

The Importance of Authentic Copyright Documentation for Web-Based Computer Programs (Web-Log Design for Online Ojek Pioneer) as Legal Proof of Ownership

Khalisha Adela Morris^{1*}, R. Rahaditya²

Universitas Tarumanagara, Indonesia

Email: adelmorris18@gmail.com^{1*}, rahaditya@fh.untar.ac.id²

*Correspondence

ABSTRACT

Keywords: copyright; computer program; web application; web-log design; online ojek pioneer.

Weblog design is a work of web-based computer programs that can be protected in terms of coding and display. In the competition of businesses to market their products/services, weblogs are a powerful mainstay to win the competition. With the sophistication of Web 3.0 technology, it can make a website a dynamic and attractive digital platform. However, in some cases of copyright infringement, the existence of web applications is still underestimated and even considered only an unprotected concept. The purpose of this study is to analyze illegal acts for alleged copyright infringement of the Online Ojek Pioneer weblog. The research methods used are normative-prescriptive with a legal, case, and conceptual approach. Data processing from primary, secondary, and tertiary legal sources through literature studies. The analysis was carried out with deductive syllogism. From the results of the study, it can be explained that weblogs are one of the digital works that should be protected. It fulfills the elements of fixed, form, and originality, where the invisible side of the source code is a work of literate work while the appearance is the artwork. Documentation of the authenticity of each work is important to be prepared early because it will be strong evidence when stumbling upon copyright disputes. Suggestions to the DJKI to develop systematic General Data on Creations as a reference for creators to anticipate no copyright infringement and for judges to explore legal findings related to the diversity of computer programs to more accurately determine decisions related to the copyright of web-based computer programs.



Introduction

Human civilization has entered the era of the Industrial Revolution 4.0 which is built on the foundation of the digital revolution characterized by communication technology (internet, mobile) and information technology (various computer

programs/applications that run on the internet network). The existence of information and communication technology (ICT) developments has changed human behavior patterns in doing business in almost all industrial sectors, including in the transportation industry. But unfortunately, the speed of ICT development is not always followed by adequate legal rules.

The creation of various computer programs in supporting business raises various kinds of legal problems related to unlawful acts against the work, in the form of infringement of exclusive rights owned by the creator by Article 4 of Law Number 28 of 2014 concerning Copyright (UUHC), namely moral rights and economic rights to the use of copyright without the permission of the creator. Copyright works in the fields of science, art, and literature, including **computer programs**, are objects of Copyright based on Article 40 paragraph (1) letter s.

The application of digital solutions in the transportation sector, namely motorcycle taxis (ojek) as public transportation which is quite in demand in breaking through congestion, has stolen the public's attention, although the presence of motorcycle taxis as public transportation legally is still a dilemma to this day. The motorcycle taxi business model, which started conventionally where consumers visit motorcycle taxi bases, has changed in line with the existence of internet-based, cellular, and mobile phone-based digital solutions. Consumers are more facilitated and practical when they need motorcycle taxi services by using these online solutions.

The implementation of this digital business model for motorcycle taxis in Jakarta was pioneered by Arman Chasan an online motorcycle taxi service business actor in 2008. Arman Chasan's copyright in the form of computer programs and written works has been declared for the first time (first to announce) for online motorcycle taxi bookings through weblogs and call center systems since December 1, 2008, and has been operating (first to use) by subsequently managing up to 20 driver partners, where applying a fee of 10% of partner receipts. The manifestation (fixation) of the work is real in the form of weblogs and written content that attracts the attention of journalists because of its peculiarity so that it is covered by national and international media, including Trans TV, SCTV, MetroTV, Media Indonesia, Bloomberg, and NHK Japan. The process is by Article 1 number 1 of the UUHC where Copyright is an exclusive right that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions. In addition, the results of the weblog and written works have been recorded (first to file) in the database of the Director General of Intellectual Property (DJKI) by the recording procedures in Article 66 - Article 73 of the UUHC.

However, in 2011 it was suspected that there had been an unlawful act for copyright infringement that contained elements of error because the Gojek startup in 2010 deliberately without permission modeled something similar to Arman Chasan's copyright, namely **weblogs and call center systems** to be commercialized. This evidence was obtained from legal facts in the form of news publications in the Media Indonesia newspaper dated October 28, 2011, clearly quoted that Nadiem Makarim Co-Founder of Gojek at that time said that Gojek as a motorcycle taxi service company **implemented**

web solutions and call center systems for taxi bookings using mobile phones (voice/sms) and blackberry messenger with online terms as well. At that time, Gojek partnered with 100 motorcycle taxi bases with a total of 230 motorcycle taxi fleets for the Jakarta area and its surroundings. Where partners are charged 35% of the total fare paid by passengers. The collective payment system is still manual.

The decision of the first lawsuit in 2021 did not reach the subject matter but NO (niet ontvankelijk verklaard) because of an obscure label error in persona. The case was analyzed even though the verdict was not yet unanimous. However, what is being sued is not "the creator and copyright holder of Gojek-PT Aplikasi Karya Anak Bangsa" (Karim, 2023). What Arman Chasan sued when he created "**a web blog** for online motorcycle taxi bookings and using call centers and collaborating with motorcycle taxi drivers in 2008", is the same as what the Gojek company did in 2010. So there is an allegation that Gojek is peeking at Arman Chasan's web blog based on the evidence presented at the trial.

In the second lawsuit decision, both at the Commercial Court and cassation levels, the Supreme Court rejected all of Arman Chasan's lawsuits because the copyright made by Arman Chasan was only in the form of the concept of ordering a motorcycle taxi. The judge considered the computer program for making weblogs that had been accepted for recording by the DJKI as a category of computer programs and papers were set aside and considered only a concept.

Concepts or ideas based on Article 41 are not considered tangible manifestations of works so they are not protected according to the judge's consideration. This makes it out of sync with the recording in the DJKI. Based on Article 31, the recording is the initial proof of ownership, unless proven otherwise if sued by the real Creator who of course must prove the originality of the work.

From the background description above, the author aims to analyze illegal acts of alleged copyright infringement. The number of computer programs and their rapid development has caused legal delays in pursuing the phenomenon of ICT development. One of the doctrines of Ahmad Ramli states that there are so many works of computer programs that it becomes a problem because there is no standard or standard proof of the computer program. Meanwhile, the judge's consideration, according to the author, is not correct that the expression of the idea embodied by Arman Chasan is only a concept because the weblog and the content of his written works can be seen, read, and heard by internet users. This study is based on the UUHC and the Court Decision in the Arman Chasan vs Gojek case. The results of this study are expected to be a contribution and input for policymakers and application developers as well as startups whose work is in the form of computer programs, especially web-based applications to carefully document the originality of their work, as proof of legal copyright ownership to provide legal certainty.

Research Methods

The research method used is legal dogmatic, namely the juridical study of positive law or normative law. Dogmatic law has the main task of directing, analyzing, systematizing, interpreting, and assessing positive laws (Diantha & Sh, 2016). Normative

law research examines the law from an internal perspective with the object of research being legal norms. The research specification uses a prescriptive method (Nurhidayani & Sujono, 2024) as a process to find legal rules, legal principles, and legal doctrines as well as legal literature and other materials related to the case to be studied so that it can answer legal issues about what should be done.

The data collected through literature studies are qualitative data from the type of secondary data obtained indirectly from available sources. The research sources are in the form of primary, secondary, and tertiary legal materials.

Primary legal materials are legal materials that have an authoritative nature, materials consisting of the ratification of international agreements, laws, and regulations, along with official records or academic manuscripts or minutes of the promulgation process, and judges' decisions. In this study, the author uses: The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs); Law Number 28 of 2014 concerning Copyright (UUHC); Civil Code; Government Regulation (PP) Number 16 of 2020 concerning the Registration of Works and Related Rights Products; Regulation of the Minister of Law and Human Rights (Permenkumham) Number 15 of 2024 concerning the Management of Royalties for Secondary Use Licenses for Books and/or Other Writings; Regulation of the Minister of Law and Human Rights (Permenkumham) Number 42 of 2016 concerning Electronic Intellectual Property Application Services; Court Decisions: Commercial Court No. 86/Pdt.Sus-HKI/Cipta/2021/PN Jkt.Pst., No. 96/Pdt.Sus-HKI/Cipta/2022/PN Jkt.Pst., and Supreme Court No. 1033 K/Pdt.Sus-HKI/2023;

Secondary Legal Materials consist of all publications on the law that are not official documents, including books, journals, scientific works, and commentaries on court decisions in the field of Civil Rights and Intellectual Property Law law, as well as articles and news from the Internet related to the case being studied, namely alleged copyright infringement for "web design" objects categorized as web-based computer programs and the content of written works that have been recorded in the General Register Created by the Director General of Intellectual Property (DJKI).

Tertiary/other legal materials are materials that provide instructions and explanations for primary and secondary legal materials. In this case, the tertiary legal materials used by the author are the Great Indonesian Dictionary and legal dictionaries that are used to interpret terms and definitions or general understandings to help the author understand legal terminology and concepts in other legal materials.

Furthermore, the Research Approach is a perspective in choosing a spectrum of discussion space that is expected to provide clarity in the description of the substance of the scientific work. The approach in conducting normative legal research in this study is with a legislative approach, a case approach, and a conceptual approach.

The data analysis method used in this study uses deductive logic, as a syllogism embraced by Aristotle. The use of deduction depends on the presentation of the major premise (general statement), then the minor premise (specific properties), and then concludes from the two premises (Nurhidayani & Sujono, 2024).

Results and Discussion

The case raised in this study is about the act of violating civil law against the alleged copyright infringement of the Pioneer of Online Motorcycle Taxi Arman Chasan by the Gojek startup. Arman Chasan has legal standing to sue because he feels aggrieved due to unlawful acts without permission for the exclusive rights he has to 5 (five) copyrights that have been documented and recorded by the recording procedures based on Government Regulation Number 16 of 2020 concerning the Registration of Works and Related Rights Products. The following Copyrights are recorded:

Table 1
Rights CIPTA Arman Chasan's DJKI

It	Category	Request	Heading	Registration No	First Date Announced
1	Computer program	EC0020016758 June 3, 2020	The First Bintaro Online Motorcycle Taxi Serves Bintaro, Rempoa, Sudirman, Thamrin, Jakarta and Surrounding Routes.	00200452	Dec 1, 2008
2	Work Write	EC00202107723 21 Jan 2021	Standard Operating Procedures for Online Motorcycle Taxi Booking (Ojol) in 2008 by using via phone, SMS, and website. And Internet Media.	000234632	Dec 1, 2008
3	Work Write	EC00202107724 21 Jan 2021	The First Online Motorcycle Taxi to Implement Safety Riding for the Bintaro, Rempoa, Sudirman, Thamrin, Jakarta and Surrounding Routes.	000234276	Dec 1, 2008
4	Program Computer	EC00202130902 30 June 2021	Business Methods and the Forerunner of the Establishment of the First Online Motorcycle Taxi in Indonesia by using internet-based media since Year 2008.	000257673	Dec 1, 2008
5	Work Write	EC00202130913 30 June 2021	Business Methods and the Forerunner of the Establishment of the First Online Motorcycle Taxi in Indonesia by using internet-based media since Year 2008.	000257674	Dec 1, 2008

Based on Article 1365 of the Civil Code related to unlawful acts (*onrechtmatige daad*) states that every act that violates the law (including violating the norms of morality, propriety, and public order) and brings harm to others, obliges the person who caused the loss due to his fault to compensate for the loss. An act declared unlawful must meet the following elements: 1) the act must violate the law, 2) the act was committed by mistake, 3) the act must cause harm, and 4) there must be a causal relationship between the act and the loss incurred. (Kusumawati, 2022).

Arman Chasan's copyright is included in the category of computer programs in the form of weblog design programs to inform and how to order motorcycle taxis via the internet (online). Although it is still very simple to create this web-log is included as a web-based computer program. According to Article 1 number 9 of the UUHC, a computer program is a set of instructions written in a specific programming language, which is then executed by a computer to complete certain tasks. In this case, the Blogger platform used for web-log (blog) design is specifically designed to assist users in creating and managing the views and content of their weblogs. The instructions in it allow users to choose templates, set layouts, add images, write text, and various other functions related to creating a web blog.

The unlawful act is a mistake, because deliberately without the permission of the Creator it has violated several articles in the UUHC as *lex specialis* derogate *lex general* of the Civil Code, namely:

1. Arman Chasan's copyright is in the form of a motorcycle taxi booking web blog that can be accessed via the internet and has been declared/announced for the first time in 2008 so that people who have used its services are dubbed as Online Motorcycle Taxi Pioneers, therefore it should automatically be protected by the state based on Article 1 number 1 jo. number 11
2. Copyright objects in the form of written works and computer programs are also copyright objects that can be protected according to Article 40 paragraph (1) letters a and s;
3. Violating the exclusive rights of the creator, namely the moral right of Article 5 paragraph (1) where the Gojek website as reported in the mass media as the Pioneer of Online Motorcycle Taxi in 2011 uses a system similar to that has been created by Arman Chasan, namely the similarity of ordering through web blogs and call centers and partnering with motorcycle taxi drivers to run their business;
4. Violating economic rights as Article 8 jo. Article 9 by publishing and commercializing without permission the Gojek website which has been imitated from Arman Chasan's Copyright for motorcycle taxi bookings through web blogs and call center systems;
5. This act is a mistake because there is no talk of transferring economic rights, one of which is through a written agreement or called a license (KARJONO & SH, 2023) According to Article 16.

According to Angela Bowne quoted by OK Saidin, internet users violate the UUHC, when they download content from an internet site and save it to their computer's

hard drive. However, this answer is not given, because if an internet user changes the format or content of a digital work to another visible format without downloading it from the website, it can be considered copyright infringement. From this, OK Saidin can conclude that not all traditional copyright principles can include copyright infringement on the internet. (Darwance, Yokotani, & Anggita, 2020). Copyright is the most important foundation for the creative development of the national digital economy. Without copyright, the owner of the work is at risk of being targeted by plagiarism and illegal sales activities which of course cause intellectual and material losses due to acts of infringing the copyright of the creator and copyright holder. (Rahmawati, Putri, & Nabila, 2023).

The Form of Copyright of the Online Motorcycle Taxis (Ojek) Pioneer: Computer Programs and Written Works

Regarding unlawful acts (PMH) here related to violations of regulations in the UUHC, the description of the copyright that is violated needs to be explained first. Indonesia has ratified the TRIPs agreement Articles 9 and the Berne Convention Article 2, where copyright will be protected if it meets the following elements: Fixed (concrete/tangible form), form (certain form), and original (original unique).

Based on the perspective and paradigm of web developers who are engaged in web blog development, they argue that web blogs are a form of a computer program that involves programming as a series of instructions in the form of technical code (coding) collected in a source code to be aimed at performing a specific function. This is in line with Article 1 number 9 of the UUHC regarding the definition of computer programs. Web-based computer programs and blogs generally function to display noisy content for internet users. Other functions can also be for transactions such as e-commerce platforms or online stores as Tokopedia did at the beginning of its establishment in 2009, namely web-based computer programs, which at that time had not yet penetrated smartphones in Indonesia so mobile apps were not so taken into account.

Web-based e-commerce platforms use various technologies and programming languages such as HTML, CSS, and JavaScript, as well as server-side programming languages such as PHP, Python, or Ruby to build and manage online stores. The PHP (hypertext preprocessor) programming language was created by Rasmus Lerdorf in 1994 to create pages, websites, web applications, and graphical user interfaces (GUIs) and function as an intermediary between web servers and databases (e.g. to store products, users, and transaction information), thus enabling data processing and user interaction. Thanks to Lerdorf, websites can display interactive and dynamic content, which can change according to user requests. This PHP language algorithm can be directly inserted into HTML and the code will be executed on the server side before being sent to a web browser (Huda, 2024).

The general definition of an algorithm is a series of logical and systematic steps to solve a particular problem. More precisely, it can be understood that an algorithm, both in computer science and mathematics, is a method or procedure that can be used to solve

existing problems. Therefore, algorithms can be said to include several elements such as reasoning, data processing, and calculations (Amira, 2022). Based on Article 4 letter d of Law Number 13 of 2016 concerning Patents (hereinafter referred to as "**Patents**"), an algorithm is an effective method expressed as a limited set of instructions that have been well-defined to calculate a function.

In the context of algorithms, computer programs in Indonesia are classified under Copyright protection. It is based on that creating software is done with algorithms, formulas, or code. According to the Berne Convention and WIPO Copyright Treaty, the protection of computer programs is protected by literary works and artistic works. (KARJONO & SH, 2023), while in the United States, computer programs are classified as protected in terms of Patent Rights. Software protection with the Patent mechanism in the United States is more complicated because it is assessed based on three criteria, namely: a. novelty, b. contains inventive measures, and c. can be applied in the industrial field. Software protection based on copyright is based on originality. Judging from the protection period, the protection of software based on Copyright is longer, namely 50 years, while Patents are 20 years (Candra, 2015).

Meanwhile, a web browser is an application that can help to access/read pages that contain all the information on the internet network. Without a web browser, internet users can't access websites. Examples of web browser applications include Google Chrome, Mozilla Firefox, and Opera. But web browsers are not search engines. A search engine is a portal to help find information/resources on a particular web page. Examples include Google Search, Yahoo, DuckDuckGo, and Bing. Meanwhile, the search engine itself is included in the category of websites that can be accessed using a web browser (Napizahni, 2022).

A website or weblog is a tangible manifestation of the results of the expression of human thought. Article 1 paragraph (3) of the UUHC, that a Creation is any work of copyright in the fields of science, art, and literature that is produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in real form.

A website can contain several intellectual property rights (Copyrights, Brands, Patents, Industrial Designs). A website can consist of the following elements (Setiawati, 2011):

- a. Website design;
- b. The content (content) of the website, can be in the form of text/writing, photographs, images, music, animations, videos, databases, and software;
- c. Logos, business names, product/service brands, symbols and slogans;
- d. Domain name;
- e. Features with web 2.0 or web 3.0 technology, e.g. search engines, app downloads, transaction systems such as in online stores, navigation systems, algorithmic systems e.g. for payment/credit calculations, memberships, etc.

According to Ahmad M. Ramli, the appearance of websites in America is protected as an industrial design, because there are secrets in its creation so it protects more of the

substance of the data contained in computers and internet networks. Industrial Design protects things related to displays such as the homepage. The homepage is the front page or main page (homepage) of a website (Cmlabs, 2023). The main function of the home page is to provide information about the website to visitors without having to see all the pages on the website. Other features of the home page include: providing easy access for users to the website, representing the identity of the website and the main topic of discussion, displaying a list of navigation menus, as well as an overview of the functionality of the content published on the website.

However, the protection of the homepage as intellectual property in the field of industrial design is often still a debate because of the principle that some countries believe that industrial design does concern mass-produced objects. Law Number 31 of 2000 concerning Industrial Design (hereinafter referred to as "**UUDI**") is associated with the protection of homepages which has quite a principled problem because it strictly adheres to constitutive principles (Ramli, 2010).

Based on the definition of computer programs in Article 1 number 9 of the UUHC, website design or web blogs are included as a category of computer programs. The form of expression of a web-based computer program or web-log application refers to the concrete way or manifestation of the ideas contained in the program. Here are the forms that can be recognized and identified objectively. In other words, the form of expression is how the abstract ideas of a programmer are embodied in a form that can be understood by a computer. It covers a wide range of aspects, such as:

a. Source Code

- 1) Text written in a specific programming language.
- 2) It contains instructions, algorithms, and data that make up the program.
- 3) Examples: code in HTML, CSS, Python, Java, C++, etc.

b. Object Code

- 1) Compiled version of the source code.
- 2) In the form of a machine language that can be directly run by computers that are generally on the host server so that it can be accessed 24/7.
- 3) It cannot be easily read by humans.

c. User Interface

- 1) The way the program interacts with the user.
- 2) Includes visual display, input/output, and navigation.
- 3) Examples: buttons, menus, forms, graphics, sounds, etc.
- 4) Interface display elements:

The real form (fixation) of web blog design refers to the final visual appearance that can be seen, read, heard, and accessed by internet users, consisting of the main elements, namely:

- a) Layout: The structure of the page, such as the header, footer, sidebar, and main content area.
- b) Graphics and Visuals: Images, icons, logos, buttons, forms, and other visual elements are used to beautify the web logo.
- c) Typography: The font selection, text size, and writing style used throughout the web-log.

- d) Color: A color scheme chosen to create a specific mood or theme.
- e) Navigation: Menus and links that make it easy for users to explore different sections of the weblog
- f) Content: text/article posts, sounds, animations/videos, and other multi-media published on blogs
- g) Interactive features: memberships (subscribers), visitors.

All of these elements work together to create an engaging and consistent Internet user experience.

d. Data Structure

- 1) The way data is organized and stored in programs.
- 2) Examples: arrays, lists, trees, databases, etc.

e. Algorithm

- 1) Logical steps used to solve the problem.
- 2) Although the algorithm itself is not a form of expression, its implementation in the source code is a form of expression.

f. Combination of These Elements Complex programs are often a combination of some or all of the above elements.

While invisible elements in the form of source code and object code, web-based computer programs or weblog applications can still be protected by copyright law. Copyright protects the form of expression of a program, such as the source code or interface appearance as in the element above.

Copyright protection in computer programs is so abstract, that it is necessary to understand that copyright protects the form of expression of the program (Article 40), not the basic idea/concept as in Article 41 of the UUHC.

This means that two people can have the same idea for a program, but the way they express those ideas in different source code, user interfaces, or data structures can be protected by copyright.

Therefore, two programmers may have an idea to create an e-commerce web application. Although the basic idea is the same, the way they design the user interface, calculation algorithms, and data structures in the source code can differ, and these differences can be protected by copyright.

By understanding the concept of forms of expression, one will be able to better understand how copyright protects computer programs and how to protect the intellectual work of the Creator.

The main thing to note is that all Copyright authenticity documentation must be carefully described. Both in terms of ideas, chronology, initial design/concept, stages of completion of the creation, business model, process flow, and method used, the manual must be documented, if it is needed in the future as a protection of moral rights and proof of legal ownership as Article 6 jo. Article 7 of the UUHC. Legal ownership documentation, moreover, has been recorded as prima facie evidence to anticipate lawsuits from other parties (creators) who consider plagiarism to have occurred.

To ensure copyright authenticity in the creation of a website design or weblog, here are some important documentation steps (Shalda, 2022):

- a. Initial Concepts and Sketches: Save all the initial concepts, sketches, and ideas used in the design process. This can be a hand-drawn drawing, a note, or a digital file.
- b. Design Process: Document every stage of the design process, including changes and revisions. Save different versions of the design to show the progress of the work.
- c. Resources Used: All resources used, such as images, fonts, icons, graphic elements, or other art illustrations are recorded. All such resources are guaranteed to have a valid license or are original works, including if using an open-source license. Open source is a collaborative phenomenon of programmers/developers. Further development of open source can be made proprietary, allowing for licensing as per the agreement.
- d. Means of technological control: Use various methodologies, such as Digital Watermark, Digital Rights Management (DRM), Least Significant Bit (LSB) stenography techniques, and Data Encryption Standard (DES) cryptography techniques that can be used as protection of copyright ownership by applying Copyright management information and/or Copyright electronic information.
- e. A manual that explains how to use computer programs, complete with source code.
- f. Agreements and Contracts: As a developer, if you're working with a client/booker or team, make sure there's a written agreement explaining the copyright and ownership of the design. This is important to avoid disputes later on.
- g. Date and Proof of Publication: Keep proof of date and publication of the design, such as emails, screenshots, or other notes showing when the design was first created and published.
- h. Copyright Registration: Although copyright protection automatically applies from the time the copyright is realized/used and declared/published, registering/registering a web design with the DJKI can provide a stronger legal presumption unless there is another party who can prove otherwise.

With the aforementioned steps, Creators can ensure that web designs can be protected by copyright and have strong evidence to support authenticity claims in the event of a dispute. Evidence of authenticity documentation and registration certificates at the DJKI will facilitate and accelerate the evidentiary process in alternative dispute resolution (APS), arbitration, and litigation.

When the copyright authenticity documentation has been completed, it should be registered with the DJKI immediately. Based on Articles 64 - 75 of the UUHC and its administration in Government Regulation Number 16 of 2022 concerning the Registration of Works and Related Rights. There is no confirmation of how long it will take for a recording application after the Copyright is realized, although it should be as soon as the Copyright Authenticity Documentation is completed. This is left to the Creator or Copyright Holder. The process of recording works starts from the date of receipt of applications that meet the requirements to giving the decision to accept or reject the application within a maximum of 9 (nine) months. An example of a copyright

infringement case of PT Sritex vs PT Duniatex that occurred in 2011, shows that after 35 years of copyright in the form of a "Yellow/Gold Thread Line" on every fabric of PT Sritex's copyrighted textile products can still be registered with the DJKI. The Copyright of the Yellow/Gold Thread Strip has been used and announced since August 16, 1976 (Kaligis, 2012).

The general list of works in the DJKI database is a work information system that should be referred to by Creators and Copyright Holders when ideas/ideas/concepts/principles/methods/systems or embryos of the work have not been realized. So that the general list of works can anticipate the minimum possibility of copyright infringement. Although the registration of a work is only an essential check, that is, checking all works that have been recorded in the general register of works or other objects of intellectual property, the recording can be a legal assumption of the original evidence of creation, unless there is a rebuttal from another party who also has valid evidence. Meanwhile, the substance or content, meaning, intent, and form of the Work or Related Rights products that are recorded are not guaranteed to be approved considering that recording is not a requirement for the legalization of a copyright. This is different from the legalization of trademarks, patents, industrial designs, and trade secrets which contain constitutive principles so that the recording process is strict down to its substance.

Analysis of Proof of Elements of Unlawful Acts

1. There is an act or not to do

The researcher used Gojek to refer to the Defendants (PT GoTo Gojek Tokopedia, Tbk. and Nadiem Anwar Makarim) because the brand is a trademark that has been passed down by the general public. In the case of Arman Chasan vs Gojek, Arman Chasan was aware of his active actions when the Co-Founder of Gojek had contacted him through the number that he informed in his weblog as his call center contact, which was about 3 (three) months before the establishment of Go-jek on October 13, 2010. At first, he thought it was a call from his potential customers because he usually keeps the phone numbers of his subscribers. Arman Chasan did not know Nadiem, but the person concerned introduced himself and invited him to work together. However, the talks were interrupted and there was no follow-up. He had saved the cellphone number with the name Nadim Makarim as the person concerned introduced himself, hoping that the person concerned would contact him again. However, he did not keep a time/date log on his mobile phone when he was contacted, he did not suspect in the slightest that the log would be needed in the future as evidence of electronic information based on Article 111 paragraph (2).

Arman Chasan's busy management of online motorcycle taxi services and a lot of coverage about him as an "online motorcycle taxi pioneer" is called by the public as a form of appreciation for taking advantage of his services. Time went on three years later when he was shocked to read the Media Indonesia newspaper on October 28,



Figure 2
Attributes of Arman Chasan vs Gojek Driver Partners

After 1919, PMH was widely interpreted, so that it not only violated the law or the rights of others or was contrary to decency or was considered appropriate in public relations, but if it was not enough to show reasonable prudence and tolerance for the interests or property of other people or parties, then it could be considered guilty of committing PMH. (Rachman, 2024). In this case, the act of actively observing and imitating content on Arman Chasan's web-log property without citing the source, of course, at least violates moral rights and hurts the reputation of the Online Motorcycle Taxi Pioneer.



Figure 3
Interactive and Community Booking Columns

Arman Chasan's web blog is still fairly simple to be considered as the forerunner of the digital platform for the electronic system trade operator (PPSE) ride-hailing because even if it is considered an online transportation business actor motorcycle vehicles are still not accommodated in Law Number 22 of 2009 concerning Road Traffic and Transportation, is not listed as public transportation. So the legality of online motorcycle taxi services is still in question (Saputra, 2022).

Beyond the legality of online motorcycle taxi services, Arman Chasan's work has been clearly manifested in the form of a web-based application. It should be understood that not all application terms can be downloaded, as is the case with web applications. It can only be read through a web browser. The definition of a computer program as Article 1 number 9 of the UUHC does not mention that the application element is that it can be downloaded as well as mobile applications and desktop applications.

As the web design of the ojekbintaroblogspot blog is carried out by two people, the arrangement as a creator is outlined in Article 33, Article 34 jis. Article 36 of the UUHC, the role of each can be clarified in the documentation of copyright authenticity. Arman Chasan acted as the orderer and directed the design in the form of basic ideas for the flow of the ordering process and article content (copywriter/content editor) to be uploaded on the web blog and oversaw the completion of all creations. Meanwhile, the design of the layout, graphics, typography, navigation, data structures, and coding to create interactive features was assisted by Handono Warih. Therefore, as agreed by them, the registration of the work recorded as the Creator is Arman Chasan (Hasan Azhari) in the registration of the Work and/or listed in the general register of the Work as the Creator (Article 31 letters c and d of the UUHC). This is generally done as in Article 35, in the business relationship between the Legal Entity and the Web Developer vendor, through a cooperation agreement and the nature of confidentiality, the owner/orderer of the Legal Entity as the Creator.

2. Elements of Unlawful Acts

After 1919 with the Cohen and Lindenbaum incident (Arrest Hoge Raad of January 31, 1919), this unlawful act can be based on positive rules and according to legal principles that apply in society, such as the principle of propriety or propriety. So that the actions carried out must violate the rules, morality, public order, or subjective rights of others (it can be material rights, it can also be individual rights). According to Munir Fuady, unlawful acts are in the form of acts that violate the law, that violate the rights of others guaranteed by law, acts that are contrary to the legal obligations of the perpetrator, acts that are contrary to morality (*goede zeden*), and acts that are contrary to a good attitude in society to pay attention to the interests of others. (Fuady, 2005).

The articles that are suspected of being violated include:

- a. Article 4, which is a violation of the exclusive rights of the Creator of the weblogs and writings of the Pioneer of Online Motorcycle Taxi
- b. Article 5, the moral right inherent in the Creator for life, which is the right to be named and the control of the work under its control, such as maintaining its right to change the Creation, distortion of the Creation, mutilation of the Creation, modification of the Creation, or anything detrimental to his honor or reputation.
- c. Article 8 and Article 9, in the form of economic rights to utilize the commercialization of works, so that without the permission of the creator, it is not

allowed to use, among others, the work; publication of Works, Reproduction of Works in all their forms; translation of Works; adaptation, arrangement, transformation of Works; announcement of Works.

- d. Article 16, Arman Chasan's copyright has never been transferred in the form of a license based on an agreement. Arman was contacted before Gojek was established to carry out cooperation, but it was cut off and there was no continuation.

3. Elements of Fault

Mistakes from unlawful acts can be intentional and negligent. Intentionality means that a person does an act and this act intends to create an effect. The perpetrator (subject of law) must be wrong in doing or not doing. The subject of the law can be an individual (natuurlijke person) or a legal entity (recht person). Fault (schuld) can consist of an element of intentionality (dolus), and an element of negligence (culpa), and there is no justifying reason or excuse for the person.

In the case of the perpetrator deliberately observing the weblogs and the content of the articles in it, even though it was clear that the website offered online motorcycle taxi services, and realized that it was his competitor at that time.

4. Element of Loss

Every unlawful act brings harm to others, which obliges the person who caused the loss because of his fault, therefore the perpetrator must be responsible for replacing the loss. As in accordance with Article 1365 of the Civil Code.

Generally, liability in civil affairs is based on the law of engagement, namely: 1) Liability arising from the agreement/contractual relationship (privity of contract) based on Articles 1338 and 1317 of the Civil Code; 2) Responsibilities arising from the law (laws and regulations). Responsibilities arising from the law include two things, namely: 1) Responsibilities arising from the law alone, or 2) Responsibilities arising from the actions of people, whose actions may be by the law (also legal/halal acts) or acts that violate the law which are also called Acts Against Civil Law (PMH). However, as stipulated in Article 1367 of the Civil Code, liability is not only due to his actions but also due to the actions of people or objects under his control. (Idayanti & Aryani, 2019).

An example of a case in 2001, an unlawful act by infringing on the exclusive rights of the creator of a computer program that is familiar to computer users is the Microsoft Office application. IPR protection is universal, considering that Indonesia has ratified the TRIPs agreement and the Indonesia-US bilateral agreement through Presidential Decree No. 25/1989 concerning the Ratification of Agreements on Copyright Protection (KARJONO & SH, 2023).

The active act was proven guilty intentionally based on evidence of the results of the dealer test purchase program (DTPP). Microsoft Co. hired an investigation company to purchase computers at several stores that allegedly carried out illegal installations without the addition of purchasing official licenses to attract computer buyers at those stores. The computer evidence was dismantled for research on its

production code (serial number, password, secret code) as a means of technological control that has been regulated in Article 52 of the UUHC.

As a result, this act has harmed Microsoft Co., so the perpetrator must be responsible for the loss, where it is certain that there is a causal relationship between the crime and the harm caused.

Claims for losses are not only material losses (compensation, costs, interest) but also moral losses (immaterial). The amount of loss was obtained on the assumption that the five defendant stores had been running their business for 4 (4) years. During that time, he sold an average of 10 to 20 units of computers every day. The original Microsoft Office costs \$599, while the illegal one costs \$110. So the total compensation claim amounted to US\$ 8.8 million.

However, in the end, a peaceful route was carried out, so that it could be resolved fairly, quickly, and effectively compared to the litigation route that had lasted 8 (eight) months. The agreement was that each defendant paid US\$ 20,000 and donated 20 computers equipped with official Microsoft applications and support for use for social purposes and published on social media.

Piracy of Microsoft applications does not only occur conventionally (using diskettes/CDs) in the above case but also occurs on websites that provide free Microsoft software download facilities. (Handiwiyanto & Dewanto, 2020). The copyright infringement was carried out to increase the number of hits and ad views due to the increase in visitors. However, Billy (Handiwiyanto & Dewanto, 2020) Their descriptions did not explain how to settle the loss. The point is that the creator of a computer program needs to include a means of technological control as a protector and implement Copyright management information and/or copyright electronic information as Article 6, Article 7 of the JIS. Article 52 of the UUHC.

Analogous to the example of the case above, Arman Chasan's claim for losses due to alleged plagiarism committed by the perpetrator when observing his web blog, so that he realized that there had been an online motorcycle taxi since 2008, which was two years before Gojek was established. Conducting a test call center and being disconnected without any follow-up showed that the perpetrator realized that the web blog he was looking at was a competitor at that time. In the evidence in court, it was revealed that the partner witnesses from each party explained that the ordering process was the same. Unfortunately, the web view of Go-jek.com was not captured as evidence of clues, but in the trial, there were no legal facts or evidence of the authenticity of Gojek's web copyright documentation and recording in the DJKI Works List at the time of publication in 2010. At that time, there were no mobile apps. Gojek itself was only incorporated in 2015 along with the launch of mobile apps based on iOS and Android. Considering that fierce competition began to occur in 2014 with the arrival of ride-hailing platforms such as UBER, Grab, inDrive, and Maxim.

Regarding the claim for compensation requested to the judge, the assumption of the calculation is also analogous to the calculation of the Microsoft software piracy case above, which assumes the calculation of the income of 20 driver-partners, which

is an average of Rp 150,000 per day. Gojek ran its business from 2010 – 2021 (10 years), resulting in material losses of IDR 10,800,000,000. As well as claims for immaterial losses. The demand for a fee of 10% of the profit should be based on the license. But in reality, this is a PMH demand, not a default (license agreement).

5. Element of Causality

Causal liability is a causal relationship between unlawful acts and losses. The causal relationship between unlawful acts carried out by the perpetrator. The existence of a causal relationship between actions and losses is based on several theories, namely: the theory of factual relations (*sine qua non*), the theory of adequate aerobraking, and the theory of proximate cause.

In this case, the factual correlation between the deeds and losses experienced by Arman Chasan due to alleged plagiarism caused his business to be threatened, finally in 2013 Arman closed his business, lost money, and also the competition began to be fierce at that time with the arrival of a ride-hailing platform from outside.

Conclusion

A work that has been realized in real (fixed, form, and original) in this digital era where the product is in the form of an abstract web-based computer program that is protected on the side of the source code which is stored in the computer and invisible to the user. However, when designing using open source code, further development can allow the Creator to close the source code (closed source code) as proprietary. How to use it as a user guide (manual book) needs to be prepared and can be protected as a copyright of written works. The appearance and content in it can be protected as intellectual property rights.

The variety of computer programs as the creation and originality of a work, such as web-based and mobile application-based computer programs along with the development of smartphones, as far as using coding, should be protected regardless of whether the product can be installed (by downloading) or can be read through a browser application such as the web. Websites/blogs or types of web applications that are clear to perform certain functions, especially with the advancement of web 3.0 or 4.0 technology have blurred the boundaries of website design with web applications, and have developed into dynamic and interactive features, such as online stores or web-based e-commerce platforms.

Documentation of the Authenticity of Copyright Works should be prepared from the beginning of creation, so that it becomes *prima facie* evidence, and also so that it can be recorded in the General Register of Works at the DJKI, to be aware of copyright disputes.

Suggestions for the DJKI, to develop an information system for the General Register of Copyright Works and Intellectual Property Rights to be a reference for creators and Copyright holders to avoid infringement of exclusive rights of works. And for the judge at the Commercial Court, to be able to explore legal findings related to the emergence of various computer programs, considering that some cases regarding web-

based computer programs are still considered non-applications. So this is a bad precedent for the creation of a conducive atmosphere that motivates web application developers and also for startups, at the beginning of 2024 based on Startup Ranking data, Indonesia already had 2,562 startups and this is the largest number in Southeast Asia.

Bibliography

- Darwance, Darwance, Yokotani, Yokotani, & Anggita, Wenni. (2020). Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual. *PROGRESIF: Jurnal Hukum*, 14(2), 193–208.
- Diantha, I. Made Pasek, & Sh, M. S. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Prenada Media.
- Fuady, Munir. (2005). *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*.
- Handiwiyanto, Billy, & Dewanto, Wisnu Aryo. (2020). Perlindungan Hukum Terhadap Hak Pencipta Software Yang Nomor Serialnya Dikomersialkan Tanpa Hak Di Cyber Space Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. *DiH: Jurnal Ilmu Hukum*, 16(1).
- Idayanti, Soesi, & Aryani, Fajar Dian. (2019). Tanggung Jawab Pelaku Usaha Terhadap Kerugian Akibat Perbuatan Melawan Hukum dalam Pelaksanaan Perjanjian E-Logistics. *Diktum: Jurnal Ilmu Hukum*, 7(1), 68–81.
- Karim, Asma. (2023). Kepastian Hukum Pencipta dan Pemegang Hak Cipta Gojek-PT Aplikasi Karya Anak Bangsa (Studi Kasus Perkara Nomor 86/Pdt. Sus-HKI/Cipta/2021/PN Niaga Jkt. Pst). *JURNAL PENELITIAN SERAMBI HUKUM*, 16(02), 31–48.
- KARJONO, D. R. D. R. S., & SH, M. (2023). *Perjanjian lisensi pengalihan hak cipta program komputer transaksi elektronik*. Penerbit Alumni.
- Kusumawati, Attika Hilma. (2022). *Perlindungan Hukum bagi Kreditur dalam Penyelesaian Kredit Bermasalah melalui Restrukturisasi pada Masa Pandemi Covid-19 Dikaitkan dengan Perspektif Hukum Perbankan*. FAKULTAS HUKUM UNIVERSITAS PASUNDAN.
- Nurhidayani, Heksa, & Sujono, Sujono. (2024). Pertanggungjawaban Pidana Penipuan yang Dilakukan Oleh Militer (Analisis Putusan Hakim Pengadilan Militer 1-02 Medan No. 11-K/PM-I-021/AD/2/2023. *Polhum Sovereignty Law And Diplomatic Politics*, 1(1), 43–61.
- Rachman, Rahmia. (2024). The Validity of Boarding House Rental Agreements from Civil Law Perspectives. *Alauddin Law Development Journal*, 6(3), 433–444.
- Rahmawati, Annisa Nur, Putri, Febrina, & Nabila, Tsalissya. (2023). Optimalisasi Perlindungan Hukum Terhadap E-Commerce Websites Dikaji dari Perspektif Hak Kekayaan Intelektual. *Jurnal Al Azhar Indonesia Seri Ilmu Sosial E-ISSN*, 2745, 5920.
- Shalda, Cici Ana. (2022). *Opini Publik Mahasiswa Komunikasi Penyiaran Islam Fakultas Dakwah Dan Komunikasi Terhadap Prank-Prank Ojek Online Di*

Youtube. UIN Ar-Raniry.