



CIREBON INTERNATIONAL CONFERENCE ON EDUCATION AND ECONOMICS (CICEE)

JURIDICAL STUDY OF THE REGULATION OF CINEMATOGRAPHIC WORK VIEWING ON DIGITAL STREAMING PLATFORMS BASED ON THE INDONESIAN LEGAL SYSTEM

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Abstract

The viewing of cinematographic works on digital streaming platforms has become a significant phenomenon in the modern entertainment industry. Along with the ease of access, it also raises various legal issues, especially related to censorship and content control, and legal enforcement of censorship regulations and limitations in censorship of cinematographic works on digital streaming platforms has become a hot topic of discussion. This research aims to analyse the law enforcement of censorship regulations on cinematographic works and the factors that influence the limitations in censoring cinematographic works on digital streaming platforms. This research uses a normative juridical method by conducting a qualitative approach and analysing laws and regulations and opinions of legal experts. This research found that there are complexities and challenges in law enforcement against content censorship on digital streaming platforms, such as the lack of clarity of the parties entitled to censor cinematographic works on digital streaming platforms, and a vacuum in supervision of digital streaming platforms because the characteristics of digital streaming platforms are not fulfilled with the concept of broadcasting contained in broadcasting regulations.

Keywords: *Cinematography, Censorship regulations, Digital streaming platforms*

INTRODUCTION

Information technology that has developed significantly over the years has affected all aspects of people's lives. People who once tended to use everything conventionally are now switching to digital technology. This development eventually formed levels of communication, namely from intrapersonal communication, interpersonal communication, group communication, to mass communication. Communication is very important in our life process as social beings to be able to convey our ideas and ideas to our interlocutors.

The presence of digital technology creates a new paradigm regarding the process of delivering information and messages, such as cinematographic works. The viewing of cinematographic works delivered by the media from year to year has changed significantly since the existence of OTT services. OTT or Over the Top services through the Netflix, HBO TV, YouTube, Facebook TV platforms have become an alternative for people to find information and entertainment in recent years. Digital streaming platforms as new media have become one of the main platforms

for consumers to enjoy various cinematographic works easily using the internet. However, along with this ease of access, legal issues arise related to censorship in the viewing of cinematographic works on digital streaming platforms.

Technology and information innovation in broadcasting not only provide benefits but also challenges for the government, especially independent government institutions such as KPI. Broadcasts aired in several media are regulated and monitored so that all content disseminated by the media is not harmful, either personally to someone or to the Indonesian nation. The commissions or institutions that regulate and monitor are Indonesian Broadcasting Commission (KPI) and Film Censorship Board (LSF).

Indonesian Broadcasting Commission (KPI) is an independent institution established by Law Number 32 Year 2002 on broadcasting. It was created to regulate all things broadcasting in Indonesia. However, since the existence of OTT or over the top services, KPI, which is a broadcasting institution that oversees the broadcasting industry, has been in a dilemma as to how far it can oversee OTT services because Indonesia has not recognised OTT services as part of broadcasting activities due to differences in transmission methods.

Article 1 paragraph (2) of Law No. 32 of 2002 on Broadcasting (Broadcasting Law) defines broadcasting as a broadcasting activity carried out by utilising transmissions and/or transmissions using the radio frequency spectrum via cable, air, and/or other media so that it can be received simultaneously by broadcast service users. Meanwhile, OTT broadcasting is done by utilising internet protocol-based telecommunication networks. This difference creates legal diversification for the implementation of OTT services.

Article 47 of Law Number 32 Year 2002 regulates that broadcast content in the form of films and/or film advertisements must obtain a censorship pass mark from an authorised institution. Furthermore, the explanation of Article 47 states that the censorship pass mark referred to in this article only applies to television broadcasting services. However, the Broadcasting Law does not mention which institution is authorised to censor the content.

It was only in 2014 that Government Regulation No. 18 Year 2014 on Film Censorship Board was born, as a mandate from Law No. 33 Year 2009 on Film (Film Law), in Article 3 paragraph (1), it is stated that the Government established a Film Censorship Board (LSF) to censor films or film advertisements. The censorship activity itself is defined as an activity of research, assessment, and determination of the eligibility of films and film advertisements to be shown to the public.

The main thing done by LSF in conducting censorship is that the implementation of censorship by LSF is carried out with a full sense of responsibility and pays attention to the contextual nature of a film, technological advances and the development of values in society.

The criteria for censoring films and film advertisements are seen in terms of:

- 1). violence, gambling, and narcotics;
- 2). pornography
- 3). ethnicity, race, group, and/or class;
- 4). religion
- 5). law;
- 6). human dignity; and
- 7). the age of the film audience

Supervision of broadcast content after it is aired by broadcasters is conducted by the Indonesian Broadcasting Commission (KPI). The Broadcasting Law regulates KPI's authority, among others, to compile and stipulate P3SPS as the basis for assessing the content of broadcasts aired by each broadcasting institution. Based on its authority, one of KPI's duties and obligations is to accommodate, examine, and follow up complaints, rebuttals, and public criticism and appreciation towards broadcasting operations. Broadcasting Law

emphasises KPI's supervision of broadcast content after it is aired by broadcasters. To strengthen the implementation of KPI's authority and duty, KPI establishes Broadcasting Code of Conduct (P3SPS), which is a guideline on the limit of broadcasting behaviour and national broadcasting supervision.

The supervision of television broadcast content until the introduction of analogue broadcasting system was still conducted by two broadcast content supervisory regulators. LSF, whose institutional identity is regulated by Film Law, is mandated by Broadcasting Law to conduct censorship of broadcast contents to be aired on television. The supervisory authority then becomes KPI's authority after the content has been aired by broadcasters. Therefore, censorship of broadcast content before it is aired on television is the authority of the Film Censorship Board (LSF), while post-airing supervision on television is carried out by the Indonesian Broadcasting Commission (KPI). What about censorship and supervision in cinematography broadcasts on digital streaming platforms? Which party has the right to conduct censorship and supervision of the content of the broadcast.

Previous research explains that with the advancement of technology and information, online and streaming media such as Youtube and Netflix, have positive and negative impacts on Indonesian society. Many contents contain negative elements that need to be restricted and monitored by the government and related agencies such as KPI. However, based on Law No. 32 of 2002, KPI does not have the authority to restrict and monitor new media or online platforms such as Youtube and Netflix. Without the revision of the law, it will be difficult for KPI to supervise and restrict online media and streaming media such as Youtube, Netflix, and others. In addition, KPI can also reorganise the Broadcasting Code of Conduct and Broadcast Programme Standards (P3SPS), especially for new media monitoring.

From the existing research, there have not been many studies that discuss how law enforcement of censorship regulations on cinematographic works and what factors affect the limitations in censorship of cinematographic works on digital streaming platforms. Thus, this research seeks to contribute to a better understanding by focusing on law enforcement of censorship regulations and factors that influence limitations in censorship.

METHOD

The method used in this journal research is normative juridical or legal research using a qualitative approach that analyses legislation (statute approach) and related regulations, such as the regulations of the Indonesian Broadcasting Commission and the Film Censorship Board as well as a conceptual approach that examines the theories and doctrines of experts in the field of cinematographic works on digital streaming platforms.

RESULTS AND DISCUSSIONS

As mandated by Law No. 32 of 2002, KPI is given the authority and function to develop and supervise broadcasting regulations by synergising broadcasters with government and society. This regulation also covers the whole process of broadcasting activities, starting from the establishment, operationalisation, accountability and evaluation stages.

KPI's regulation is done to prevent conflicts that may cause loss to society, consumers, media companies and government due to broadcasts that violate the rules or do not comply with broadcasting ethics or KPI's law. In carrying out its duties, KPI also cannot be arbitrary, there are guidelines that regulate it. What programmes are not in accordance with the rules and can be harmful, it is all regulated in the Broadcasting Law and Broadcasting Ethics, which must be obeyed by media companies.

Based on Article 8 paragraph (2) of Law No. 32 Year 2002, in carrying out its functions, KPI has the authority to:

- 1). Setting broadcast programme standards
- 2). Develop regulations and set broadcasting code of conduct (proposed by broadcasting association/community to KPI);
- 3). Supervise the implementation of broadcasting regulations and code of conduct as well as broadcast programme standards;
- 4). Impose sanctions on violations of broadcasting rules and code of conduct and broadcast programme standards;
- 5). Coordinate and/or co-operate with the Government, broadcasting organisations and the public

While in Indonesian Commission Regulation Number: 01/P/KPI/07/2014 on Institutionalisation of Indonesian Broadcasting Commission Article 3 paragraph (2) states that "in performing its function as referred to in paragraph (1) of this Article, KPI has authority:

- 1). Establish the SPS;
- 2). Drafting regulations and establishing P3;
- 3). Supervise the implementation of regulations and P3 and SPS;
- 4). Providing sanctions for violations of regulations and P3 and SPS;
- 5). Coordinate and/or co-operate with the Government, broadcasting institutions, and the public.

One of the KPI's powers under the Broadcasting Law is to oversee the implementation of broadcasting rules and guidelines and broadcast programme standards. The limitations on the object of KPI's authority above are clearly regulated in Article 13 of Law No. 32 Year 2002. This is expressed in the regulation on broadcasting service, which consists of radio broadcasting service and television broadcasting service. Regarding the organiser, broadcasting service can be organised by public broadcasting institution, private broadcasting institution, community broadcasting institution, and subscription broadcasting institution. Thus, KPI's authority as broadcasting organiser is actually limited to radio and television content, as well as broadcasting institutions. In other words, KPI is basically not authorised to monitor new digital media such as: Youtube, Facebook, Instagram, Netflix, and so on.

Broadcasting media actually has unique or specific characteristics compared to print media or other mass media. It is unique because with this broadcasting media, information can be channelled and disseminated to be received by the audience directly or commonly referred to as real time or live. All events are directly heard/seen at the same time by listeners/viewers with a very wide and effective population coverage, but the information conveyed by broadcasting media that has immediately passed, cannot be repeated again unless it is given a policy to be rebroadcast. Meanwhile, in print media, the information provided can still be read again, anywhere and anytime, with a relatively narrower population coverage. In addition, OTT is essentially private and exclusive in contrast to public broadcasting.

Based on the characteristics of broadcast media mentioned above, digital streaming platforms do not fulfil the characteristics of broadcast media. The true characteristics of digital streaming platforms are streaming-based subscription services, which are offered online with film and television programmes, including some programmes created by digital streaming platforms themselves. Since the characteristics of digital streaming platforms are not fulfilled with the broadcasting concept contained in the Broadcasting Law, it means that KPI does not have the authority to supervise digital streaming platforms. However, if

KPI wants to impose restrictions on media content on digital streaming platforms, then it is out of its duty and authority and not in accordance with the concept of broadcasting based on Law No. 32 Year 2002 on Broadcasting.

Over The Top (OTT) broadcasting activities, i.e. digital streaming platforms, are not subject to Law No. 32 of 2002 on Broadcasting (Broadcasting Law) like conventional broadcasting corporations. OTT services in Indonesia are subject to the rules of the Telecommunications Law and its supervision refers to the ITE Law. The content presented in OTT services is restricted within the corridors of Articles 27 to 29 of the ITE Law, namely prohibited acts in transmitting electronic information. However, the articles that can protect the public in the ITE Law are a complaint offence, so only people who feel aggrieved can report to the authorities.

If there is content of electronic information that violates the law, the ITE Law and Government Regulation No. 71/2019 on the Implementation of Electronic Systems and Transactions (Government Regulation on PSTN) delegate authority to the Government to cut off access to electronic information. Settlement of violations that occur can also take the form of blocking content by telecommunications service providers. Another sanction is in the form of criminal threats listed in Article 45 of the ITE Law.

Currently, the Government has issued Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 3 Year 2016 on the Provision of Application Services and / or Content Through the Internet (Over The Top) (Circular Letter Number 3 Year 2016). This circular was issued with the aim of encouraging the readiness of OTT service providers in complying with the regulations being prepared by the Ministry of Communication and Information. It also aims to provide time for OTT to prepare everything related to the rules of OTT service delivery in Indonesia.

This circular letter regulates in detail the content restrictions that OTT must comply with, such as prohibitions on monopolistic practices and unfair business competition, pornography, consumer protection, broadcasting, cinema, intellectual property rights, advertising, anti-terrorism, and taxation. In addition, OTT is obliged to carry out data protection, carry out content censorship and filtering mechanisms, use Indonesian internet protocol numbers, provide access for the purpose of investigation or investigation, and must include instructions and information on the use of services in Indonesian. Furthermore, OTT is prohibited from containing content that contradicts Pancasila, the 1945 Constitution of the Republic of Indonesia, and matters that threaten the integrity of the country. Content that causes conflict, conflict between groups, inter-tribal, inter-religious, inter-racial, and inter-group (SARA), up to tarnishing religious values is also prohibited.

The prohibition also applies to content that encourages OTT service users to commit illegal acts, abuse narcotics, commit violence, extortion or threatening, hate speech, defamation, or other acts that are contrary to the provisions of laws and regulations. However, until now the circular letter is only an appeal and cannot be legally binding.

Hamid. S argues that the function of legislation in a modern country is a powerful method or way to regulate and provide direction to society towards the expected goals. Although there are simple arrangements governing OTT Services such as the ITE Law or the privacy policies of digital content service media, OTT Services do not have their own legal umbrella to serve as an integrated rule that can be tasked with supervising, providing responsibility, and legal certainty to the community.

CONCLUSION

This research shows that there is no clarity on the party that has the right to censor and supervise cinematographic works on digital streaming platforms because the characteristics of digital streaming platforms are not fulfilled with the concept of broadcasting contained in Law Number 32 of 2002 concerning broadcasting. Therefore, Over The Top (OTT) broadcasting activities, namely digital streaming platforms, are not subject to Law No. 32 of 2002 on Broadcasting (Broadcasting Law) like conventional broadcasting corporations. However, Over The Top (OTT) services in Indonesia are subject to the rules of the Telecommunications Law and its supervision refers to the ITE Law. The author suggests the creation of a separate regulation related to Over The Top (OTT) services that regulates and supervises digital streaming platform.

REFERENCES

- Ajibulloh, A. A. (2020). Analysis of Transmedia Storytelling in Hilo Milk Advertising Through Augmented Reality Media. *Journal of Communication Science*, 6(1), 26. <https://doi.org/10.35308/source.v6i1.1701>.
- Ajibulloh, W. K. (2023). Polemics of Indonesian Broadcasting Commission (KPI) in Monitoring New Media. *Journal of Islamic Communication and Broadcasting* Vol. 7, No. 1.
- Budiman, A. (2021). The Synergy of the Authority of Film Censorship Board and Indonesian Broadcasting Commission in Maintaining Broadcast Quality. Vol. XIII, No.12/II/Puslit.
- Dharmawan, A. (2018). Unravelling the Challenges and Solutions of East Java Regional Indonesian Broadcasting Commission to Achieve Television Broadcast Program Quality. *Diakom: Journal of Media and Communication*, 1(1), 24-32.
- Fachruddin, H. D. (2011). *Broadcasting Basics: History, Organisation, Operation, and Regulation*. Jakarta: Kencana.
- KPI. (2017). Basis for KPI Establishment. <http://www.kpi.go.id/index.php/id/tentang-kpi/dasarpembentukan>.
- Laksono, P. (2020). Mass Communication and Democracy in the Current Political System.
- Lana Aulia Afiftania, N. M. (2021). Legal Differentiation for Over The Top Service Providers (Comparative Study of Indonesia and Singapore). *Legal Perspective*, Vol.21 No.1.
- Mustamim, U. L. (2020). Innovation and Marketing Strategies for Small Industry Products in the New Normal Era. *Journal of Community Service in Economics*, 1(1), 20-22. <http://journal.knpj.org/index.php/ccsj>.
- Nugraheni, E. d. (2020). Digital Content Restrictions on Netflix Media by the Indonesian Broadcasting Commission. *Journal of Perspective* Volume 25 Number 1 Year 2020 January Edition.
- Rifai, A. (2010). *The discovery of law by judges: in the perspective of progressive law*. Sinar Grafika.
- Syahara, T. A. (2021). Tiktok and Pandemic (Content Analysis of the Use of Tiktok as a Covid-19 Educational Media during the Pandemic). *Urecol Journal*. Part H: Social, Art, and Humanities, 1(1), 39-46. <https://doi.org/10.53017/ujsh>.