

# THE LAW OF REMOVING WATERMARKS ON SHORT VIDEOS ACCORDING TO THE PERSPECTIVE OF WAHBAH AZ ZUHAILI (CASE STUDY OF REMOVE WATERMARK TIKTOK APPLICATION)

Rio Pradana <sup>a\*)</sup>, Iwan <sup>a)</sup>

<sup>a)</sup> Universitas Islam Negeri Sumatera Utara, Medan, Indonesia

<sup>\*)</sup>Corresponding Author: [rio0204181007@uinsu.ac.id](mailto:rio0204181007@uinsu.ac.id)

**Article history:** received 31 November 2023; revised 02 December 2023; accepted 04 January 2024

**DOI:** <https://doi.org/10.33751/jhss.v7i3.9600>

**Abstract.** Cases of removing watermarks on creative videos on Tiktok often harm content creators because the videos are taken unfairly. Researchers identified a problem in this that was found to be a short video from Tiktok that was uploaded back to Tiktok and other platforms without including a watermark where the watermark was a sign of protection of intellectual property rights of the original video owner. This research uses research methods Normative legal research or library research is research that examines document studies using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of scholars' opinions. The form of loss felt by the content creator himself to the exploration of his videos without watermarks is certainly the most detrimental to the identity of his work and the economic value that makes the content creator himself decrease his income. Not only that, but actually the Copyright Law has carried out legal protection for content creators whose videos are deliberately removed watermarks on the video. Wahbah Zuhaili himself views the case as a form of idea theft and can be subject to civil and administrative sanctions. In this case Wahbah Zuhaili himself is in line with copyright law.

**Keywords:** watermark; short video; Wahbah Zuhaili

## I. INTRODUCTION

Communication over the internet is known as Computer Mediated Communication (CMC). This CMC facilitates the community with various applications including social media. The emergence of this social networking site originated from an initiative to connect people around the world. Various applications are increasing and facilitating the digital activities of social media creators such as social media applications to share articles such as Blogs, update status on Twitter and Facebook, upload photos and videos on Instagram, and share videos namely Tiktok and Youtube [1]. TikTok is a platform where users can be creative to present and share various short videos with short duration that can be enjoyed by all TikTok application users around the world. In TikTok videos, creators/creators always watermark their work so that their work is not stolen or claimed by others. Including a watermark means that we respect the identity of the creator when creating work or content. This is done by all parties who already have a TikTok account when registering have agreed to all the terms and policies of the TikTok application, both only using TikTok as a medium of entertainment viewing and using and making videos with their creative ideas. However, it is not uncommon for parties to remove or take over all creator rights to their creations such as removing watermarks on TikTok videos they take and then uploading them on other applications such as Youtube Shorts as if they were videos of

their creation and often used for commercial purposes. Creators can only upload their own videos or those of others who are allowed to use. This means they can't upload videos that aren't their own work or use someone else's copyrighted content, such as music tracks, sneak trailers, or user-generated videos. Other creators, in their videos without obtaining the necessary permissions. Youtube, along with the rapid development and movement of technology, created its latest feature, Youtube Shorts which are short in duration of 15 seconds and 60 seconds long per video.

Before conducting the study, researchers had made observations on TikTok social media and Youtube Shorts with several videos obtained such as Jessica Jane's TikTok video, which was reuploaded by the Youtube channel account Cewek Berdamage on Youtube Shorts without the inclusion of not only one watermark but other TikTok creator content such as Erika Richardo, Fuji An, Vilmei, and other creator content uploaded on this Youtube channel. Furthermore, researchers found several other creator content videos whose videos were reuploaded on Youtube Shorts without watermark, namely TikTok videos owned by content creators, namely Tumming Abu. In addition, researchers also found this case in a video belonging to Gen Halilintar who reuploaded without permission Siti Badriah's song Lagi Syantik. Researchers identified a problem in this that was found to be a short video from Tiktok that was uploaded back to Tiktok and other platforms without including a watermark

where the watermark was a sign of protection of intellectual property rights of the original video owner.

## II. RESEARCH METHODS

This research uses research methods Normative legal research or library research is research that examines document studies using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of scholars' opinions. [2]. The approach used in this study is the normative juridical approach. The normative approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. [3]. And using a conceptual approach. What is meant by a conceptual approach is an approach that departs from the views and doctrines that develop in legal science era.

## III. RESULTS AND DISCUSSION

### *A Form Of Loss To Content Creators Whose Tiktok Videos Are Reuploaded Without Watermark*

Watermark or watermark is a mark made separately on an image and video that serves to protect a copyrighted work produced from irresponsible parties who deliberately imitate even to the point of stating that it is their copyrighted work [4]. Copyright is a type of intellectual property that gets legal protection, it is stated in the TRIPS Agreement [5]. In the field of Copyright has benefits for creators by having intellectual power in creating protected works. Indonesia [6] is a member of the WTO which includes the TRIPS Agreement where Indonesia must comply with the TRIPS Agreement including adjusting the international standards of the TRIPS Agreement into the UUHC in Indonesia. [5] With the approval of the TRIPS Agreement regarding intellectual property protection arrangements, it is affirmed that anyone who violates IPR Law must be held accountable. [7]. Legal protection should also be given to someone who has created an intellectual work. Where the IPR concept is interpreted as an appreciation of one's creativity in the form of copyrights and art seen in one of the theories of intellectual property rights legal protection, namely Reward Theory proposed by Robert C. Sherwood which states that Reward Theory explains that in exchange for the intellectual work of creative video creators uploaded on the TikTok application.

The disadvantages of re-exploitation without watermark itself have a bad impact on the content creator himself are as follows:

1. Loss of economic rights of content creator owners so that it can result in income from the content creator itself
2. Loss of copyright due to the creative video he made because it was acquired unofficially by someone else ;
3. The content creator loses his work directly and his identity so that other viewers assume that the video does not belong to him.

### *A Form Of Legal Protection For Content Creators Whose Tiktok Videos Are Reuploaded Without Watermark*

The TikTok application is an application that is currently experiencing an increase in the number of downloads. This application has beaten other applications with the highest number of application downloads in 2019, which is 740 million downloads. This happens because there is a lot of enthusiasm from the Indonesian people who download this application as a way for them to fill their time at home by doing activities and creating in the form of creative videos made in the TikTok application that have unique features, various interesting challenges, and the amount of music provided by TikTok so that many TikTok users perform dance performances and this also makes TikTok users interested in download and follow challenges that are viral among Indonesians. TikTok application users either as Content Creators or as spectators, all parties must comply with the rules provided by the TikTok application. But it is unfortunate because many users ignore these rules written in the terms and conditions of using the TikTok application. In the Terms and Conditions of using the TikTok application, it is explained about how TikTok explains some important things about how the TikTok application protects creative videos uploaded by Content Creators and how the TikTok application handles copyright violations of a creative video made by Content Creators. This is the legal basis provided by TikTok in protecting its users from forms of Copyright infringement.

Creative videos are tangible and original creations from Content Creators, so these creations must be protected. The authenticity in question is related to an element of creativity that is typical of the creative video. [8] This is because, every work from the creator has economic value considering that a Content Creator has invested his time, energy, and mind to create works uploaded through the TikTok application. Content Creator is the creator of a creative video work, so it is very important to protect the rights owned by the creator. When viewed in UUHC, creative video does not yet have its own definition in UUHC. Video is a technology that records a process, transmits, arranges and also recaptures the moving image. [9]. However, creative videos can be categorized as cinematographic works which are the creation of moving image works uploaded on a media and creative videos produced from the TikTok application according to this definition. Cinematographic works are creations that must be protected according to the UUHC in accordance with article 40 paragraph (1) letter m, seen in the article it can be stated that creative videos uploaded through the TikTok application receive Copyright protection. The definition of Copyright is contained in Article 1 point 1 of the UUHC that Copyright is an exclusive right for the creator or rights holder who can publish his own work and give permission for his work to other parties. [10]

Copyright Holders have the right to control the use of certain works or information. [11] Exclusive Rights owned by creators according to article 4 of the UUHC states that Exclusive Rights are Moral Rights and Economic Rights. [12] The definition of Moral Rights is a right that is automatically

attached personally from a creator, so that Moral Rights continue to be attached to a creator's work, namely by including the creator's name, using a real or pseudonym. Economic Rights are rights owned by a creator and automatically owned to get a profit from the work created.

If a creative video is downloaded by TikTok users (viewers) and re-aired on other social media platforms, it does not violate their Moral Rights, because the Moral Rights contained in the creative video include the real name or pseudonym of the creator of the work. Based on Article 5 paragraph (1) of the UUHC regarding moral rights that bind the creator personally to be able to include his name, either a pseudonym or alias. Use of his work for the public and have the right to modify his work. But with so many phenomena that occur today, many parties are not responsible for the creation of others by covering up the Moral Rights of a video by deleting the name of the creator of the creative video and not being responsible for his actions. The way to protect the Moral Rights of a creative video is seen in Article 6 of the UUHC regarding the protection of moral rights where the creator of the work has the right to information on the management of his creation. As stipulated in Article 7 paragraphs (1) and (2) of the UUHC that Copyright management is carried out by the method of identifying the originality of the substance of the creation and who the creator is. Furthermore, electronic information: Copyright includes some information about the work that arises and pastes electronically, namely information about the name of the creator, either aliases, pseudonyms.

In addition to copyright infringement in the form of eliminating a moral right inherent in a work of creation, many phenomena occur experienced by Content Creators where their creations are downloaded from the TikTok application and then rebroadcast on several social media platforms and use other people's creative videos to take advantage of the economic value of the video. This is because there is a provision from TikTok where the economic rights are released automatically after the creative video is uploaded on the TikTok application. With this provision, it causes a lot of content piracy and unauthorized reviewing, because creative videos are considered as ordinary videos that have no economic value. The meaning of "Piracy" contained in Article 1 number 23 of the UUHC has the meaning that piracy is a duplication of creation that is unlawful and widely broadcast with the aim of obtaining economic benefits. So content piracy is a creative video that is rebroadcast on various social media platforms without permission from the Content Creator and takes advantage of the economic value of creative videos. However, while not removing the watermark on the video, it does not become a piracy.

#### *Law Removing Watermarks On Short Videos According To Wahbah Zuhaili*

The auction of the house must certainly get prior approval from the owner of the house even though even though the owner of the house has in fact defaulted due to not being able to pay the arrears that have been mutually agreed.

According to Wahbah Az-Zuhaili, the title or right of ownership is the relationship between a person and a property that is strengthened and legitimacy by Syara' whose relationship makes the property specific only to him and he has the right to do all forms of slurs towards the property as long as there is no such thing as to prevent him from performing the stage. The word al-Milku, as used to indicate the meaning of the relationship above, can also be used to indicate the meaning of something possessed, such as the saying, "Hadzaa havei", which means, this is something mine. That is, al-Milku is something owned by someone, be it in the form of goods or benefits. Based on this meaning, it is understood that the words of the Hanafiyya scholars, that the benefits and rights are included in the category of al-Milku not property. [13]

Based on this, property is a form of ownership in which there are two categories in it. Property is divided into two parts, namely tangible property in objects and intangible property in objects. Property is something more general than possessions that are more specialized in nature. Therefore, if a person controls and obtains ownership of property by legal means, then the possession of such property is especially for him, and the particularity of possession of the property for him makes him able to use it in performing it unless there is a reason or cause established by sharia that prevents him from doing so, such as madness, idiotism, as-safah nature, still a child and so on. Similarly, the particularity of possession of the property for him precludes others from utilizing or exercising proper respect for the possession of the property unless there is a reason or cause established by the shari'a that permits it for him, such as a representative, al-Wishaayah (pardon, appointed as Washi) or representative. [13]

So researchers can understand that the concept of ownership proposed by Wahbah Az-Zuhaili is a legitimate relationship between property and its owner, thus causing the ownership of the property specifically or fully to belong to him both in the form of goods and benefits. So that no one else is allowed to use the property unless there is a reason or other cause determined by the sharia that allows it for him. In other words, you cannot use someone else's property without the permission or willingness of the owner of the property.

#### 1. Types of Ownership According to Wahbah Zuhaili

Ownership according to Wahbah Az-Zuhaili can be divided into two, which are as follows:

##### *Perfect Ownership*

That is, ownership as a whole, both substances and benefits, thus all rights recognized by Shara 'remain in the hands of the owner. That is, if the material or benefit of the property is wholly owned by a person, then all rights related to the property are under his control. Among its most important characteristics is that it is an absolute, permanent possession that is not limited by a certain period as long as something owned still exists, and cannot be aborted. For example, if someone owns a house, then he has full power over the house and he can use it freely.

##### 2. Imperfect Ownership

That is the possession of something, but only its substance (object), or its usefulness (use) only. Because it

could be that the form of property is owned by someone else, and it could have benefits without the form of the object itself. The imperfect division of ownership can be divided into three, which are as follows: [14].

1) Mikul 'Ain

That is ownership of something, but only the object while its use and usefulness belong to others.

2) Milkul al-manfaat asy-syukhshi or Haqqul Intifaa'

Namely ownership of the benefits of a personal item or the right of utilization and use. The factors that cause the emergence of beneficial ownership include borrowing, leasing, endowments, wills and grants.

3) Property or haqqul irtifaq

Haqqul irtifaq is an object established over an immovable property for the benefit and benefit of other immovable property owned by others. This is a right that remains as long as both immovable property still exist regardless of who owns it. Such as, the right to irrigation water, the right to canals or waterways, the right to drain, the right to pass, the right to coexist. So it can be understood that, according to Wahbah Az-Zuhaili, various possessions are sometimes perfect or complete and sometimes imperfect. It can be said to be perfect if the possession is as a whole, both its substance (its object) and its benefits (its use) and is recognized by Shara'. And it is said to be imperfect if the possession is only the substance (the object), or its usefulness (use) while the form of the object is owned by someone else. So according to Wahbah Zuhaili, legal protection of huquq maliyah is called legal protection of property ownership in general because intellectual property rights are ownership rights or non-tangible property rights. Therefore, actions that violate the determination of IPR are haram. Wahbah al-Zuhaili basically did not explicitly mention Intellectual Property Rights as we know the concept today. However, he had mentioned property rights to property which includes authorship rights and disseminating written works, in a discussion in the book al-Fiqh al-Islami wa Adillatuh with the title subchapter haq al-ta'lif wa al-nasyr wa al-Tauzi' (the right to write and disseminate written works) but has relevance to the concept of intellectual property in general.

Actually (copyright) is part of the right to ideas, so the concept needs to be implemented in the protection of other intellectual property. Wahbah al-Zuhaili explains as follows:

[15] أَلْفَصْلُ الْأَوَّلُ - تَعْرِفُ الْمَلِكِيَّةُ وَالْمَلِكِ  
أَمْلِكُ : اِخْتِصَاصٌ بِالشَّيْءِ يُنْعَمُ الْغَيْرُ مِنْهُ وَيُمْكِنُ صَاحِبُهُ مِنَ التَّصَرُّفِ  
فِيهِ اِبْتِدَاءً إِلَّا لِمَا نَعَى شَرْعِي

Meaning: Similarly, the particularity of the property for him precludes others from using or doing proper use of the property unless there is a reason or cause established by the shara'.

If viewed the cause of the haram of IPR violations in counterfeiting this brand, according to Wahbah Zuhaili is because Wahbah Zuhaili considers that the brand is an intellectual property right in the nature of property and non-tangible ownership as a form of huquq maliyah where huquq maliyah is non-material ownership that is protected by its rights as well as the right to protection of objects owned in

reality. The right to property in the form of an idea or a work is part of the rights of Maliyah ma'nawiyah when viewed from the division above. Wahbah al-Zuhaili himself in his work mentions that jumhur ulama' other than Hanafiyyah views benefits and rights as treasures, because the goal of everything is its benefits not its substance alone. This opinion is correct and used by laws and social customs of the community in general. So that grasping (al-ihraz) and mastery (al-hiyazah) still apply to rights and benefits.

If the concept of huquq maaliyah Wahbah al-Zuhaili was previously relevant to the protection of IPR in general, it can be summarized as follows: First, Intellectual Property Rights recognized by law are personal rights protected by sharak even when a country's laws do not regulate them are still protected under the applicable 'urf. Second, plagiarizing and disseminating (commercializing) without the permission of the rights owner is tyranny which is immoral. Third, rights owners have the right to confiscate and stop the production of IPR violators. Fourth, the rights owner is entitled to compensation for moral and material losses for the stolen work. Fifth, a work can be used by other parties with an agreement on a certain object with a specified time. That is, the law of uploading tiktok videos without watermark from the original owner is a crime and prohibited according to Wahbah Zuhaili. Until this view is considered plagiarism and is theft. The theft is different from hudud theft where the law must be to cut off the hands. However, the penalty for plagiarism by removing this watermark is only punishable civilly and administratively. Although the law is haram, Wahbah Zuhaili categorizes the removal of this watermark as different from ordinary theft. If you understand again the issue of watermark removal itself refers more to ownership. Wahbah Zuhaili himself considered that watermarks were the same as non-tangible property rights as with *the theory of huquq maaliyah* which was used as the basis for intellectual property rights.

The problem of removing watermarks in creative videos that are then re-uploaded is a crime that is equated with theft because it takes someone else's property. Based on the description above, according to Wahbah Zuhaili, it is unlawful to commit acts of violation of individual property as long as the ownership is legal and legal. Islam prescribes penalties for theft, *ghashab* (grabbing), plunder, fraud, zhalim tax collection and so on, as well as demanding fines for damages for the destruction of others' property. In addition, Islam has also given a strict threat to anyone who takes the property of others in a vanity way such as stealing. This is also the same as the act of removing video watermarks with the aim of owning the video without permission recognized in the eyes of the law. All on the basis of instantaneousness so that it violates all legal provisions. Not only haram in Wahbah Zuhaili's view, this act is certainly contrary to Law Number 28 of 2014 concerning Copyright. The law agrees and is in line with the haram issued by Wahbah Zuhaili and states that removing watermarks on creative videos is an unlawful act which is certainly haram to do

#### IV. CONCLUSION

The form of loss felt by the content creator himself to the exploration of his videos without watermarks is certainly the most detrimental to the identity of his work and the economic value that makes the content creator himself decrease his income. Not only that, but actually the Copyright Law has carried out legal protection for content creators whose videos are deliberately removed watermarks on the video. Wahbah Zuhaili himself views the case as a form of idea theft and can be subject to civil and administrative sanctions. In this case Wahbah Zuhaili himself is in line with copyright law.

#### REFERENCES

- [1] A. G. Gani, "Sejarah dan Perkembangan Internet di Indonesia," *Journal Mitra Manajemen*, Vol. 5, Nomor 2, p. 68., 2013.
- [2] Y. A. Mukti Fajar ND, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, Yogyakarta: Pustaka Pelajar, 2010.
- [3] A. Muhammad, *Law and Legal Research*, Bandung: Citra Aditya Bakti, 2004.
- [4] T. Situmeang, "Perlindungan Hukum Terhadap Ciptaan Fotografi dengan Tanda Air atau Watermark Berdasarkan UU No. 28 Tahun 2014 Tentang Hak Cipta," *Fokus Hukum UPMI*, Vol. 1. Nomor 3, p. 137, 2020.
- [5] N. K. S. e. a. H. o. I. I. P. L. I. Dharmawan, *Harmonization of Indonesian Intellectual Property Law I*, Denpasar, Private Nulus, 2018: Private Nulus, 2018.
- [6] D. d. I. Pawitram, "Pengaturan Lembaga Manajemen Kolektif Terkait Penarikan Royalti Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta," *Jurnal Ilmiah Ilmu Hukum Kertha Semaya No.1*, p. 2, 2017.
- [7] N. K. S. d. W. W. Dharmawan, "Eksistensi dan Implikasi Prinsip MFN dan NT dalam Mengatur Hak Kekayaan Intelektual di Indonesia," *Jurnal Magister Hukum Udayana* 6, No.2, p. 261, 2014.
- [8] D. Tus, "Perlindungan Hukum Keaslian Cerita Rakyat," *Jurnal Magister Hukum Udayana* 3, No.3, p. 472, 2014.
- [9] I. M. D. Priyanto, "Tanggung Jawab Youtube atas Pelanggaran Video Tanpa Izin Kreator," *Jurnal Kertha Negara* 7, No. 10, p. 4, 2019.
- [10] A. Atsar, *Mengenal Hukum Kekayaan Intelektual Lebih Dekat*, Yogyakarta: CV Budi Utama, 2012.
- [11] A. Munawwar, "Upaya Penegakan Hukum atas Pelanggaran Hak Cipta Menurut Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta," *Jurnal Al'Adl Fakultas Hukum Universitas Islam Kalimantan* 8, No. 2, p. 127, 2016.
- [12] I. M. M. Wljaya, "Perlindungan Hukum Vlog di Youtube yang Disiarkan Ulang Stasiun Televisi Tanpa Izin," *Jurnal Kertha Semaya* 7, No.3, p. 6, 2019.
- [13] W. az-Zuhaili, *Fiqh Islam wa Adillatuhu* Vol. 6, Diterjemahkan oleh Abdul Hayyue al-Qattani, Jakarta: Gema Insani, 2011.
- [14] A. W. Muslich, *Fikih Muamalat*, Jakarta: Amzah, 2010.
- [15] W. Zuhaili, *Fiqh Islam Wa Adillatuhu*, Damaskus: Darul Fikr, 1985.
- [16] R. Usman, *Hukum Lelang*, Jakarta: Sinar Grafika, 2017.
- [17] I. Ash-Shan'ani, *Subulus Salam Juz.III*, Beirut: Darul Kurub Al-Ilmiyah, 1995.
- [18] A. Saepudin, *Hukum Keluarga, Pidana & Bisnis*, Jakarta: Kencana Prenadamedia Group, 2013.
- [19] A. Sutendi, *Hukum Gadai Syariah*, Bandung: Alfabeta, 2011.
- [20] A. Tirmidzi, *Al-Jami' Al-Shahih*, Beirut: Dar Al Ilmi, 1988.
- [21] R. Indonesia, *Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia*, Jakarta: Dewan Perwakilan Rakyat RI, 1999.
- [22] K. Keuangan, *Peraturan Menteri Keuangan Nomor 27/PMK.06/2016 Petunjuk Pelaksanaan Lelang*, Jakarta: Kementraian keuangan Republik Indonesia, 2016.
- [23] M. D. N. d. I. A. Pawitram, "Pengaturan Lembaga Manajemen Kolektif Terkait Penarikan Royalti Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta," *Jurnal Ilmiah Ilmu Hukum Kertha Semaya* 5, No.1, (2017), hlm. , p. 17, 2017.