



Legal Position of Cable Subscription Broadcasting Institutions in the Redistribution of Free-to-Air Content

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Abstract: Broadcasting institutions are broadcasting organizers, including public broadcasting institutions, private broadcasting institutions, community broadcasting institutions or subscription broadcasting institutions, which in carrying out their duties, functions and responsibilities are guided by applicable laws and regulations. The title of this research is “Legal Position of Cable Subscription Broadcasting Institutions in the Redistribution of Free-to-Air Content”. The object of this research is the broadcasting industry organization. The objective of this research is to analyze the legal position of cable subscription broadcasting institutions in the redistribution according to the law. This paper employed the juridical normative method with the statute and literary approaches. The researchers collected data in this research using the semi-structured literature review and documentation techniques. Results showed that Regulation of Subscription Broadcasting Institutions refers to Law Number 32 of 2002 concerning Broadcasting, Government Regulation No. 52 of 2005 on the Implementation of Subscription Broadcasting Institutions and other related laws. It regulates licensing, procedures for establishment, Subscription Broadcasting Institutions obligations, broadcast content, cross-ownership to reporting and administrative sanctions. One of the Subscription Broadcasting Institutions obligations regulated in this Government Regulation is to provide at least 10% (ten per hundred) of the channel capacity to distribute programs from public broadcasting institutions and private broadcasting institutions.

Keyword: Legal Position, Cable Subscription, Broadcasting Institution, Free-To-Air Content, Redistribution.

INTRODUCTION

Subscription broadcasting institutions are broadcasting institutions in the form of Indonesian legal entities, whose business field is only providing subscription broadcasting services and must first obtain a subscription broadcasting permit consisting of subscription broadcasting institutions via satellite, via cable and via landline. The obligation of subscription broadcasting institutions in distributing programs from public broadcasting institutions and private broadcasting institutions has become a polemic in the regions, especially for

subscription broadcasting institutions via cable, hereinafter referred to as cable TV (Amanda, 2022). The cable TV licensing process before obtaining a broadcasting permit goes through several stages including submitting an application to a private broadcasting institution which is a free-to-air broadcasting institution hereinafter referred to as free-to-air TV broadcasting to be able to distribute broadcast programs from the private broadcasting institution (Law No. 32 of 2002 on Broadcasting, 2002).

Efforts to obtain free-to-air TV broadcasts by Cable TV in North Maluku, namely PT. Bintang Kejora Cable Vision and Kie Raha Limited Company by submitting an application via letter to the free-to-air TV content provider, but from the application letters submitted, some responded and gave permission but some did not respond to the application (The Directors of Bintang Kejora Limited Company and Kie Raha Televisi Limited Company, personal communication, December 12, 2023). The difference in response from several free-to-air TVs did not stop cable TV from broadcasting this content because in principle they did not respond by prohibiting cable TV from redistributing this content.

Legal Status of Subscription Broadcasting Institutions via Cable in this case Bintang Kejora Cable TV and Kie Raha Media Television Limited Company when viewed from their legal status based on Law Number 32 of 2002 concerning Broadcasting have the legal status to be able to redistribute free to air broadcast content because they have a Broadcasting Organization Permit. Bintang Kejora Limited Company has a Broadcasting Organization Permit from the Minister of Communication and Information Number 189/T.04.02/2018 dated April 11, 2018 which is valid for 10 years, while Kie Raha Media Television Limited Company has a Broadcasting Organization Permit from the Minister of Communication and Information Number 62 of 2016 dated January 25, 2016 and is valid for 10 years.

Broadcasting Organization Permit is given to Broadcasting Institution after going through several stages (Utomo, 2010), namely application submission, file verification, Public Hearing Evaluation, and broadcast trials and Broadcast Trial Evaluation so that it can obtain a broadcasting organization permit valid for 10 years for Subscription Broadcasting Institutions via Cable Television. Regulations on subscription broadcasting institutions in this case Cable TV, in addition to being subject to the Broadcasting Law, there are several other regulations that regulate the position of Cable TV, namely Government Regulation No. 52 of 2005 on Subscription Broadcasting Organization, P3SPS and other related laws and regulations, one of which is Law Number 28 of 2014 on Copyright (Iskandar, 2014).

Copyright comes from two words, namely rights and creation, the word "rights" is often related to obligations and has the meaning of an authority owned by a certain party that is free to use or not to use (Irzha, 2016). While the word "creation" or creation is always directed at the results of human work using reason, imagination, feelings, knowledge and experience. So it can be said that copyright is related to human intellectuals (The Republic of Indonesia's Ministry of Education, 2018).

According to the Copyright Law of 1912 Staatsblad Number 600 of 1912, Article 1 states that: "Copyright is the sole right of the Creator, or the right of the person who obtains the right, over the results of his creations in the field of literature, knowledge and art to announce and reproduce, taking into account the limitations that have been determined by law" (The Republic of Indonesia's Ministry of Education, 2018). According to Article 1 number 1 of the Copyright Law, it states that (Setiawan et al., 2018): "Copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a creation is manifested in a tangible form without reducing restrictions in accordance with statutory provisions." According to the problem above the research problem is: how legal position of cable subscription broadcasting institutions in the redistribution according to the law?

METHOD

This research employed the juridical normative method with the statute and literary approaches (Wardiono, 2019). In the juridical normative method, researchers do not carry out field research but it is library-based research. This research was descriptive qualitative research which aims to describe and understand the legal position of cable subscription broadcasting institutions in the redistribution of free-to-air content. The analysis unit of this research was the broadcasting industry organization.

The researchers collected data in this research using the semi-structured literature review and documentation techniques (Mertokusumo, 2010). The data were used to find answers to the research problem in a more opened manner. Then, the authors collected data using the documentation study method on document data to explain the issue and findings (Soekanto, 2019).

The document study was used to obtain institution-based descriptions, both official and non-official ones which may provide data, facts, and information on the research object (Rahardjo, 2000). Apart from that, the documentation that may become a source of data is document. The researchers conducted data analysis during and after the data collection process in the field by referring to the concepts of broadcasting institutions, productions, transmissions, and content distribution. The authors also selected data by carrying out the following stages during the data analysis process (Wardiono et al., 2024): (1) Data reduction, namely the data obtained from the field were rather abundant, (2) Data presentation so that the authors may understand what has happened and plan the next steps that will be carried out, and (3) Conclusion drawing. In this stage, the authors drew a conclusion based on the research results.

RESULTS AND DISCUSSION

Exclusive Rights in copyright consist of moral rights and economic rights (Mufid, 2010). Exclusive Rights in terms of moral rights are limited to the creator, so that no other party can use these rights without the creator's permission, copyright holders who are not creators only have part of the exclusive rights in the form of economic rights (Explanation of Article 4 of Law No. 28 of 2014 on Copyright, 2014). Exclusive rights owned by creators and copyright holders are the rights to use their own creations, allow other parties to use them or prohibit other parties from using these rights. Restrictions on the use of exclusive rights of copyright are because in principle the protection of copyright rights (Febri, 2017). Copyright is not only for protected creations, but protection is also given to related rights.

Related rights (Neighboring right) in the 1961 Rome Convention (Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations) the rights of performers, producers of phonograms and broadcasting organizations are called neighbouring rights (Yuliandri, 2010). In Indonesia, various terms have emerged (as translations of neighbouring rights): adjacent rights, neighbor rights, channel rights, parallel rights, and so on, the last and then official term is Related Rights (Hasibuan, 2008). According to Law Number 28 of 2014 concerning Copyright, related rights are rights related to copyright which are exclusive rights for performers, phonogram producers, or broadcasting institutions (Primasanti, 2009).

Broadcasting institutions have related rights to the content they broadcast and receive legal protection for 20 years from the first broadcast (Wulandari, 2017). Broadcast content broadcast by broadcasting institutions based on the provisions of the Copyright Law also has copyright restrictions where there are several acts that are not considered copyright infringement in article 43, namely:

First, announcement, distribution, communication and/or duplication of the State emblem and national anthem according to their original nature;

Second, announcement, distribution, communication and/or duplication of anything carried out by or on behalf of the government, unless stated as protected by statutory

regulations, statements on the creation, or when the creation is announcement, distribution, communication and/or duplication are carried out.

Third, taking actual news, either in whole or in part from news agencies, broadcasting institutions, and newspapers or other similar sources, with the provision that the source must be stated in full; or

Fourth, the creation and distribution of copyrighted content through information and communication technology media that is non-commercial and/or benefits the creator or related party, or the creator states that he has no objection to such creation and distribution.

Fifth, duplication, announcement, and/or distribution of portraits of the President, Vice President, former Presidents, former Vice Presidents, National Heroes, heads of state institutions, heads of ministries/non-ministerial government institutions, and/or regional heads with due regard to dignity and fairness in accordance with the provisions of laws and regulations.

Copyright restrictions stipulated in Article 43 of Law Number 28 of 2014 concerning Copyright apply to Subscription Broadcasting Institutions in this case Cable TV because the redistribution of content carried out by Bintang Kejora and Kie Raha cable TV is based on point c and namely Taking actual news, either in whole or in part from news agencies, Broadcasting Institutions, and newspapers or other similar sources with the provision that the source must be stated in full; or Making and distributing copyrighted content through information and communication technology media that is non-commercial and/or benefits the creator or related party, or the creator states that he has no objection to the making and distribution (Rahayu, 2019).

The explanation of point c above where free to air content contains news broadcasts that are broadcast in full without any restrictions or additional advertisements other than what has been shown by free to air broadcasts (Saputra et al., 2025), in addition to the affirmation in point d that the redistribution of free to air content benefits the private broadcasting institution in terms of distributing commercial advertisements whose payments are only to private broadcasting institutions that have direct contracts with temporary advertisement providers, cable TV, although participating in distributing the advertisements that benefit private broadcasting institutions or cable TV advertisement providers, does not ask for such payments so that in terms of the redistribution of free to air content by Cable TV in this case Bintang Kejora Limited Company and Kie Raha Limited Company, it cannot be said to be a violation of related rights for free to air content and this is limited not to premium content whose distribution is locked (Muliarta, 2020).

Redistribution of content by cable TV to free to air broadcasts is a necessity where free to air broadcasts are content that is a source of information and entertainment for the public as a logical consequence of the use of frequencies that belong to the public so that there is a public right to obtain information and entertainment for free or free of charge so that it cannot be said that cable TV violates copyright or related rights when participating in distributing free to air content. This is compared to what cable TV does, namely redistributing premium content (Sutanto & Salim, 2015).

The legal position of subscription broadcasting institutions in the redistribution of free to air content in this case cable TV is seen from two aspects, the first is the legality aspect, namely licensing in accordance with the provisions of Article 33 of Law Number 32 of 2002 concerning Broadcasting, namely before carrying out its activities, broadcasting institutions are required to obtain a broadcasting permit, thus when Cable TV already has a broadcasting organizer permit, then legally the Cable TV can broadcast. Second, in terms of redistribution of free to air content, it can legally be carried out by Cable TV whether or not it has permission from the owner of the related rights. Cable TV can redistribute the content because it is content whose copyright or related rights fall within the restrictions stipulated in Article 43 points c and d of Law Number 28 of 2014 concerning copyright (Supadiyanto, 2021).

Copyright restrictions are a logical consequence of one of the principles of intellectual property, namely the social principle. Intellectual Property Rights provide protection to individual rights, but to balance individual rights with the interests of society, there are several principles in intellectual property protection, including (Riswandi & Syamsudin, 2004):

First, the principle of natural justice: The creator of a work, or another person who works to produce results from his intellectual abilities, deserves to receive compensation. This compensation can be in the form of material or non-material, such as a sense of security because he is protected and recognized for his work.

Second, the economic principle (the economic argument): This intellectual property right is a right that comes from the results of creative activities of a human's intellectual ability that is expressed to the general public in various forms, which have benefits and are useful in supporting human life, meaning that ownership is reasonable because of the economic nature of humans which makes it a necessity to support their lives in society.

Third, the cultural principle (the culture argument): Human work is essentially aimed at enabling life which must produce more work.

Fourth, the social principle (the social argument): The law does not regulate the interests of humans as individuals who stand alone, separate from other humans, but the law regulates the interests of humans as a society.

CONCLUSION

This social principle illustrates that individual rights must be balanced with the rights of society so that in intellectual property, intellectual property protection is limited by time so that society can enjoy the intellectual property. This also applies to the redistribution of free to air content, intellectual property restrictions also apply so that it can be enjoyed by the public, especially for broadcasts that are blank spots that can only be received by the use of Cable TV by the public.

The use of cable TV by the public by paying a fee is a logical consequence because it uses devices provided by Cable TV and this cannot be categorized as commercial use by Cable TV because there are benefits that are also received by content providers (Private Broadcasting Institutions) because their advertisements are also widely distributed to Cable TV customers so that from a business perspective it is mutually beneficial.

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