

Regulation on Broadcasting Rights in Indonesia Based on Law No. 28 of 2014 on Copyright and Law No. 32 Of 2022 on Broadcasting

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Infringements of broadcast rights and the State's obligation to protect broadcast rights in relation to copyright should be supported by a legal infrastructure that can reduce broadcast rights infringement. The legal instruments should be able to serve as a basis for certainty and legal protection of broadcast rights, especially those related to the copyright in the digital transformation era. This paper aims to discover the legal principles of broadcast rights related to copyright, explore and conceptualize the content protection of broadcasting institutions in the Copyright Law in conjunction with the Broadcasting Law in conjunction with the Job Creation Law, as well as formulate the legal protection of broadcast rights in the era of digital transformation. This study adopts a normative juridical approach with descriptive analysis research specification. The authors conduct a document study (library research) to obtain the data that are then analyzed qualitatively. The findings are as follows: First, the legal principles of broadcasting rights related to broadcasting institutions are the principle of justice. This principle focuses on the material and immaterial works that investors are entitled to receive. In addition, the economic principle can also be attached by emphasizing the ownership of useful economic value and expressed in various forms to the public, which is one of the principles of intellectual property with a remuneration scheme. Second, the protection of Broadcaster Content Under the Copyright Law in conjunction with the Broadcasting Law in conjunction with the Job Creation Law is in accordance with Article 25 paragraph (2) letter a of Law No. 28 of 2014 on Copyright and Article 43 of Law No. 32 of 2002 on Broadcasting stating that it is mandatory to obtain a license from Broadcasting Institution as the economic rights holder of the broadcast. On the other hand, the Job Creation Law seeks to provide protection in the form of optimal broadcasting products to the public for existing broadcasts, both in terms of the government as a regulator and Broadcasting Institutions as broadcasters. The Job Creation Law is positioned to make existing broadcasts feasible to be enjoyed on the basis of technological advances so that technological advances can be enjoyed by all levels of society across Indonesia. Third, the concept of legal protection of broadcasting rights in the era of digital transformation is laws and regulations that place the law to function and play a role not only as a basis for certainty and order but also as an accelerator and director for Indonesia's transformation into Industry 5.0, so that the remuneration approach protects the economic rights of creators more effectively than the absolute exclusive rights approach.

Keywords: Legal Protection, Broadcasting, Copyright

A broadcast right is a right granted to broadcast a work of a creator or recipient of the rights to the work. This is consistent with the concept of a copyright holder, which includes the creator as the owner of the copyright, a party who legally receives such rights from the creator or other parties who receive additional/further rights from the party who legitimately receives such rights. The copyright holders subject are persons or legal entities. A creation is any copyrighted work in the field of science, art, and literature; hence the broadcast right is a right to broadcast or publish a created work in any form as a result of the work of the creator.

As is commonly understood, a broadcasting right is exercised by a broadcasting service provider, namely

(i) Public broadcasting institution

A public broadcaster institution, according to Article 14 paragraph (1) of the Law on Broadcasting, is an independent, neutral, and non-commercial institution in the form of a legal entity established by the state to provide services of public interest.

(ii) Private broadcasting institutions

A private broadcaster, according to Article 16 paragraph (1) of the Law on Broadcasting, is a commercial broadcasting institution in the form of an Indonesian legal entity whose sole business is to provide radio or television broadcasting services.

(iii) Community broadcasting institution

A community broadcasting institution, according to Article 24 paragraph (1) of the Law on Broadcasting, is a specific community-established broadcasting institution in the form of an Indonesian legal entity

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that is independent and non-commercial, with low transmitting power, a limited coverage area, and to serve the interests of its community.

(iv) Subscription broadcasting institution

A subscription broadcaster, under Article 25 paragraph (1) of the Law on Broadcasting, is defined as a broadcasting institution in the form of an Indonesian legal entity whose sole business is to provide subscription broadcasting services and must first obtain a subscription broadcasting license

A broadcast right is granted through a licensing mechanism¹ whereby the copyright holder has the right to grant his/her broadcasting license to anyone, including subscription broadcasting institutions, based on a license agreement. Nevertheless, there are instances where broadcasting occurs without the license/consent of a broadcasting rights holder. From a profit standpoint, this may be contrary to the law because broadcasting has economic value. To take a case in point, an infringement of the Premier League's broadcasting rights, which are held by Mola TV.²

The Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights, through the Directorate of Investigation and Dispute Resolution, took action against alleged copyright infringement of illegal football broadcasts in four different locations simultaneously on Sunday Night, 23 May 2021.³

The law enforcement in the four cities is based on a complaint report from PT Global Media Visual or Mola TV for alleged copyright infringement of unauthorized broadcast of Premier League football. During law enforcement, a Civil Service Investigator of the Directorate General of Intellectual Property, accompanied by the Civil Service Investigators Coordinator from the Criminal Investigation Unit of the National Police, successfully investigated two locations: a cafe in Padang, West Sumatra and Resto & Bar in Yogyakarta. In addition, the Civil Service Investigator of the Directorate General of Intellectual Property also summoned Bier Haus Cafe in Pekanbaru, Riau Islands and Bintang Kopi Cafe in Batam, Riau Islands.

In addition to the aforementioned case, there was also a case that was considered a violation of broadcasting rights that was judicially reviewed by the Constitutional Court with Case Number 78/PUU-XVII/2019. The review was focused on the provisions of Article 32 Paragraph (1) of Law of the Republic of Indonesia Number 11 of 2008 on Electronic

Information and Transactions as Amended by Law Number 19 of 2016 on Amendments to Law of the Republic of Indonesia Number 11 of 2008 on Electronic Information and Transactions (hereinafter EIT Law), Article 25 Paragraph (2) Letter a of the Copyright Law against the 1945 Constitution of the Republic of Indonesia.

Provision of Article 32 paragraph (1) of the EIT Law states that:

"Every person intentionally and without right or unlawfully by any means alters, adds, reduces, transmits, damages, removes, moves, hides electronic information belonging to another person or to the public"

Article 25 paragraph (2) Letter a of Law on Copyrights states that:

"The economic rights of Broadcasting Institutions as referred to in paragraph (1) include the right to perform, grant permission to, or prohibit other parties to perform: a. Broadcast replay."

Basically, based on the provisions of Article 28F of the 1945 Constitution, it is stated that everyone has the right to seek, obtain, own, store, process and convey information using all available channels. Nevertheless, this right is limited by the provision of Article 28J of the 1945 Constitution. This identifies that the basic rules of the Indonesian State recognize the inherent rights of every individual, including economic rights in the field of broadcasting.

This is applied in Article 43 paragraph (2) of the Law on Broadcasting, which states "In broadcasting programs, broadcasting institutions are obliged to include broadcasting rights". This demonstrates that a broadcast is legally protected. The legal protection is a protection on broadcast that cannot be aired without the permission of the rightful owner. This is also related to the economic rights contained in broadcast rights as specified in Article 25 of Law No. 28 of 2014 on Copyright. Copyright infringement, in this case, infringement of broadcast rights can result in financial losses for broadcasting companies. Therefore, copyright protection is required, particularly for digital content distribution in broadcasting under a convergence scheme. Convergence is the simultaneous integration of traditional telecommunication media and internet telecommunication media.⁴

Along with the convergence in telematics, there will be a transition from analog to digital broadcasting systems. As is well known, the information protected

by copyright includes information that has been converted into digital forms, such as, articles, songs, images, or photographs distributed via the Internet.⁵

Based on the aforementioned, the violation of broadcast rights and the State's obligation to protect broadcast rights relating to copyright should be supported by a legal infrastructure that can minimize violations of broadcast rights. These legal instruments must be able to serve as a foundation for legal certainty and protection of broadcast rights, especially those related to copyright in the context of the digital transformation era. There are currently several laws and regulations that are considered disconnected and overlapped with one another, eliciting a variety of reactions from the general public, broadcasting companies, including broadcasting associations, and media analysts.⁶

Accordingly, the author identifies several problems, the first is how the legal principles of broadcasting rights are related to broadcasting organizations. Second, how the content protection of broadcasting institutions in the Copyright Law in conjunction with the Broadcasting Law and the Job Creation Law. Third, the concept of legal protection of broadcasting rights in the era of digital transformation.

Research Method

This research specification is carried out in an analytical descriptive method, which entails describing existing problems and then reviewing and analyzing them using primary legal materials, secondary legal materials, and tertiary legal materials. This research employs a normative juridical approach, which examines and analyzes secondary data. In terms of the normative juridical approach, the research is carried out in two stages, namely a literature study and field research that is only supportive in nature. The data is then analyzed using a qualitative juridical analysis.

Discussion

Broadcasting Rights Legal Principles Relating to Broadcasting Institutions

Information technology in Indonesia is primarily supported by three elements, namely:

(i) Law No. 36 of 1999 on Telecommunications

It discusses infrastructure, as well as provisions on frequency, satellites, cables, and media-based services.

(ii) Law No. 32 of 2002 on Broadcasting

The enactment of Law No. 32 of 2002 on Broadcasting has changed the paradigm in which the government no longer controls broadcasting by broadcasting institutions. This paradigm shift is influenced by a democratic system that guarantees freedom of speech in the 1945 Constitution.⁷ The Broadcasting Law discusses the elements contained in Law No. 36 of 1999 on Telecommunication. The Broadcasting Law states that the foundation of a healthy information service function is a diversity of content and diversity of ownership.⁸

(iii) Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Electronic Information and Transactions.

It discusses legal relationships, criminalization and internet protocol.

The aforementioned three elements constitute an information technology scheme that is applied in the form of broadcasting. Broadcasting is defined in Article 1 of Law Number 32 of 2002 on Broadcasting. From a legal standpoint, the author argues that the provision of Article 1 should be reconstructed considering the presence of technology as an intermediary for media/broadcasting advancement. The reconstruction of the provision is based on the fact that Law No. 32 of 2002 on Broadcasting basically defines broadcast content in the forms of audio, images, or audio and images or in the forms of graphics, characters, be it interactive or not, and its distribution media in the form of a transmitter and/or transmission facilities on land, in the sea, or in space by using radio frequency spectrum through air, cable, and/or other media. Currently, broadcasting media is growing rapidly, as radio, television, newspapers, and magazines are currently outcompeted by internet media, for example: Youtube, Netflix, Instagram, Facebook, Twitter, and others that have become a means of broadcasting.

This raises a problem in relation to one of the considering clauses in Article 1 of Law No. 32 of 2002 on Broadcasting, namely the considering clause of "synchronously and simultaneously". The author believes that the phrase "synchronously and simultaneously" is irrelevant to the existence of digital transformation. This is on the background that digitalization, especially in relation to digital content on platforms such as YouTube, Netflix and others, cannot be implemented "synchronously and simultaneously". It cannot be carried out

"synchronously and simultaneously" considering that broadcasting on a platform can be carried out with different time schemes on each platform. This is the reality of content digitization.

The phrase "synchronously and simultaneously" is a digital transformation irony that should be addressed in the amendment or reconstruction of Law No. 32 of 2002 on Broadcasting.

Other issues in defining broadcasting in Law No. 32 of 2002 on Broadcasting include "can the internet be categorized as "other media" in the Broadcasting Law? and Can social media also be categorized as broadcasting media?". This problem is caused by the fact that the explanation of Article 1 does not explain the definition of "other media". The uncertainty and ambiguity of the term "other media" has made it juridically more difficult to implement Article 8 paragraph (2) point c of Law Number 32 of 2002 on Broadcasting, which states: "oversee the implementation of rules and a code of conduct on broadcasting and standards for broadcast programs" which definitively correlates with the Indonesian Broadcasting Commission (Komisi Penyiaran Indonesia/KPI).

The problem in broadcasting regulation implementation is related to the media democratization as stated in Law No. 32 of 2002 on Broadcasting has not been well-implemented, such as in the field of broadcasting:

(i) Broadcasting Regulator

Law No. 32 of 2002 on Broadcasting has brought fundamental changes in the management of broadcasting system in Indonesia. The most significant change is the limited transfer of authority from government-exclusive broadcasting management to an independent regulatory body called KPI.⁸ The independence is intended to emphasize that the management of broadcasting system, which is a public domain, should be managed by a body that is free of capitalist and government intervention. The body is elected and accountable to the House of Representatives of the Republic of Indonesia (DPR RI) and the membership is composed of individuals who do not represent the interests of broadcasting industry, government, or political parties.⁹ Having learned from the past, when broadcasting management was still in government hands, the broadcasting system as a strategic tool was not immune to co-optation by the state and was used to perpetuate political interests. Moreover, the broadcasting system was not only utilized to support

the regime's hegemony over the public in the control of strategic discourse, but also to take advantage of collaboration between ruling elites and businessmen.¹⁰

(ii) In terms of institution, Article 8 paragraph (2) of Law Number 32 of 2002 on Broadcasting states that the KPI shall serve to accommodate aspirations and to represent public interests in broadcasting as a form of community participation. Furthermore, in order to strengthen its function, the KPI organization should be at the level of Secretariat General (independent), rather than dependent on or under the Ministry of Communication and Informatics, as it is now. Therefore, KPI is aware of the precise number and competency of human resources it requires to achieve the essence or purpose of Law No. 32 of 2002 on Broadcasting.

(iii) There is no problem with budget management accountability and infrastructure at the Central KPI Secretariat because the human resources who manage it are civil servants.¹¹ However, the problem is with the Regional KPI Secretariat, as there are currently no civil servants there.¹² As a result, supervisory tasks and functions are not carried out optimally.

(iv) In a Focus Group Discussion of the Legal Analysis and Evaluation on Broadcasting held by the National Law Development Centre (BPHN) on 27 August 2020, in the framework of strengthening KPI as a broadcast content supervisory institution.¹³ Essentially, KPI as a reformation product must be preserved, however, public criticism towards KPI is an indication that KPI needs to be strengthened in order to optimally perform its authority, duties, and obligations.

(v) Ownership

The principle of limiting the possibility of an excessive and dominant influence on public opinion by a particular broadcaster should be applied as part of a national broadcasting system. This is due to the fact that it must be implemented properly and optimally in order to limit the possibility of broadcasting dominance leading to a monopoly on influencing public opinion. This will result in a concentration of media ownership and, thus, impacting on media content, specifically political life and content diversity.¹⁴

(vi) Public Broadcasting Institution

A public broadcasting institution is a broadcasting institution that is a legal entity established by the state

that is independent, neutral, and non-commercial and serves the public interest. The Public Broadcasting Institution is made up of the Radio of the Republic of Indonesia and Television of the Republic of Indonesia, both of which have their central broadcasting station in the state capital city.

(vii) Community Broadcasting Institution

The enactment of Law No. 32 of 2002 on Broadcasting changed the structure of Indonesia's broadcasting media. This law allows for the development of broadcasting institutions with their own orientations and objectives.

The author believes that there are regulatory challenges that need attention in implementing this law, namely:

- a. There is no fair frequency allocation for Community broadcasting Institutions. There are only three channels prone to in-flight interference: 107.7, 107.8, and 107.9, and there is no special allocation for community TV;
- b. The licensing process for community radio is still extremely difficult;
- c. Prohibition of advertising on community radio while there is no guarantee of long-term viability other than community self-funding;
- d. Digitization; and
- e. There is no comprehensive regulation for disaster broadcasting. So far, the Government has only implemented the following initiatives.
 - 1) Online licensing for Community Radio will speed up the licensing process;
 - 2) KM 773 for disaster management in Central Sulawesi included emergency radio.
 - 3) Minister of Communication and Information Regulation No. 9 of 2018 regulates temporary Radio Station Permits for Disasters
 - 4) Village Regulation on Village Funds includes Community Radio

Aside from broadcasting regulations, the declarative principle of copyright, as stated in Article 1 paragraph (1) of Law Number 28 of 2014 on Copyright, explains that copyright is the exclusive right of the creator that arises automatically based on the declarative principle after the creation/work is realized in a tangible form without reducing restrictions in accordance with the applicable laws and regulations. As a result, it appears that copyright protection is granted directly without any specific conditions, or that copyright is protected directly

without the need for prior registration.¹⁵ The declarative principle of copyright protection is a type of legal protection provided by the state for copyright, including broadcast rights. Legal protection is the provision of protection to human rights that will likely/have been violated by others, and the protection is given to the community so that they can fully benefit from all the rights granted by law. In other words, legal protection is a variety of legal efforts to be granted by law enforcement officials to provide a sense of security, both mentally and physically, from interference and various threats from any party.¹⁶

Legal protection for broadcast rights is used to protect unauthorized broadcasts. Unauthorized broadcasts have caused broadcast right holders to suffer losses considering the economic value guaranteed by Article 25 of Law Number 28 of 2014 on Copyright, thus, they can take steps to restore the rights that should have been obtained. The author argues that there are fundamental principles in the intellectual property system that can balance individual and societal interests, namely:

(i) The justice principle. This principle focuses on the material and immaterial works that investors are entitled to receive. This also demonstrates that in every broadcast, there are intellectual property rights attached to a legal subject that must be respected. This respect represents justice. The absence of this respect will lead to legal consequences considering that broadcast rights and intellectual property are protected by law.

Fundamentally, a law, in relation to broadcasting rights and copyright, should be placed as a preventive legal protection medium. In other words, rather than being used as a reference when a dispute arises, the law should be used as a reference in actions (repressive legal protection). The author's rationale for positioning the law as a preventive legal protection medium is that copyright and broadcast rights arrangements have already been established and that it must be implemented. If there are elements of the law that have not been regulated, the law must position itself as a means of development by actively considering the circumstances and societal conditions. As a result, the law will either immediately enforce or even precede the situation. This legal concept will certainly provide justice for broadcast rights holders and copyright who are dealing with the digital transformation era, in which all aspects are rapidly evolving. As the nature of information media, mass

media, in addition to containing beneficial value as a transformation tool, also unintentionally becomes a powerful information media that spreads new values that the community does not expect.¹⁷ The media serves as a vehicle for cultural development, not only in the sense of developing art forms and symbols, but also in the sense of developing procedures, fashion, style, life, and norms.¹⁸

(ii) As one of the intellectual property principles, the Economic Principle emphasizes ownership of useful economic value expressed to the public in various forms. An inherent economic value of copyright is undeniable rights. The inherent economic value of copyright is associated with the right to income derived from it. As an economic property, a copyright is attached to a broadcasting right; thus, the copyright holder is entitled to income (economic value) when the broadcast is used, particularly by third parties. Thus, it can be said that when there is a broadcast of an audio/visual or audiovisual with broadcast rights, the subject who conduct the broadcasting (broadcaster) should respect the economic rights of the broadcasting rights holder. In response to economic rights infringement in broadcasting, the authors argue that the concept of remuneration can be reduced to wages or gifts given to individuals for their broadcasting work. As is well-known, remuneration emerged from the needs of the modern economy and is the latest form of the traditional wage system that previously caused various controversies in the labor economic system. In other words, in the context of the digital era, remuneration can be given to broadcasters. This is certainly beneficial to the broadcaster rather than taking the risk to conduct illegal broadcasting. It also means that each party, both the copyright holder and the broadcaster, can receive benefits. However, in order to provide such remuneration, the following remuneration system components must be considered.¹⁹

(i) Pay for Position. A job-based pay is a reward for conducting work to encourage and appreciate the completion of duty. At this point, the copyright owner must pay the broadcaster's performance whether the broadcast is of quality or not (many or few viewers)

(ii) Pay for Performance. A performance-based pay system aims to encourage motivation for the best performance realization. This is a situation where the copyright owner pays the broadcaster more if the broadcast is viewed by more people.

(iii) Pay for People. A security protection program comprises facilities to support comfort and welfare determined by individual/personal criteria (pay for people) or called benefit programs. This remuneration component is related to individual conditions, which can be in the form of insurance premiums, severance pay, or pensions.

Protection of Broadcaster Content Under the Copyright Law in conjunction with the Broadcasting Law in conjunction with the Job Creation Law

Basically, the provisions of Article 25 paragraph (2) letter a of Law No. 28 of 2014 on Copyright regulates broadcasters' economic rights, one of which is to prohibit any third party from rebroadcasting or free-to-air private television broadcasts or even relaying broadcasts.

In the authors' opinion, the concept of copyright limitations and exceptions is specifically regulated in Law No. 28 of 2014 on Copyright. Limitations and exceptions are possible without requiring permission from the creator or copyright holder as long as it is not commercial. As for commercial interests, permission from the institution that owns the broadcast copyright is required.

It is important to note that copyright entails a loss of constitutional rights in addition to economic rights. Basically, constitutional rights and human rights are inseparable in nature. This is because the term "Human Rights" has a broader space compared to "constitutional rights". A constitutional right has a narrow scope that only applies to the positive law of a particular country. The development of human rights at the international level has encouraged the national recognition of human rights as constitutional rights.¹⁹ It should be noted that one function of the constitution is as a guardian of fundamental rights²⁰ and that essentially constitutional rights are rights guaranteed in and by the 1945 Constitution.²¹

The State shall also position itself as a protector of increasingly advanced technological developments with laws that can accommodate all the consequences. This is necessary because in addition to the necessity of law to accelerate transformation, on the other hand, the rapid development of technology has rendered the world borderless, necessitating the use of law to filter various global influences to protect the sovereignty of the state and the life of the nation and state. Furthermore, the law should serve to restore humanity as the center of civilization, rather than allowing

technology to replace humanity. In other words, the law is designed to put humans at the center, in line with the tagline of Industry 5.0, namely a Human Cyber Physical System (HCPS).

This legal concept is a reconstruction or, more precisely, the elaboration of the development of legal theory as the premise, which is adjusted to the digital transformation conditions.²² This theory is more of a concept based on development law theory that has been enriched and adjusted in the context of preparing Indonesia for Industry 5.0. Based on technological advancement and global transformation, as well as criticism of its impact on Indonesia, the law in this context contains elements of certainty and justice, in addition to functioning for order purposes. The law, like technology, must also function as infrastructure to change, direct, and accelerate society, infrastructure development, and all elements of the state to transform in order to keep up with the speed of the global transformation of Industry 5.0 while avoiding the negative effects of a global transformation.

Therefore, the core element of this concept is a global development of legal facts and phenomena as well as non-juridical factors, such as technological, economic, social,²³ and cultural factors of Indonesian society that are affected by global transformation caused by massive digital transformation so that it requires a law that can accelerate the transformation, including a more progressive, effective, and efficient law formation process based on the needs of the country. It is in this context that the concept of transformative law is needed. This legal concept is inseparable from the influence of digital technology, as countries around the world have entered the transition period of Industry 5.0 characterized by cyber-physical and the massive use of the Internet of Things, artificial intelligence, and digital robotics that disrupt various economic, social and cultural patterns, as well as the existing individual behavior.²⁴ The law must be the transformation infrastructure while still referring to the ideology of Pancasila.²⁵

The Job Creation Law is one of the manifestations of the aforementioned legal concept. This situation is formally reflected in the Job Creation Law. The Job Creation Law, as well as its implementing regulations, are progressive legal instruments designed to enable the law to function as an infrastructure for national digital transformation, responding quickly and carefully to telecommunications and digital technology developments that open up the possibility

of healthy business competition, infrastructure sharing, and even frequency spectrum sharing. With regard to the independent body, there is a specific body for handling broadcasting content, namely the Indonesian Broadcasting Commission (KPI).

Following the previous 4G, digital technology development is now entering 5G. In addition to infrastructure development and management, frequency spectrum structuring and refarming are required to support the widespread use of 5G. Previously, 4G had an optimal speed of 100 Mbps; however, 5G is 100 to 200 times faster than 4G, with low latency and multi-Gbps.²⁴ One of the reasons that the Job Creation Law was designed in the Postal, Telecommunications, and Broadcasting sectors was to address this issue. This is because, regardless of the availability of technology, the development will be hampered if the regulations are not supportive.

It is critical for Indonesia to build digital infrastructure and create policies that encourage efficient and progressive growth of the telecommunications industry. Furthermore, the government must also support industry players to collaborate with various digital platforms. This is to develop human resources and digital ecosystems, both of which are required for the national telecommunications and digital industries to function optimally.

The national telecommunications industry should work in a mutually-beneficial symbiosis with all over-the-top (OTT) platforms operating in the region. Network sharing and infrastructure sharing among telecommunications providers should also be conducted to run their business and services. Due to the Covid-19 pandemic, there has been a massive shift to digital access and digital devices, which emphasizes the importance of Quality of Service (QoS) for both telecommunications providers and OTT platforms. Telecommunications and digital industry revival must be accomplished more realistically. QoS is the benchmark. To reach as many customers as possible, a tariff war is no longer necessary; rather, innovation is the priority.

In Indonesia, digital transformation is identical to at least three fields, the first is the telecommunications sector which is currently the backbone and, has even functioned like the oxygen, needed not only for digital economic development, but also plays a role in various fields of life, such as education, health, government, public services, and various other fields. The telecommunications aspect also plays a pivotal

role during the Covid-19 pandemic in Indonesia and the world.²⁶ Due to telecommunications and information technology advancements, the massive spread of Covid-19 can be decelerated, resulting in a shift in life patterns from physical to virtual and a hybrid of the two.²⁷

The second is broadcasting, which plays an important role, especially in the form of television and radio broadcast services as the mainstream media that play an essential role in economic, socio-cultural, and state life. Broadcasting is one of the substances listed in the Job Creation Law for the postal, telecommunications, and broadcasting industries. It is due to the need for structuring in accordance with the broadcasting technology modernization, namely the switch from analog TV to digital TV that will provide not only the best quality service but also plays a role in frequency utilization and refarming as a limited natural resource that so far has been used lavishly, then it can be saved as a digital dividend for national broadband interests.²⁸

The third field that is the object of the Job Creation Law is the postal and logistics sector. This sector is the foundation of digital economic growth in addition to the telecommunications industry, marketplace platform industry, and end-products manufacturers, including Small and Medium Enterprises, in the digital economy, especially e-commerce. The postal and logistics are the end of all transactions carried out electronically so that the purchased items can be received physically because of the postal and logistics services.

The Job Creation Law is a masterpiece and a manifestation of the concept of law as the infrastructure for Indonesia's transformations. Substantially, this regulation that uses the Omnibus Law method can pragmatically and comprehensively change numerous existing laws whose legislative processes have been hampered and create new progressive norms for Indonesia's transformation in a single step and a single effort that directly produces so many changes from a variety of laws in the form of one new law. Hence, it can be said that the Job Creation Law seeks to protect existing broadcasts by providing optimal broadcasting products to the public, both from the government as a regulator and from broadcasting institutions as broadcasters. The Job Creation Law is positioned to make existing broadcasts worth watching/listening to on the basis of technological advances, allowing all levels of society in Indonesia to have optimal access to technological advances.

The Job Creation Law supports the National Digital Transformation program, the analog-to-digital TV broadcast migration process, the restructuring of the telecommunications and broadcasting industry, and the optimization of limited resources, specifically the radio frequency spectrum, and its utilization for national interests. It is a new milestone in the history of Indonesian law. The Job Creation Law is groundbreaking not only in its legal content but also in its drafting process, which employs the aforementioned Omnibus Law method. This method in Postal, Telecommunications, and Broadcasting at least breaks the deadlock on articles that have been unable to keep up with global developments in Postal, Telecommunications, and Broadcasting.

In the field of Postal Management, the law regulates various matters including the ease of business license process that is based on the Electronic Integrated Business Licensing System (Online Single Submission/OSS) as well as regulates foreign investment and Postal Business Development.²⁹ In the field of Telecommunications, the law significantly regulates matters related to telecommunications implementation, tariffs, business licensing, telecommunications services and/or network operations, as well as the government's authority to set lower-limit and upper-limit tariffs as an effort to provide good public services in the telecommunications sector and foster healthy business competition in the industry.

In the telecommunication sector, the law also regulates progressive business licensing as stipulated in Paragraph 15 of Article 30. In addition to providing consumer protection, it also requires the fulfilment of technical standards for every telecommunication equipment or device assembled, manufactured, and inserted for trade and/or use in Indonesia. In line with international best practices, the Job Creation Law also regulates radio frequency spectrum principles and implementation that are more flexible, efficient, and can be implemented in the form of joint use for the application of new technologies.

In the broadcasting sector, the law regulates fundamental aspects, such as commercial broadcasting institutions that must be registered as Indonesian legal entities and simplified business licensing process from the central government.³⁰ Another fundamental aspect is the migration of analog to digital television broadcasting as well as the deadline of the Analog Switch-off (ASO) of two years

from the enactment of the Job Creation Law.³¹ This provision breaks the deadlock that lasted for a dozen years that had previously kept Indonesia behind other countries due to migration delays. The migration of analog TV to digital TV has also created numerous opportunities for the development of broadband telecommunications in Indonesia. The migration has resulted in 700 MHz frequency efficiency in the utilization of digital dividends in the form of the radio frequency spectrum that can be used for various telecommunications and internet purposes.

The enactment of the Copyright Law, Broadcasting Law, and Job Creation Law is basically to provide protection for public rights as a human rights manifestation. As a result, human rights are the foundation of the modern state constitution. Human rights are a set of inherent rights in the nature and existence of every human being as a creature of God Almighty that must be respected, upheld, and protected by the State, Law, Government, and every individual for the honor and protection of human dignity. This implies that human rights are rights that are inherent in every human being. Despite their distinct scopes, human rights and constitutional rights both serve significant and structural functions. Both serve to limit the power of the government while also protecting the fundamental rights of all citizens. Substantively, both contain fundamental rights such as civil and political rights, economic, social, and cultural rights, minority rights protection, and environmental protection. Both have a similar structure in that they distinguish between rights that can be limited or reduced and those that cannot be limited or reduced.

The Concept of Legal Protection of Broadcast Rights in the Digital Transformation Era

Article 27 of Law Number 19 of 2016 on Electronic Information and Transactions monitors and evaluates not only the condition when the public uses digital broadcasting in providing video content services but also the policies and security provided by an application, as well as digital content that contains un-educational or does not promote positive values of decency that can be shared with the public. For example, some people may say/write a word/content that the author considers violating the norms of decency for society. Even though the word/content is not intended for anyone, it can set a bad example for the rest of the community.

Based on the legal development theory whose dimensions are theories rooted in the conditions of a plural society and based on Pancasila.³² In principle, the legal development theory was born, grew and developed in Indonesia, and it was created by an Indonesian with the intention of being applied in Indonesian society.³³ This theory has a reciprocal and harmonious synergy if implemented in the context of Indonesian society in general and specifically in law enforcement conditions. In Mochtar Kusumaatmadja's legal theory, this can still be applied as a crucial basis that positions the law to play an active and dynamic role as a catalyst and dynamize-er in community renewal.²⁹ Mochtar's legal theory explicitly emphasizes law as an instrument that can renew society or law as a tool of social engineering, not as a tool.³⁴

Therefore, it is necessary to reconstruct the theory of legal development by incorporating elements of digital transformation and digital economy as well as Indonesian human development so that this legal development theory can then be reconstructed into 'law as a means of community renewal' in the face of a global transformation. The global transformation element is deliberately emphasized so that the community renewal process continues to pay attention to the goals of laws and regulations for national competitiveness in the international arena, law as a means of maintaining national identity and ideology, and law as a means of providing direction for national human resource development with global competitiveness.

In addition, the law must also be a means not only for the development of society, but also for the development of the economic system, national digital infrastructure and supporting infrastructure, and other institutions in order for Indonesia to enter Industry 5.0. The phrase "means of societal renewal" is based on the notion that order and discipline are necessary to create national development and renewal. In addition, the assumption that 'law as a means of renewal' is that law as a rule or regulation functions as a tool (regulator) or means of development to bring people in the intended direction.

The definition of law demonstrates that understanding the law as a whole/holistically requires understanding not only the principles and rules but also the institutions and processes. The four components of the law synergize integrally in efforts to implement the rules in practice, in the sense of fostering written law in the form of legislation.

Meanwhile, the four legal components needed to implement the law through written legal reform continue to be unwritten legal reform, such as through jurisprudence.

The function of law as a tool for societal development is still relatively in line with the development that is currently implemented in the national program, but it still requires bureaucratic empowerment (bureaucratic engineering) that prioritizes the concept of role models or leadership so that the legal function can create harmonization between bureaucratic elements and society in one place called "bureaucratic and social engineering" (BSE).

As a result of digital transformation, a comprehensive legal framework can be presented. First, documentation and evidence have shifted from physical to digital formats, and this has been recognized by the law. Second, digitization in the litigation process, both courts and arbitration as well as other alternative dispute resolution, for example, business transactions and negotiations, contract drafting processes, and legal drafting, can be conducted more efficiently, but still accurately as long as the information technology system is reliable. Third, in the human resources sector, online systems have made it easier to start education and conduct research as research papers are becoming more widely available. Fourth, in relation to clients, law offices can conduct almost everything through online correspondence. The same applies to lawmakers and government institutions as well as parliaments, where law-making, public consultations, and hearings can be conducted online.

The aforementioned situation highlights the usefulness of legal theory as the national transformation infrastructure intended as a concept of the function and role of law not only as a basis for certainty and order but further as an accelerator and director of Indonesia's transformation into Industry 5.0. Like technology, the law must be at the forefront in order to become the Indonesian transformation infrastructure, and laws must be designed in anticipation of the massive digital technology. Therefore, it is important to study all the Industrial Revolution phenomena, their benefits and impacts, and then create a directional infrastructure in the form of transformation-based laws for an advanced and prosperous Indonesia. Laws must be devoted to the Indonesian state, a welfare state under the ideology of Pancasila, and protect the entire people.

Technological and digital economic development are facts, but it is a necessity to make technological, economic, social and cultural developments for the welfare of society and to protect the people and the sovereignty of the homeland.

One of the current problems is that the law is frequently late in responding to the global transformation that affects the life of the nation and state. Synchronization and harmonization of positive laws to solve national problems are also often problematic due to the inefficient process of legislation, amendment, and legal formation as well as a lengthy bureaucratic process in which formalities and sectoral egos frequently override the substance of the law that is intended for development. Therefore, transformative legal theory as a reconstruction and adjustment of the legal development theory previously initiated by Mochtar Kusumaatmadja, is intended as a progressive legal concept in line with digital transformation and industrial 5.0.³⁷ Legal Theory as Indonesia's Transformation Infrastructure broadens and prioritizes law formation processes and integrated legal models in the form of Omnibus Law and integrated law-forming institutions as important elements. As a result, the elements of law, which include principles, norms/rules, institutions, and processes, are not limited to the framework of enforcement alone, but all of these elements become necessary during the law formation process.

Conclusion

The justice principle focuses on the material and immaterial works that investors are entitled to receive. This also demonstrates that in every broadcast, there are intellectual property rights attached to a legal subject that must be respected. This respect represents justice. The absence of this respect will lead to legal consequences considering that broadcast rights and intellectual property are protected by law. The legal principles in broadcast rights are: the principle of fairness, which emphasizes the material and immaterial works that investors are entitled to receive. In addition, the economic principle can also be attached by emphasizing the ownership of useful economic value and expressed in various forms to the public, which is one of the principles of intellectual property. In response to economic rights infringement in broadcasting, the concept of remuneration can be reduced to wages or gifts given to individuals for their broadcasting work. As is well-known,

remuneration emerged from the needs of the modern economy and is the latest form of the traditional wage system that previously caused various controversies in the labor economic system. In other words, in the context of the digital era, remuneration can be given to broadcasters.

Protection of Broadcaster Content Under the Copyright Law in conjunction with the Broadcasting Law in conjunction with the Job Creation Law is in accordance with Article 25 paragraph (2) letter a of Law No. 28 of 2014 on Copyright and Article 43 of Law No. 32 of 2002 on Broadcasting stating that it is mandatory to obtain a license from Broadcasting Institution as the economic rights holder of the broadcast. On the other hand, the Job Creation Law seeks to provide protection in the form of optimal broadcasting products to the public for existing broadcasts, both in terms of the government as a regulator and Broadcasting Institutions as broadcasters. The Job Creation Law is positioned to make existing broadcasts feasible to be enjoyed on the basis of technological advances so that technological advances can be enjoyed by all levels of society across Indonesia.

In the digital transformation era, the concept of legal protection of broadcast rights is that legislation is a powerful method or way to regulate and provide direction to the public in understanding broadcast rights. The reconstruction of the legal development theory into a theory of law as a transformation infrastructure is a concept that places the law to function and play a role not only as a basis for certainty and order but also as an accelerator and director for Indonesia's transformation into Industry 5.0 so that the remuneration approach protects the economic rights of creators more effectively than the absolute exclusive rights approach.

References

- 1 Definition of License according to Article 1 point 20 of the Copyright Law is a written permission granted by the copyright holder or the owner of related rights to other parties to exercise economic rights over his/her creation or related rights products under certain conditions.
- 2 Tempo, Melanggar Hak Cipta, Pembajak Konten Mola Jalani Proses Hukum, available at: <https://www.tempo.co/hiburan/melanggar-hak-cipta-pembajak-konten-mola-jalani-proses-hukum-473023> (accessed on 7 May 2025).
- 3 Amalia N S, Siarkan Liga Inggris Tanpa Izin & Pemilik Kafe Terancam Denda Rp 1 M, *Detik News*, 24 May 2021, available at: <https://news.detik.com/berita/d-5581322/siarkan-liga-inggris-tanpa-izin-pemilik-kafe-terancam-denda-rp-1-m>, (accessed on 5 May 2025).
- 4 Hermawan in Dinara Maya Julijanti, Dinamika Digitalisasi dan Konvergensi Media Televisi di Indo, *Jurnal Observasi*, 10 (2) (2012) 94.
- 5 Ramli A M, Cyber Law dan Haki dalam Sistem Hukum Indonesia, *Bandung: Armico*, 2006, 63.
- 6 Sumiaty N, Konstruksi regulasi penyiaran di era konvergensi, *Jurnal Penelitian Komunikasi*, 15 (2) (2012) 206.
- 7 Denico D, Upaya Penguatan Kelembagaan Komisi Penyiaran Indonesia Dalam Perspektif Hukum, Membangun Hukum untuk Keadilan dan Kesejahteraan, *Jurnal Negara Hukum*, 6 (2) (2016) 150.
- 8 Gokma Toni Parlindungan S, Tinjauan Umum Pembagaian Kekuasaan Dalam Hukum Tata Negara di Indonesia, *Jurnal Advokasi*, 4 (2) (2013) 24.
- 9 Article 7 (1), Law Number 32 of 2002 on Broadcasting.
- 10 Article 6 (1), Law Number 32 of 2002 on Broadcasting.
- 11 Article 6 (2), Law Number 32 of 2002 on Broadcasting.
- 12 Minister of Communication and Digital, Seleksi Calon Anggota Komisi Penyiaran Indonesia Pusat periode 2022-2025, available at: <https://seleksi.komdigi.go.id/info-seleksi/seleksicalonanggotakpi>, (accessed on 5 May 2025)
- 13 Humas B P H N, BPHN Mengadakan Focus Group Discussion (FGD) Analisis dan Evaluasi Hukum terkait Tata Kelola Perkebunan, available at: [https://bphn.go.id/publikasi/berita/2020081206585540/bphn-mengadakan-focus-group-discussion-fgd-analisis-dan-evaluasi-hukum-terkait-tata-kelola-perkebunan#:~:text=Focus%20Group%20Discussion%20\(FGD\)%20merupakan%20tahap%20dalam,dan%20Evaluasi%20Hukum%20pada%20Tahun%20Anggaran%202020,2020](https://bphn.go.id/publikasi/berita/2020081206585540/bphn-mengadakan-focus-group-discussion-fgd-analisis-dan-evaluasi-hukum-terkait-tata-kelola-perkebunan#:~:text=Focus%20Group%20Discussion%20(FGD)%20merupakan%20tahap%20dalam,dan%20Evaluasi%20Hukum%20pada%20Tahun%20Anggaran%202020,2020), (accessed on 5 May 2025)
- 14 Armis M, Tinjauan Hukum Mengenai Prinsip Diversity Of Ownership dan Diversity Of Content Ditinjau dari Undang-undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat dan Undang-undang Nomor 32 Tahun 2002 Tentang Penyiaran, *Jurnal Kumpulan Mahasiswa Fakultas Hukum*, 1 (1) (2014) 9
- 15 Law Number 32 of 2002 on Broadcasting.
- 16 Nurdahniar I, Analisis penerapan prinsip perlindungan langsung dalam penyelenggaraan pencatatan ciptaan, *Jurnal Veritas Et Justitia*, 2 (1) (2016) 240.
- 17 Raharjo S & Hukum I, Bandung: Citra Aditya Bakti, 2000, 74.
- 18 Laurensius A S, Komisi Penyiaran Indonesia Sebagai State Auxiliary Bodies Yang Menjamin Siaran Yang Layak Bagi Anak, *Jurnal Veritas et Justitia*, 3 (1) 2017 141.
- 19 Akil M A, Regulasi Media Di Indonesia (Tinjauan UU Pers dan UU Penyiaran), *Jurnal Dakwah Tabligh*, 15 (2) (2014) 138,
- 20 Putra V A & Gunawan A, Pengaruh Remunerasi Dan Motivasi Kerja Terhadap Kinerja Karyawan PT Naturalva Herba Indonesia, *Udicious Journal of Management*, 2023, 20.
- 21 Dewa Gede Palguna I, Pengaduan konstitusional: Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara, *Jakarta: Sinar Grafika*, 2013, 131.
- 22 Bagir Manan dan Susi Dwi Harijanti, Konstitusi dan Hak Asasi Manusia, *Jurnal Ilmu Hukum*, 3 (3) (2016) 456
- 23 Dian Kus Pratiwi J A D, Ariani D & Heryansyah D, Pengenalan Hak-Hak Konstitusional Warga Negara di Sekolah, *Jurnal Jamali*, 1 (1) (2019) 27.

- 24 Ramli A M, Hukum Sebagai Infrastruktur Transformasi Indonesia *Bandung: Sinar Grafika*, 2022, 120.
- 25 The law is not seen as a mere social code, this can be seen in Mochtar Kusumaatmadja in Otje Salman and Eddy Damian, Otje Salman and Eddy Damian, *Konsep-Konsep Hukum dalam Pembangunan*, Bandung: Alumni, 2002, 3.
- 26 Badan Pembinaan Ideologi Pancasila Republik Indonesia, Ideologi Pancasila di Era Milenial, available at: <https://bpip.go.id/berita/ideologi-pancasila-di-era-milenial>, (accessed on 5 May 2025).
- 27 Tech, Media & Entertainment, 5G vs. 4G: How Much of a Difference Does it Make?, available at: https://tme.net/blog/5g-vs-4g/?utm_source=chatgpt.com, (accessed on 5 May 2025).
- 28 Rahim F, Bagaimana Peran Teknologi Internet Selama Pandemi Covid-19?, available at: <https://kumparan.com/fitra-rahim/bagaimana-peran-teknologi-internet-selama-pandemi-covid-19-1tvKVFn10s/3>, (accessed on 5 May 2025.)
- 29 PANRB, UU Cipta Kerja Dukung Percepatan Transformasi Digital dan Ciptakan Lapangan Kerja Baru Sektor Kominfo, available at: <https://menpan.go.id/site/berita-terkini/berita-daerah/uu-cipta-kerja-dukung-percepatan-transformasi-digital-dan-ciptakan-lapangan-kerja-baru-sektor-kominfo>, (accessed on 5 May 2025).
- 30 Article 70 (15), Law (UU) Number 6 of 2023 Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as Law.
- 31 Article 16 (1), Law Number 32 of 2002 on Broadcasting.
- 32 Law (UU) Number 6 of 2023 Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as Law.
- 33 Badan Pembinaan Ideologi Pancasila Republik Indonesia, Ideologi Pancasila di Era Milenial, available at: <https://bpip.go.id/berita/ideologi-pancasila-di-era-milenial>, (accessed on 5 May 2025).
- 34 Mulyadi L, Teori Hukum Pembangunan Prof Dr Mochtar Kusumaatmadja S H, L L M, *Badan Peradilan Umum Mahkamah Agung*, 2.