosperity for its people. These products produced by humans are not completely in the form of goods but can be the result of the thought of their intellect which is called Intellectual Property.

Intellectual Property is a right owned in the fields of science, art, literature, technology, business, and industry as a result of the creation or innovation of its intellectuals (Sudjana, 2018, p. 38). In simple terms, Intellectual Property is wealth that arises or is born from human intellectual ability. Intellectual Property is the result of thinking in the form of ideas or ideas that are manifested or expressed in the form of inventions, works of literary science and design art, certain symbols/signs, creation of semiconductor component layouts and varieties of breeding results (Ferianto, 2017, p. 1).

Intellectual Property is a translation of *Intellectual Property Rights* (hereinafter referred to as IPR) and in Dutch is referred to as *Intellectual Property* (Hutagalung, 1956, p. 87). Intellectual Property (hereinafter referred to as IP) is a right related to wealth arising or born from human intellectual abilities in the form of inventions in the fields of technology, science, art and literature. IP is a material right, a right to an object that comes from the work of the

brain, and the work of ratios (Saidin, 2010, p. 9). If explored further, intellectual property rights are actually part of objects, namely intangible objects (immaterial objects) (Hutagalung, 1956, p. 105). Only people who are able to employ their brains can produce material rights called *Intellectual Property Rights* and are exclusive (Saidin, 2010, p. 10).

IP is divided into two, namely Industrial Property and Copyright. Industrial Wealth consists of patents, brands, industrial designs, trade secrets, plant varieties, and integrated circuit layout designs. While Copyright consists of science, art, and literature. Basically, IP contains three elements as follows: 1) Contains exclusive rights granted by law; 2) These rights relate to human efforts based on intellectual ability; 3) These intellectual abilities have economic value (Silondae & Fariana, 2010, pp. 155-156).

The exclusive right in question is the right to exploit the work so as to bring economic benefits to the creator and copyright holder. A creator is a person who creates a work while a copyright holder is a person who holds the rights to his creation, both the creator himself and other people who get it through legal means such as grants, inheritances, wills, or agreements (Saidin, 2010, p. 214).

In Indonesia, the owner of the Copyright receives protection to be able to use his creations with Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the UUHC). The existence of this UUHC regulation is one of the results of Indonesia's participation as a member of the World Trade Organization, namely the *World Trade Organization* (hereinafter referred to as *the WTO*). *Trade Related Intellectual Property Rights* (hereinafter referred to as *TRIPs*) is one of the international agreements for *WTO* members to be able to adapt their domestic regulations to international regulations. The State of Indonesia has ratified *TRIPs* through Law Number 7 of 1994 concerning the Ratification of the Agreement on the Establishment of the World Trade Organization or *WTO*.

Especially regarding the types of copyright and other related rights, Article 9 paragraph (1) of the *TRIPs* refers to the types of copyright regulated in Article 2 of the 1971 Berne Convention which covers all types of works in the fields of literature, science and art, regardless of the mode or form of *expression*. Then in paragraph (2) it is also emphasized that what is protected by copyright is a work that has been expressed and not only in the form of ideas, procedures, working methods or similar mathematical concepts (Sutrisno, 1999, p. 49).

Article 1 paragraph (5) of the UUHC also defines other rights, namely *related rights* are rights related to Copyright which are exclusive rights for performers, phonogram producers, or broadcasting institutions (Law Number 28 of 2014 concerning Copyright, Article 1(5)). Based on this definition, the related rights are said to be secondary. Although in general related rights are closely related to the rights of the creator, in some cases such as *broadcasting rights*, they can also stand alone as in the example of broadcasting rights for football matches (Rayes, 2020, p. 3). Football players are not the creators of the game of football, but only the actors of the sport of football.

Football is one of the popular sports among humans. Football matches can be carried out by various groups, from competitions between cities, provinces, and even between countries which are referred to as the world cup. This is of course a great opportunity for every country to be able to get exclusive rights to the Copyright they have in order to get benefits, and Indonesia is no exception. A football match in accordance with Article 1 No. 6 of Copyright is

a performer, namely a person or several people who individually or jointly display and demonstrate a Work. The performance in Article 1 No. 8 is broadcast by Broadcasting institutions, namely Broadcasting Providers, both public Broadcasting institutions, private Broadcasting institutions, community Broadcasting institutions and subscription Broadcasting institutions that carry out their duties, functions, and responsibilities in accordance with the provisions of laws and regulations. Where the object of the broadcasting institution is broadcast works which include broadcast content to live football matches.

At the 2014 Brazil World Cup, FIFA (*Federation International de Football Association*) as a performance in the form of a football match then gave a broadcasting license to a broadcasting institution, namely PT Inter Sport Marketing (ISM) (Decision No: 02/PDT. SUS-HKI/2015/PN. Business.Smg). One of the rights of the licensee is to give a sublicense to another party. PT. ISM entrusted TV One and ANTV exclusively to broadcast the events/programs of the FIFA World Cup Brazil 2014 with the *Free to Air Broadcaster* system (free broadcasts without having to use subscription television). In addition, K-Vision and Viva+ exclusively broadcast the FIFA World Cup Brazil with the Pay TV Broadcaster *system* (paid broadcasts using subscription television). Meanwhile, the sub-license for *Internet Mobile Right* (the right to access internet using mobile phones) was given to Domikado. Based on the license agreement, PT. ISM also has public exhibition rights or rights for commercial interest. PT. ISM has appointed PT. NONBAR as the sole coordinator for joint viewing activities throughout the Republic of Indonesia. So, if there are other parties who broadcast the FIFA World Cup Brazil broadcast in a commercial place or to obtain commercial profit, they must obtain a license and pay royalties to PT. ISM as the sole licensee for the entire territory of the Republic of Indonesia. This is in accordance with article 9 paragraph 3 of law No. 28 of 2014 concerning Copyright.

During the world cup in 2014, there were several violations committed by hotels, restaurants and cafes by holding a world cup watch event together without permission from PT. ISM as the licensee of the world cup. One of the violations was committed by the Family Hotel Pier located at Jl. R. E. Martadinata No. 69, Wirobrajan Village, Wirobrajan District, Yogyakarta City, on Tuesday, June 24, 2014, at around 03.01 WIB, has broadcast the live broadcast content of the 2014 Brazil World Cup. At that time, Dermaga Keluarga Hotel as the organizer of the nobar held a broadcast without a permit and did not pay *a fee* for the broadcast of the world cup match which was licensed by PT ISM, even though the broadcast was carried out in a commercial area.

PT. ISM filed a lawsuit against the Family Hotel Pier, PT. Tri Sekar Lestari, at the Semarang Commercial Court for copyright infringement. PT. ISM, which claims to have an official license from FIFA, is demanding compensation of IDR 25,000,000 because the Family Hotel Pier committed an unlawful act. The lawsuit has sparked debate among academics and legal practitioners over the validity of licenses and their impact on legal decisions. In this context, differences in legal interpretations led to a variety of diverse judges' decisions.

This study has similarities with several previous studies. One of them is a study on the application of legal protection to broadcasting copyright by Annisa Justisia Tirtakoesoemah and Muhammad Rusli Arafat, who concluded that supervision and socialization of copyright is very important to protect the creators of works. Another study, by Badrudin Bin Choirul Anam and Sri Maharani, discussed the copyright protection of Champions League broadcasts,

which also found that infringements can be committed both individually and in groups. This research has similarities in researching broadcasting copyright, but differs in the approach of the case and object of the infringement studied, namely the World Cup and the Champions League.

This study aims to find out the legal arrangements related to broadcasting rights licenses in Indonesia according to Law Number 28 of 2014 and legal protection for Brazilian FIFA World Cup broadcasting rights license holders. This research is expected to contribute both theoretically to the development of legal science and practically for business actors in the broadcasting world, as well as to educate the public about copyright protection, especially broadcasting rights.

RESEARCH METHOD

In this legal research, methods were employed to analyze and obtain the results of the thesis, based on specific methodologies, systematic steps, and legal reasoning aimed at studying certain legal phenomena through analysis. The data and information used in the research were gathered using several methods. First, the approach method applied was the normative juridical approach, which involved examining secondary data such as positive law, legal principles, and theories related to Information and Communication Technology law, copyright protection, and other relevant legal fields. This study focused on literature materials or secondary data, including primary, secondary, and tertiary legal sources.

Second, the research specification was descriptive-analytical, describing applicable laws and regulations and associating these with legal theories and the practical implementation of positive law relevant to the problems encountered. Third, the research was conducted through library research by collecting secondary legal materials, including binding legal sources to gain concepts, theories, and information.

The legal materials used included three categories: primary legal materials, which are authoritative legal materials serving as the main sources, such as laws and binding regulations in Indonesian positive law relevant to the study—specifically, Law Number 28 of 2014 concerning Copyright and the Criminal Code; secondary legal materials explaining primary sources, such as draft laws, books, articles, research findings, and expert doctrines directly related to the subject; and tertiary legal materials, which provide instructions and explanations about primary and secondary materials, including legal dictionaries (such as Black's Law Dictionary), encyclopedias, and other reference sources.

Data were collected through library research by examining documents, scientific writings, laws and regulations, and other relevant articles pertaining to the legal protection of broadcasting rights license holders. The data analysis employed a qualitative juridical method, which is based on legal principles and norms. This qualitative approach focused on studying applicable documents, literature, and scientific writings related to the research subject and analyzing them without using quantitative data. The approach emphasized formal and argumentative reasoning rather than hypothesis testing and aimed to understand legal issues and symptoms in the context of protecting broadcasting rights violations.[](#_ftn9)

The research was conducted in locations considered supportive of the study, including the Mochtar Kusumaatmadja Library at the Faculty of Law, Padjadjaran University, Bandung,

and the CISRAL Library, the Information Resources Center and Public Library of Padjadjaran University.

RESULTS AND DISCUSSION

Legal Protection of License Rights Holders for Fifa World Cup 2014 Brazil Broadcasts

One of the legal aspects that protects human rights in their intellectual rights is Intellectual Property Rights (IPR). Intellectual Property *Rights* (IPR) are basically rights that are born based on the results of a person's intellectual work. IPR is a legal construction of intellectual property protection as the product of the creator's or inventor's *karya* (Sardjono, 2010, p. 256). As a form of appreciation for Intellectual Property Rights, legal protection of these rights requires adequate legal tools and protection mechanisms. In this way, IPR will get a proper place as a form of rights that have economic value.

One of the areas of IPR that receives protection is copyright. Law Number 28 of 2014 concerning Copyright, states that copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with the provisions of laws and regulations (Saputra, 2016). While the creator is one or several people alone or together produce a unique and personal creation. A creator can also be defined as a person who gives birth to a creation for the first time so that he is the first person to have the right to be the creator.

Copyright in terms of function is the legality of ownership of exclusive rights of a work. This legality provides legal protection to the work and ensures that the rights of the creator are not violated, so that the protected work will not be misused by other parties. The exclusive rights of the Creator or copyright holder mean that no other person may exercise such rights except with the permission of the creator. Protected works include works in the fields of science, art, and literature. According to the explanation of Article 2 of Law Number 28 of 2014 concerning Copyright, what is meant by exclusive rights is a right that is solely intended for the owner of the work or the copyright holder so that no other party can use the right without the permission of the creator. Meanwhile, what is meant by the Right Holder is a legal subject who is appointed by law as the party who has the right to exercise the exclusive right of copyright.

The exclusive right of the copyright holder is to communicate and reproduce a work. According to the explanation of Article 43 of Law Number 32 of 2002 concerning Broadcasting, broadcasting institutions, one of the parts of communication media, cannot simply broadcast programs that will be aired to the public, in the context of the use of their broadcasting rights (Budi, 2019, p. 10). In this article, it stipulates that every broadcast agenda must have broadcasting rights. In broadcasting broadcast events, broadcasting institutions must include their broadcasting rights. In Intellectual Property Rights (IPR), broadcasting institutions have the right to create, reproduce, or broadcast their broadcast works.

The rights holder wants to monopolize the broadcasting rights and obtain the maximum possible economic benefits or incentives as a reward or compensation for the hard work and costs that have been incurred. However, on the other hand, users want to maximize the benefits of economic rights from the intellectual property without juridical limitations (Vision Judiciary Team, 2015, p. 1). A *user* who pays *fees* or royalties to the copyright holder cannot be separated from the existence of a license agreement.

License is a form of granting permission to utilize an intellectual property right that can be granted by the licensor to the licensee so that the licensee can carry out a form of business activity, either in the form of technology or knowledge that can be used to produce, produce, sell, or market certain goods, or that will be used to carry out certain service activities, by using the licensed intellectual property rights. For this purpose, the licensee is required to provide counter-performance in the form of royalty payments which are also known as *license fees*. Meanwhile, according to Article 1 number 20 of Law 28 of 2014 concerning Copyright, a License is a written permission granted by a copyright holder or related rights owner to another party to exercise economic rights to his or her creation or related rights product under certain conditions. With this license agreement, the creator or copyright holder obtains a benefit in the form of royalties for the announcement or reproduction of the work made by other parties or licensees. Legal Protection of License Rights Holders for a Commercial Display That Does Not Have a License includes:

A. The case between Inter Sport Marketing (ISM) and the Hotel Pier

The Family Hotel Pier is located in Yogyakarta where the act of showing without a permit in a commercial area, namely in a hotel, is an act of unjustified acts. As a result, it is detrimental to PT. Inter Sport Marketing because the Family Hotel Pier does not pay a certain amount of royalties to broadcast the FIFA (Supreme Court Decision Number 1/Pdt.Sus-HKI/2019/PN Smg).

Looking at the violations committed by the Family Hotel Pier, PT. ISM took the legal route through the filing of a lawsuit against the Family Hotel Pier. PT. ISM filed a lawsuit against PT. Tri Sekar Lestari, because it is considered to be infringing copyright. This lawsuit has been filed by PT. ISM at the Semarang Commercial Court, this lawsuit was filed because the Family Hotel Pier had committed an unlawful act. In his decision, the judge sentenced the defendant to provide compensation to the plaintiff, namely PT. ISM amounting to Rp. 25,000,000,- (twenty-five million rupiah). The reality in practice that occurs in Indonesia, PT. ISM, which claims to have an official license from FIFA, has actually caused a debate of pros and cons in various circles of academics and legal practitioners. The impact of these pro and con attitudes has a great influence on judges' decisions as a result of different interpretations and interpretations of the law and gives rise to different decisions (Rayes, 2020, p. 4).

B. Case between Inter Sport Marketing (ISM) and Dunkin Donuts Ngurah Rai Jimbaran

Surabaya District Court (Surabaya District Court), where PT. ISM has also sued PT Dunkindo Lestari, which manages Dunkin Donuts Ngurah Rai Jimbaran, as an unlawful act for having broadcast the live broadcast of the 2014 Brazil World Cup in the Dunkin Donuts area on July 10, 2014 at 06.26 WITA (Surabaya Update, 2018). At that time it was a match between the Netherlands and Argentina on TV One as one of the unpaid television channels. The commercial court judge at the Surabaya District Court rejected the lawsuit of PT. ISM entirely. In its description of its legal considerations, the panel of judges argued that first, the broadcast of the 2014 World Cup in Brazil was not included in the category of creation as referred to in Article 1 number 3 of Law Number

19 of 2002 concerning Copyright which was used as a legal basis by the judge at that time, because what was meant by the broadcast was related rights, not copyrights.

Then the second, in accordance with the provisions of Article 49 paragraph (3) of Law Number 19 of 2002 concerning Copyright, which has the right to prohibit other parties from broadcasting the 2014 Brazil world cup football match is the broadcasting institution, while in this case, both FIFA and PT. ISM is not a broadcasting institution. The third legal consideration is that the broadcast shown commercially by the defendant is through TvOne broadcasting, which is a private non-paid broadcast, so that the defendant's act or action is not an unlawful act. This third legal consideration is in accordance with the Supreme Court Decision Number 518/pdt.sus-HKI/2015.

C. The case between Inter Sport Marketing (ISM) and Metro Hotel International Semarang

There is valid and strong evidence that PT. Metro Hotel International Semarang has carried out engineering engineering. Although the broadcast of the 2014 Brazil World Cup was broadcast by TVOne and ANTV which are *free to air TV stations*, but based on the evidence of the letter such as *a photocopy of* the Renewal of the Letter of Appointment No. 010/ISM/Srt.P/V/ 2014 dated May 10, 2014, where PT. Nonbar as the sole coordinator of the joint viewing activity and has exclusive rights in the territory of the Republic of Indonesia and *a photocopy of the* Deed of Statement of Resolution of the Extraordinary General Meeting of Shareholders of PT. Nonbar No. 7 dated January 9, 2013, it is known that PT. Metro Hotel Internasional Semarang is a pay TV or cable TV customer from Telkom Vission (Saputra, 2019, p. 3).

PT. Metro Internasional Hotel Semarang granted an exception as a defendant in the Semarang District Court regarding its case against PT. ISM (Saputra, 2019, p. 2). In its exception, PT. Metro International Hotel filed a lawsuit formality, namely the *legal standing* of PT. ISM to file its lawsuit, and asked PT. ISM to show proof of the license it already has (Hermantyo, 2019, p. 81). The doubts felt by PT. Metro International Hotel is also mentioned in Henry Sulisty Budi's writing, he considers that in the content of *the media rights* license as received by PT. ISM does not in any way regulate the clause authorizing the licensee to take legal action, including filing a claim for infringement of the Media Rights licensed to him (Budi, 2019, p. 14).

D. The case between Inter Sport Marketing (ISM) and PT. Bhavana Andalan Klating and Alila Villa Soori based on Decision Number 47 PK/Pdt.Sus-HKI/2018

1. Parties to Decision Number 47 PK/Pdt.Sus-HKI/2018

a. PT. Inter Sport Marketing

PT. Inter Sport Marketing is a legal entity established in 2010 based on the Deed of Establishment No. 02 dated October 5, 2010 which was made before a notary in Jakarta which has been approved by the Minister of Law and Human Rights of the Republic of Indonesia. PT. Inter Sport Marketing has been running its business since 2010 until now which is engaged in sports activities, both in the territory of the Republic of Indonesia and in collaboration with sports organizations abroad. In the context of the world cup in Brazil in 2014, PT. Inter Sport Marketing is a licensee of *the Federation International De Association* (FIFA) which is an International football organization based at FIFA – Strasse 20 PO. Box. 8044 Zurich, Switzerland.

FIFA has the power to broadcast the World Cup throughout the territory of the Republic of Indonesia. On May 5, 2011, a *License Agreement* was made and signed between PT. Inter Sport Marketing with FIFA in relation to the transfer. PT. Inter Sport Marketing has submitted an application for registration of a license to the Director of Copyright, Directorate General of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia on May 23, 2014. Media rights for the broadcast of the 2014 Brazil World Cup in the Indonesian territory PT. Inter Sport Marketing has granted a Sub License for *Free to Air TV Broadcaster* broadcasts, which is given to ANTV and TV One, while for paid broadcasts or Pay TV Broadcasters is given to K. Vision and VIVA Sky *Internet Mobile Rights* to Domikado. As for public exhibition rights or commercial area rights for commercial purposes, PT. Inter Sport Marketing gave its power of attorney to PT. Nonbar as of the Letter of Appointment dated November 12, 2013.

b. PT. Bhavana Andalan Klating and Alila Villa Soori

PT. Bhavana Andalan Klating is a company engaged in the property sector focused on the construction of hotels, villas and resorts. The company was established in Jakarta in February 2007. PT. Bhavana Andalan Klating is located on Jalan Bouvelard Artha Gading, Kelapa Gading, North Jakarta. PT. Bhavana Andalan Klating is a legal entity in the form of a Limited Liability Company of a Villa or Resort, namely Alila Villa Soori whose business is engaged in the field of hotel accommodation or villas. In this case, PT. Bhavana Andalan Klating and Alila Villa Soori were found to be broadcasting the World Cup live broadcast in a hotel room. The broadcast was aired in a commercial place without permission from PT. Inter Sport Marketing which owns the media rights to the FIFA Word Cup Brazil 2014. This act is an unlawful act and results in PT. Inter Sport Marketing suffered losses because PT. Bhavana Andalan Klating and Alila Villa Soori do not want to pay the licensing fee to PT. Inter Sport Marketing or PT. Nonbar.

c. *Federation Internationale De Football Association* (FIFA)

The Federation Internationale De Football Association (FIFA) is the international governing body of football. FIFA is headquartered in Zurich and has 211 association members. FIFA was founded in Paris on May 21, 1904. This body functions in conjunction with regional associations that monitor the development of football in different parts of the world. FIFA often takes an active role in running and developing the sport around the world. FIFA has made and signed a *License Agreement* with PT. Inter Sport Marketing, where PT. Inter Sport Marketing is the official licensee of FIFA and has media rights for all regions of the Republic of Indonesia for the 2014 World Cup in Brazil based on the *License Agreement* signed between the two parties on May 5, 2011.

The judge's consideration regarding the dispute between PT. Inter Sport Marketing against PT. Bhavana Andalan Klating and Alila Villa Soori in Decision Number 47 PK/Pdt.Sus-HKI/2018 In the Supreme Court Decision Number 80K/Pdt. Sus-HKI/2016 between PT. Bhavana Andalan Klating and Alila Villa Soori against PT. Inter Sport Marketing judge decided to reject the cassation application from the Cassation Applicants, namely PT.

Bhavana Andalan Klating and Alila Villa Soori. In addition, it also corrects the decision of the Commercial Court at the Surabaya District Court 09/IPR. COPYRIGHT/2014/PN. Niaga.Sby dated June 30, 2015. The Supreme Court is of the opinion that the objections raised by Defendant I and Defendant II cannot be justified, therefore after careful examination of the cassation memorandum received on July 24, 2015 and the counter cassation memorandum received on August 27, 2015 is linked to *Judex Facti*, the Commercial Court at the Surabaya District Court stated that *Judex Facti* There is nothing wrong in applying the law with the following considerations:

1. The facts obtained in this case prove that the Defendant, both Defendant I and Defendant II, have broadcast the 2014 Brazil World Cup match live at the Defendant's place of business without permission or approval from the Plaintiff as the entitled party or official licensee in Indonesia, but for the payment of losses it is necessary to repair so that it can meet the sense of justice for all parties and *dwangsom* must not be applied in the penalty imposed in connection with the payment of a sum of money;
2. The appeal filed by PT. Bhavana Andalan Klating and Alila Villa Soori must be rejected with the improvement of the decision of the Commercial Court at the Surabaya District Court Number 09/IPR. COPYRIGHT/2014/PN. Sby's business regarding the amount of damages and *dwangsom*;
3. PT. Bhavana Andalan Klating and Alila Villa Soori were sentenced to pay the case costs. After the above considerations, finally at this cassation level, the judge decided to reject the cassation application from the Cassation Applicant, namely PT. Bhavana Andalan Klating and Alila Villa Soori and corrected the decision of the Commercial Court at the Surabaya District Court 09/IPR. COPYRIGHT/2014/PN. Niaga.Sby, June 30, 2015. The Supreme Court stated that the reason for the Petitioner for Review or PT. Inter Sport Marketing can be justified on the grounds that if it is connected to *Judex Juris*, it turns out that there is a mistake of the judge or a real mistake.

In the consideration of *Judex Juris* which reduced the amount of material damages that had been imposed by the *Judex Facti* decision of the Commercial Court at the Surabaya District Court of Rp 1,500,000,000.00 (one billion five hundred million rupiah) to Rp 100,000,000.00 (one hundred million rupiah) did not consider the amount of money given by PT. Inter Sport Marketing to FIFA is US\$54,000,000.00 (fifty-four million US dollars). In its lawsuit, the Review Respondent postulated that *Judex Facti* had been wrong or erroneous in applying or violating the applicable law, especially the evidentiary law. *Judex Facti* should be able to prove whether or not an infringement occurs must consider the essential elements in proving the infringement of Copyright/Related Rights regulated in Law Number 28 of 2014 concerning Copyright. The *essential* elements of a normative nature are determined in Article 1 paragraph 24 of Law Number 28 of 2014 concerning Copyright which determines: "Commercial use is the use of works and/or related rights for the purpose of obtaining economic benefits from various sources or paid."

According to the law, the Petitioner for Review or PT. Inter Sport Marketing must first prove whether the elements of "Commercial Use" are fulfilled or not, so that if these elements are met, it can be proven that the Review Respondent or PT. Bhavana Andalan Klating and Alila Villa Soori have really benefited economically with the commercial use of the 2014 Brazil World Cup broadcast (Riswandi et al., 2017, p. 5).

From the results *of the sweeping* of the Review Respondent or Alila Villa Soori, it was proven that she was broadcasting the 2014 Brazil World Cup broadcast on TV in one of the empty rooms without obtaining prior permission from the Review Applicant, namely PT. Inter Sport Marketing or its representative, PT. Nonbar. The action taken by Alila Villa Soori by broadcasting the 2014 Brazil World Cup broadcast is an act of violation of the protected Broadcasting Copyright (Banindro, 2015, p. 15). Therefore, the Review Respondent must be responsible for the actions he has taken, namely by providing compensation to the Review Applicant. From the reasons that have been stated, the Supreme Court is of the opinion that there are sufficient reasons to grant the request for review submitted by PT. Inter Sport Marketing, rejected the request for review from the Review Respondent and the last was to cancel the Supreme Court decision Number 80 K/Pdt.Sus-HKI/2016 dated March 16, 2016. In addition, the Defendant or Review Respondent is sentenced to pay the costs of the case at all levels of the court and the review examination. The Judge's consideration in the case between PT. Inter Sport Marketing against PT. Bhavana Andalan Klating and Alila Villa Soori have provisions that regulate the penalty of imprisonment or fines, which are regulated in Article 116 paragraph (2) of the Copyright Law Number 28 of 2014. In Article 116 paragraph (2) it is stated that any person who intentionally and without rights commits an infringement for commercial use without a valid permit for the economic right to broadcast or communication of the performer's performance, fixation of a performance that has not been fixed and the provision of a fixation of a performance that can be accessed by the public can be sentenced to a maximum of 3 (three) years in prison or a maximum fine of Rp 500,000,000.00 (five hundred million) rupiah). If associated with this case, the penalty imposed by the Panel of Judges is Rp1,500,000,000.00 (one billion five hundred million rupiah). From the judge's decision, the fines imposed on the Defendant (Defendant I and Defendant II) were considered to exceed the specified limit. Although the 2014 FIFA World Cup Brazi broadcast was broadcast in every room of the Alila Villa Soori hotel without permission from the Plaintiff, the fine imposed on the Defendant should not exceed the limit set out in the Copyright Law Number 28 of 2014. If you want to punish with an appropriate punishment, then you should also be sentenced to imprisonment of 3 (three) years and a fine of Rp 500,000,000.00 (five hundred million rupiah). The criminal provisions that regulate punishment and fines are regulated in Articles 112 to 120 of Law Number 28 of 2014 concerning Copyright intended to provide a deterrent effect to the perpetrators of violations of the Copyright Law. Criminal provisions included in the Copyright Law Number 28 of 2014 are an *ultimum remedium*, namely criminal law is used as a last resort in law enforcement. This means that if a case can be resolved through other channels (family, negotiation, mediation, civil, or administrative law), that channel should be passed first (Riswandi et al., 2017, p. 67). The judge's consideration for the above case was that it was correct to impose the sentence on the defendants, namely PT. Bhavana Andalan Klating and Alila Villa Soori.

A. Legal Arrangements for Broadcasting Rights Licensing

1. Legal Basis of Law No. 28 of 2014 concerning Copyright

Law No. 28 of 2014 concerning Copyright replaces Law No. 19 of 2002 with significant changes that prioritize the interests of creators and copyright holders and pay attention to international agreements in the field of copyright. A fundamental change can be seen in Article

25 paragraph (3) which prohibits everyone from distributing without permission for commercial purposes the content of broadcast works of broadcasting institutions. This law also regulates dispute resolution through Article 95 paragraph (4) which requires mediation first before making criminal charges for copyright infringement in the territory of the Republic of Indonesia.

2. Licensing Agreement Recording Provisions

Article 83 paragraphs (1) and (3) of the 2014 Copyright Law requires the registration of license agreements at the Directorate General of Intellectual Property Rights, with the consequence that the unrecorded agreement has no legal consequences for third parties. However, in its implementation, this recording has not been fully implemented because it has not been properly socialized, there are no provisions from the president or the government as derivative regulations, as well as unclear about sanctions for those who do not record. As a result, the registration has not provided optimal legal protection for creators and copyright holders.

3. Purpose and Function of License Registration

The recording of license agreements has a strategic purpose, namely the aspects of promulgation (open public access), legality, and accountability as an instrument of government supervision. Through this mechanism, the government can evaluate licensing agreements to ensure that there are no provisions that are detrimental to the national economy or contrary to laws and regulations. Any proposed license agreement will be reviewed based on the parameters in Article 82 of the Copyright Law 2014, and if there is a problem, it will be refused registration.

4. Principles of Treaty Law (Pacta Sunt Servanda)

Based on Articles 1313 and 1338 of the Civil Code, a legally made license agreement is valid as law for the parties who make it. The license agreement serves as a corridor that defines the boundaries of the rights and obligations of the licensor and the licensee. If the license only provides rights for commercial activities, then that is limited to the rights owned by the licensee and does not extend to other rights such as litigation rights. The agreement is only binding on the party who made it, unless it is recorded at the Director General of IPR to be able to bind a third party.

B. Legal Protection of FIFA World Cup 2014 Broadcasting Rights License Holders

1. Philosophical and Constitutional Foundations of Protection

Protection of copyrighted works is very necessary because it is the result of a person's thoughts, works and karsa that requires an attitude of respect and appreciation in the form of recognition of rights. Article 28D paragraph (1) of the 1945 Constitution guarantees that everyone has the right to fair legal recognition, guarantee, protection, and certainty. According to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by others so that people can enjoy the rights granted by the law. This effort aims to motivate creators and related rights owners to be creative for a real contribution to the economy and welfare.

2. Ownership and Distribution Structure of FIFA World Cup 2014 License

PT. Inter Sport Marketing (ISM) obtained a license from FIFA by paying USD 54 million for the broadcasting rights of the 2014 FIFA World Cup Brazil in Indonesia. This agreement is non-exclusive because ISM grants sub-licenses to various parties: for Free to Air

TV to be given to ANTV and TV One, Pay TV to K.Vision and VIVA Sky, Internet Mobile Rights to Domikado, and appointing PT. Nonbar as the sole coordinator of the viewing activity together. This structure indicates that ISM does not have absolute exclusive rights, but can distribute broadcasting rights to other parties according to the broadcasting category.

3. Implementation of Preventive Legal Protection

Preventive efforts are carried out by ISM through the granting of official sub-licenses to broadcasting institutions and the determination of PT. Nonbar as the sole coordinator for watching activities together in commercial places. Any sub-licensee who wishes to re-sub-license to another party must first obtain permission from ISM. Preventive protection also includes the obligation to pay royalties for any institution or legal entity that uses or exploits the economic rights of the creator, in exchange for the use of the economic rights of a work or related rights product.

4. Repressive Legal Protection through Litigation

When preventive efforts are unsuccessful, the ISM carries out repressive protection by reporting violations to the commercial court or district court. Violation of broadcasting licenses is categorized as piracy of works that violate Article 25 of the Copyright Law on the economic rights of broadcasting institutions. In accordance with Article 96 of the Copyright Law, creators or copyright holders who suffer losses of economic rights are entitled to the compensation stated in the court decision, with payment no later than 6 months after the decision has permanent legal force.

C. Case Study of Broadcasting Rights License Infringement

1. ISM Case vs Hotel Family Pier

In this case, the Supreme Court held that the object of the lawsuit was not about copyright but rights related to copyright. The activities of watching together and providing the broadcast of the 2014 Brazil World Cup final for hotel guests from the channels of non-paid broadcasting institutions were considered by the judge not to be an unlawful act. Hotels in this context are seen as providing facilities for guests using free broadcasts, so that there is no active commercial element that infringes on broadcasting rights. This ruling sets an important precedent in distinguishing between uses for the internal benefit of hotels versus active commercial exploitation.

2. Case of ISM vs Dunkin Donuts Ngurah Rai Jimbaran

PT. ISM sued Dunkin Donuts, Coco Mart, and Maharani Beach Hotel for a total of Rp 26.6 billion in damages for broadcasting the 2014 FIFA World Cup without permission. The details of the losses include: a broadcasting license fee of IDR 750 million, a 3-year delay fine of IDR 7.5 billion (10x the license price), an investment value award of IDR 10 billion, and immaterial losses of IDR 8.3 billion including bank interest gains, reputational losses, and moral expenses. This case shows a comprehensive calculation of losses that include material and immaterial aspects due to broadcasting rights violations in commercial areas.

3. ISM vs Metro International Hotel Case

In this case, it was determined that PT. ISM has legal standing to file a lawsuit because it has exclusive rights under the license agreement with FIFA. Metro Hotel is proven to be engineering as a pay TV customer from Telkom Vision, not as an end user or final consumer. IPR expert Budi Agus Riswandi provided information that hotels have business elements and

benefit as business actors, so they include commercial areas. Ahmad Rifadi emphasized that although the "commercial area" is not recognized in the Copyright Law, what is important is the "commercial use" where there is an advantage from the use of the work.

4. The case of ISM vs PT. Bhavana Andalan Klating and Alila Villa Soori

Surabaya Commercial Court in decision Number 09/HKI. COPYRIGHT/2014/PN. Niaga Surabaya sentenced the two defendants to pay Rp 2.5 billion in damages (far from the Rp 37 billion demand) with details: a fine of 10x the license price of Rp 1 billion plus material damages of Rp 1.5 billion, plus forced money of Rp 500 thousand per day since the verdict has permanent legal force. The Supreme Court in its Review ruling affirmed that the rights that ISM has are exclusive rights under the copyright license of the agreement with FIFA. This violation violates Article 25 paragraph (3) of the Copyright Law and can be subject to criminal sanctions under Article 118 with a threat of imprisonment of 4-10 years and a fine of Rp 1-4 billion.

D. Problem Analysis and Protection System Evaluation

1. Inconsistency of Legal Categorization

There is confusion in the categorization between copyright, related rights, and broadcasting rights in various court rulings. The broadcasting right is regulated in the Broadcasting Law No. 32/2002 as the right of broadcasting institutions to broadcast programs legally obtained from copyright owners. Related rights are regulated in the Copyright Law including the rights of performers, phonogram producers, and broadcasting institutions. While FIFA broadcasting works licensed to the ISM are categorized as copyrighted based on the Supreme Court's ruling, but when submitted to the broadcasting institution it becomes a related right. This inconsistency creates legal uncertainty in enforcement.

2. Imbalance of Compensation and Effectiveness of Sanctions

Court judgments often award damages that are not proportionate to the actual losses and investments incurred by the licensee. As in the case of Alila Villa Soori, the compensation was only Rp 2.5 billion out of the Rp 37 billion demand, or ISM had to pay USD 54 million to FIFA but the damages for violations were only hundreds of millions of rupiah. This imbalance does not provide a deterrent effect to violators and can encourage repeat violations because the cost of compliance is higher than the cost of violation. This condition has the potential to dampen the spirit of investment in the field of intellectual property rights.

3. Weaknesses in Law Enforcement and Implementation

Although PT. ISM has made efforts to protect the law in accordance with applicable theories and laws and regulations, there are still weaknesses in implementation. The recording of license agreements at the Director General of Intellectual Property Rights has not run optimally, there are no clear derivative regulations, and sanctions for registration violations are not firm. Legal protection according to the theory of Phillipus M. Hadjon which is preventive and repressive has not been running optimally due to the lack of legal certainty from lawmakers and weak enforcement at the judicial level which does not provide a proportionate deterrent effect to violators.

CONCLUSION

Broadcasting rights licenses conducted commercially without proper authorization violate Article 25 of the Copyright Law, particularly paragraph (2), which protects the

economic rights of broadcasting institutions to license or prohibit rebroadcasting, communication, fixation, and duplication. Unauthorized commercial use, such as without a license from PT ISM, is subject to criminal charges under Article 118. Legal protection is further outlined in Article 95 paragraph (4), requiring mediation prior to civil or criminal proceedings as stipulated in Articles 118 and 96. These violations also constitute Unlawful Acts under Article 1365 of the Civil Code. To prevent infringements and economic losses to licensees, stricter legal enforcement and punishments proportionate to the offenses are recommended. Future research could explore the effectiveness of mediation processes and alternative dispute resolution mechanisms in reducing broadcasting rights violations.

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