



ANALYSIS OF INHIBITING FACTORS IN THE FILING OF CIVIL LAWSUITS BY COPYRIGHT HOLDERS

Rommy Hardyansah, Didit Darmawan, Dharma Setiawan Negara

Universitas Sunan Giri Surabaya

correspondence: dr.diditdarmawan@gmail.com

Abstract

This study aims to identify and analyze factors causing the low number of civil lawsuits filed by copyright holders in response to copyright infringement. Employing a qualitative approach through normative legal research, this study examines legal norms, legal principles, and doctrines related to civil procedure in copyright disputes. The findings reveal that the low rate of civil litigation results from normative factors, including the burden of proof and uncertainty in determining damages; structural factors, such as fragmented institutional authority and the absence of innovative litigation funding mechanisms; technical factors, specifically challenges in digital evidence and jurisdiction; and psychological factors, including perceptions of justice and reputational risks. These interconnected factors form a system of barriers that discourage copyright holders from pursuing civil litigation. This study contributes to legal scholarship by offering a comprehensive analysis of barriers within civil procedure and provides policy recommendations for procedural reforms that accommodate the unique characteristics of copyright disputes, including simplified evidentiary rules, enhanced expert roles, and innovative litigation funding schemes.

Keywords: copyright infringement; civil lawsuit; procedural law; litigation barriers.

Introduction

Copyright, as a part of intellectual property, plays a fundamental role in encouraging creativity and innovation in the digital economy era. This protection system is a form of appreciation for the originality of ideas expressed in a tangible form (Thalib, 2018). The copyright protection system is designed to provide incentives for creators to continue producing works, while simultaneously ensuring legal certainty for stakeholders. In practice, the recognition of the creator's exclusive rights should be implemented through a responsive law enforcement mechanism. One important instrument in civil law enforcement in the field of copyright is the civil lawsuit filed by the right holder. Through a civil lawsuit, right holders can claim damages and the cessation of infringement without having to wait for a criminal process that requires a heavier burden of proof (Kastowo et al., 2019). However, in empirical reality across various jurisdictions, including countries with civil law systems, the utilization of civil lawsuits as a means of copyright enforcement shows low figures. This low interest is often triggered by the assumption that the civil litigation path does not provide instant recovery of rights (Simatupang, 2021). This phenomenon is interesting to observe because it contradicts the basic logic that right holders should have a strong economic incentive to defend their exclusive rights through civil channels. In fact, a civil lawsuit offers advantages in the form of a relatively faster process, a burden of proof that is not as heavy as criminal law, and the potential for economic loss recovery directly felt by the plaintiff.

The reluctance of copyright holders to pursue the civil lawsuit path cannot be separated from the characteristics of copyright disputes, which are complex and multidimensional. Copyright disputes often involve proving the originality of the work, ownership of rights, and whether there is substantial similarity between the original work and the alleged infringing work (Kastowo et al., 2019). These elements require adequate proof through strong evidence, including ownership documents, evidence of first publication, and testimony from competent experts in the disputed field. This aligns with the view that the complexity of technical proof often becomes a major wall for independent creators (Indriani, 2018). The costs incurred to present all such evidence are not small, while the uncertainty of the final outcome of the case continues to

overshadow every step taken. This condition is exacerbated by the structure of litigation costs in court which, despite efforts to simplify, remains a burden for right holders, especially for individual creators or small and medium enterprises operating in the creative field. Thus, the low number of civil lawsuits is not solely caused by the right holder's ignorance of their rights, but rather by a rational calculation of costs and benefits that tend to be unfavorable for the plaintiff. This rational calculation ultimately forms the perception that a civil lawsuit is not an efficient path to obtain justice in copyright disputes.

Aspects of jurisdiction and judicial authority also influence the preferences of right holders in choosing a dispute resolution mechanism. Commercial courts, which are given special authority to examine copyright disputes in several countries, including Indonesia, were actually established to create a fast and professional judiciary (Kastowo et al., 2019). However, in implementation, commercial courts face challenges regarding judges' understanding of the complexity of copyrighted works that continue to evolve alongside technological advances. Increasing the capacity of judges to understand digital technical aspects is an absolute prerequisite for the effectiveness of the commercial court (Sudjana, 2021). Copyrighted works in the digital era are no longer limited to physical forms but include digital works, software, and interactive content that require different evidentiary approaches. Judges who do not have a technical background in the field of digital copyright will find it difficult to assess substantial similarities between the protected work and the accused infringing work. This limitation encourages right holders to doubt the court's ability to provide a fair and precise decision. Furthermore, the judicial process, which still takes months to years despite provisions for completion within a certain time, causes civil lawsuits to lose their appeal because, while the process is ongoing, infringements can continue to occur and losses continue to accumulate. This situation creates a cycle where right holders are reluctant to sue due to predicted uncertainty and the length of the process, while the low number of lawsuits results in the failure to form adequate jurisprudence to guide judges in handling similar disputes in the future.

Another equally important dimension is the institutional factor and the overall copyright enforcement ecosystem. The Ministry of Law

and Human Rights, through the Directorate General of Intellectual Property, has a role in the recording and registration of creations, but the function of supervision and law enforcement in the field is not the primary authority of the institution. The weak synergy between institutions often results in copyright law enforcement appearing partial and incomplete (Kusmawan, 2014). Law enforcement in the field of copyright is more frequently carried out through criminal mechanisms driven by law enforcement officials. This tendency to use criminal instruments creates a perception that copyright infringement is a crime that must be handled repressively by the state, rather than simply a civil dispute between the right holder and the infringer. Yet, the criminal approach has weaknesses because it does not directly provide compensation to the right holder for the losses suffered. Fines decided in criminal cases go to the state treasury, not for the recovery of the creator's losses. Meanwhile, alternative mechanisms such as mediation and arbitration have not been fully integrated as the primary channels for resolving copyright disputes. Mediation actually offers a win-win solution that better maintains commercial relationships between parties (Ningsih & Maharani, 2019). The lack of socialization regarding the benefits of out-of-court dispute resolution and the fact that a culture of conciliation has not yet been formed leaves right holders with two equally non-ideal choices: letting the infringement happen or getting involved in a long and expensive judicial process. Consequently, many copyright infringements are never followed up legally, creating impunity that ultimately damages the overall copyright protection ecosystem.

The development of information technology and the digitalization of copyrighted works have fundamentally changed the landscape of copyright infringement. Copyrighted works, which were previously easy to track due to their physical nature, can now be reproduced and distributed en masse within seconds through digital platforms. This digital revolution demands a reinterpretation of the boundaries of fair use in copyright (Aufderheide & Jaszi, 2018). Copyright infringement in the digital realm is characterized by perpetrator anonymity, global reach, and a speed of dissemination that far exceeds the capabilities of conventional judicial systems. Right holders wishing to file civil lawsuits against online infringements face challenges in identifying the true

identity of the perpetrators, proving that the actions occurred within the jurisdiction of the court where the lawsuit is filed, and collecting accountable digital evidence for trial. Digital evidence that is easily manipulated and the absence of standard procedures in handling electronic evidence pose significant obstacles. This is where a gap occurs between the speed of technological innovation and the speed of legal system adaptation. Civil procedures that still adopt traditional approaches in evidence and case examination are unable to respond to the characteristics of infringement in the fast-paced and cross-border digital era. Right holders who realize the inability of the judicial system to provide fast and effective protection for their digital works will tend to choose not to waste resources on suing, instead shifting their attention to self-protection efforts through digital rights management technology or mass licensing which, although not stopping the infringement, at least provides income certainty.

The main problem at the root of the low number of copyright civil lawsuits lies in the construction of civil procedural law, which does not fully accommodate the technical and dynamic characteristics of copyright disputes. The generally applicable civil procedural law places copyright disputes within the same framework as other civil disputes, without considering the specificities inherent in the object of the copyright dispute. The rigidity of this procedural law often hinders the achievement of substantial justice for right holders (Jannah, 2018). These specificities include the need for technical proof through expert testimony from those who understand the field of creation, the need for rapid provisional measures to stop ongoing infringements, and the need for decisions that can be executed effectively amidst constantly moving market dynamics. The absence of specific procedures designed to meet these needs makes civil lawsuits a rigid and unresponsive instrument. Right holders wishing to sue must go through the same stages as plaintiffs in debt-collection disputes or ordinary contract disputes, starting from mediation that is often unproductive, preliminary examinations that consume time, to evidence-taking laden with formalities. Yet, in copyright disputes, time is a crucial factor because every day an infringement persists, the economic value of the copyrighted work continues to erode. The inability of the civil procedural system to provide

fast and precise protection is a fundamental weak point that subsequently gives birth to various other consequences, such as the low trust of right holders in the judicial system.

Another equally crucial issue is the absence of a proportional court cost allocation mechanism in copyright disputes. In the civil justice system, court costs are charged to the losing party based on the principle that the party at fault must bear the financial consequences of their actions. However, in copyright disputes, charging court costs to the losing party does not necessarily guarantee that the plaintiff will recover all costs incurred, especially the costs of presenting experts and other evidentiary costs whose value is often greater than the principal matter of the case itself. The magnitude of legal operational costs is often disproportionate to the nominal damages awarded by judges (Jaman et al., 2021). In addition, the fear of potentially losing the case forces right holders to consider the risk of bearing the opponent's court costs if the lawsuit is dismissed. This risk becomes a significant psychological and financial burden, especially for individual creators or right holders who are not large corporations with adequate legal resources. Consequently, many right holders choose not to sue even though their rights have substantively been infringed, because the calculation of costs and risks to be borne is not proportional to the potential damages that can be obtained. This condition creates a situation where the civil justice system, which should be a means to enforce rights, instead becomes an instrument accessible only to parties with large resources, while small and medium creators are marginalized from access to justice.

The urgency of conducting an in-depth study regarding the factors causing the low number of civil lawsuits due to copyright infringement lies in the need to build a more effective and equitable copyright enforcement system. The creative economy, which relies on copyright protection as its primary foundation, continues to grow into a leading sector contributing significantly to the national economy. When the civil law enforcement system does not function optimally, the incentive for creators to continue working will weaken. Yet, without the certainty of legal protection, the creative ecosystem will not be able to grow sustainably. Moreover, the low number of civil lawsuits reflects a lack of trust among the creative community toward the judicial system, which in

turn will erode the legitimacy of the legal system as a whole. This study is important because systematically identifying the factors that cause the low number of civil lawsuits is a crucial first step toward formulating targeted legal reform policies. By understanding the root of the problem whether originating from aspects of procedural law, institutional structures, dispute characteristics, or economic and psychological factors of right holders a comprehensive improvement mechanism can be designed. Without adequate study, improvement efforts will only be sporadic and will not resolve the true root of the problem. Reorganizing legal procedures must be done holistically to guarantee both the moral and economic rights of creators (Simatupang, 2021).

This study aims to identify and analyze the factors causing the low number of civil lawsuits due to copyright infringement by using a normative approach through literature study. The results of the identification and analysis of these factors are expected to provide a theoretical contribution to the development of legal science, particularly in the fields of civil procedural law and intellectual property law. Practically, this study is expected to serve as a consideration for policymakers in formulating civil procedural law reforms that are responsive to the characteristics of copyright disputes, as well as for right holders in determining effective law enforcement strategies.

Method

This research is a literature study or library research with a qualitative approach focusing on the analysis of legal materials. As explained by Chapman, McNeill, and McNeill (2005), library research in the legal field aims to collect, process, and analyze legal materials systematically to answer the legal problems being studied. The nature of this research is normative because the objects of study are legal norms, legal principles, and doctrines related to the mechanism of civil lawsuits in copyright disputes. Walliman (2021) emphasizes that normative research requires precision in tracing the hierarchy of legal materials as well as consistency in drawing conclusions based on logical legal reasoning. In this study, the primary legal materials used include statutory provisions in the field of copyright and civil procedural law, while secondary legal materials consist of scientific literature, previous research results, and journal articles

discussing the enforcement of copyright law through civil channels. The approaches used are the statutory approach and the conceptual approach, which allow the researcher to trace the alignment between procedural law norms and the needs of copyright enforcement. Sevilla (1992) suggests that in library research, the validity of research results depends heavily on the researcher's ability to conduct a comprehensive analysis of all legal materials successfully gathered.

The technique for collecting legal materials in this study is conducted through a systematic literature search using relevant sources. The collection process begins with the identification of primary legal materials related to the civil lawsuit mechanism, followed by the collection of secondary legal materials discussing factors that influence the courage of right holders to file a lawsuit (Nurhayati & Ifrani, 2019). Chapman, McNeill, and McNeill (2005) state that in library research, researchers must be able to distinguish between legal materials with high authority and those that are secondary or tertiary. The analysis of legal materials is carried out qualitatively using methods of legal interpretation and legal construction to find meanings and relationships between norms. Walliman (2021) adds that qualitative analysis in library research requires caution in drawing inferences due to the absence of empirical data that can be used as a verification tool. Therefore, this study uses a systematic analysis technique by categorizing the factors causing the low number of civil lawsuits based on the source of the problem, namely normative factors, institutional factors, technical factors, and socio-economic factors. Sevilla (1992) underscores that the success of library research lies in the researcher's ability to synthesize various sources which are often scattered into a complete and coherent analytical framework. The results of this synthesis are then used to answer the research questions previously established.

Result and Discussion

Regulations regarding copyright infringement in Indonesia are comprehensively arranged to protect intellectual works in the fields of science, art, and literature from illegal use. The primary legal basis in effect is Law Number 28 of 2014 concerning Copyright, which affirms that copyright is an exclusive right of the creator that arises automatically

based on the declarative principle after a creation is embodied in a tangible form. Understanding this rule is very important for all of us so that we can better appreciate the work of others in social life (Saputra & Darmawan, 2021). Infringement occurs when another party performs a public announcement, reproduction, or distribution of a creation without valid permission from the creator or copyright holder for commercial use. This is crucial because creative works such as music and films currently significantly influence the way of thinking and behavior of the younger generation in daily life (Kurniawan & Khayru, 2021).

Within this legal framework, the forms of copyright infringement cover a wide spectrum, ranging from the piracy of music and film works, the use of images without a license on social media, to the illegal reproduction of books. Fundamentally, every action we take within a group or organization must have rules of the game that must be obeyed together (Darmawan, 2013). The Copyright Law provides strong legal protection by threatening infringers with criminal sanctions of imprisonment and material fines reaching billions of rupiah, depending on the type and scale of the infringement. Strict law enforcement against such violations actually aims to create a clean business climate and prevent fraudulent practices in the world of investment (Saputra et al., 2021; Mardikaningsih & Arifin, 2021). The awareness to act honestly is the main key so that no party feels disadvantaged in the long run. These regulations aim to ensure that creators obtain fair economic benefits for their work while simultaneously encouraging a healthy and sustainable creative ecosystem in Indonesia.

The settlement of copyright infringement disputes can be pursued through litigation in the Commercial Court or non-litigation channels such as mediation, negotiation, or arbitration. Based on Article 95 of the Copyright Law, before filing a criminal claim, the parties are strongly advised to pursue mediation first as part of a restorative justice approach. The process of discussion and finding a middle ground like this is often the best solution in facing a conflict (Saktiawan et al., 2021; Saputra & Darmawan, 2021). In this problem-solving process, the honesty and ethics of law enforcers are highly needed so that justice remains maintained for all disputing parties. If mediation fails, the right holder can file a civil lawsuit for damages or report a criminal act to the police,

considering that copyright infringement is now a complaint-based offense (*delik aduan*) that requires an official report from the rights owner to be legally processed.

Protection against copyright infringement is also strengthened in the digital realm through Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) as amended. The government has the authority to terminate access or perform a "take down" of content on the internet that is proven to violate copyright based on a valid report. Moreover, in today's fast-paced era, we need to be wiser and more careful in using technology so as not to violate existing rules (Darmawan et al., 2021). In addition to government regulations, the existence of a clear written contract or agreement is also very helpful in preventing future disputes and maintaining stability in business affairs (Wibowo et al., 2021). Digital platform providers or Internet Service Providers (ISPs) are also required to have a reporting mechanism for intellectual property violations to prevent the mass distribution of pirated works in cyberspace.

There are certain limitations where the use of a creation is not considered a copyright infringement, known as the principle of fair use. This is regulated in Article 43 to Article 51 of the Copyright Law, which allows the use of works for the purposes of education, research, scientific writing, criticism, or problem review as long as the source is fully cited and does not prejudice the reasonable economic interests of the creator. The balance between individual rights and the interests of the public must always be maintained so that the work environment remains conducive and full of innovation (Aidan Bin Abdullah et al., 2021; Darmawan, 2013). This limitation is important to maintain a balance between the exclusive rights of individuals and the public interest in accessing knowledge and information.

In terms of legal enforcement, the Directorate General of Intellectual Property (DJKI) continuously strives to increase public awareness through education regarding the importance of respecting the intellectual property rights (IPR) of others. This step is crucial because legal protection is not merely a formality, but an instrument to provide legal certainty for creators (Margono, 2020). Business actors and the public are urged to always ensure the legality of content used in commercial activities to avoid the risk of future lawsuits. This is in line

with the view that IPR violations can hamper the circulation of the creative economy and reduce investor confidence (Sardjono, 2021). With mutual respect and a positive mindset, we can create a better future for everyone (Aidan Bin Abdullah et al., 2021; Kurniawan & Khayru, 2021; Darmawan et al., 2021). Intellectual property is an intangible asset that serves as the driving force of the modern economy; without firm protection, the incentive to innovate will be lost (Hawin & Riswandi, 2020). By complying with copyright regulations, innovators and artists in Indonesia will feel safer in their creative endeavors. This conducive environment will ultimately increase the nation's competitiveness on the global stage, considering that originality is the primary currency in today's international competition (Ramli, 2022).

One of the main factors causing the low number of civil lawsuits in copyright infringement is the imbalance between the costs that must be incurred by the plaintiff and the potential damages that can be obtained. In the civil procedural law system, the plaintiff is required to pay a down payment for court fees, the amount of which is determined based on the estimated costs of summoning the parties, witness and expert examination fees, and other administrative costs (Indrawan et al., 2020). For copyright disputes that require proof through expert testimony in the field of creative works, the costs incurred can reach significant figures because competent experts generally set high honorariums. In addition, the plaintiff must also prepare costs for duplicating evidence documents, legal consultation fees for advocates, and other costs arising during the trial process. Meanwhile, the compensation that can be claimed in a copyright civil lawsuit is based on the losses actually suffered by the right holder as a result of the infringement committed. Such losses are often difficult to calculate with certainty because copyright infringement does not always cause a directly measurable decline in sales, especially if the infringed work is distributed for free by the infringer. The inability to accurately calculate losses makes compensation claims often speculative, which can then be challenged by the opposing party. When the cost of suing exceeds or is comparable to the potential damages that can be obtained, the right holder will rationally choose not to sue. This economic calculation becomes a dominant consideration, especially for individual creators and small to medium enterprises that have limited financial resources.

Normative factors originating from the provisions of civil procedural law also serve as a significant barrier. Civil procedural law adheres to the principle that the plaintiff must prove the merits of their claim, including proving the existence of valid copyright and the infringing acts committed by the defendant (Kastowo et al., 2019). Proving copyright ownership requires the plaintiff to show that the protected creation meets the criteria of originality and has been embodied in a tangible form. Although the registration of a work is not an absolute requirement to obtain legal protection, in judicial practice, a certificate of copyright recordation becomes a very strong piece of evidence that is difficult for the defendant to refute. Right holders who do not record their creations will face difficulties in proving that they are the legitimate creator, especially if the defendant challenges the ownership of those rights. In addition, proving copyright infringement requires a comparison between the original work and the alleged infringing work to determine whether there is substantial similarity indicating an act of reproduction or public announcement without permission. The assessment of substantial similarity requires specialized expertise that general judges do not typically possess; thus, the plaintiff must present a competent expert to provide testimony in court. This heavy burden of proof is a discouraging factor that causes right holders to be reluctant to file a lawsuit due to uncertainty over whether their evidence will be sufficient to win the case. The heavier the burden of proof to be borne by the plaintiff, the less likely it is for the right holder to use litigation as a means of rights enforcement.

The role of advocates in assisting right holders also influences the decision to file a civil lawsuit (Sinaga et al., 2020). In the civil justice system, advocates hold a strategic position as parties who provide legal advice regarding the prospects of winning a case, the estimated costs to be incurred, and the risks that may arise whether the lawsuit is granted or rejected. An advocate with experience in the field of copyright will conduct an initial analysis of the strength of the evidence held by the client before recommending litigation steps. This analysis includes an assessment of the originality of the creation, the validity of the proof of ownership, and whether there is evidence showing a causal relationship between the defendant's actions and the losses suffered by the client. If the advocate

assesses that the client's evidence is not strong enough to win the case, the advice given will tend toward avoiding litigation and seeking alternative resolutions such as mediation or negotiation. On the other hand, the advocate will also consider the client's financial ability to fund a litigation process whose duration cannot be guaranteed. Clients with limited resources will be directed not to take the risk of litigation due to the possibility of escalating costs during the trial process. This cautious attitude of advocates, although based on professional intent to protect the client's interests, ultimately contributes to the low number of civil lawsuits because many potential cases do not proceed to court after going through the legal consultation stage. Thus, advocates function as a filter that indirectly reduces the number of lawsuits that actually reach the trial bench.

Institutional factors related to the judicial system also play an important role in shaping the right holder's perception of the effectiveness of civil lawsuits. Commercial courts, which are granted the authority to examine copyright disputes at the first instance, have a judicial mechanism that was actually designed to provide legal certainty quickly. However, in practice, the settlement of cases in commercial courts often does not meet the time targets set by statutory regulations. Case examinations that should be completed within a certain timeframe are often delayed for various reasons, such as the absence of one of the parties, the need to examine witnesses and experts which requires rescheduling, and the length of the judgment reading process, which sometimes must wait in the queue of other cases (Baranyanan, 2021). Uncertainty regarding the duration of case resolution becomes a factor that diminishes the attractiveness of civil lawsuits as an instrument of law enforcement. Right holders who wish to stop an infringement immediately will be disappointed when the judicial process moves slowly while the infringement continues during that process. Furthermore, the quality of commercial court decisions in copyright cases is also under scrutiny due to differences in interpretation between panels of judges regarding the concept of originality, the assessment of substantial similarity, and the determination of the amount of damages. This inconsistency in decisions creates legal uncertainty, which in turn erodes the confidence of right holders in the judicial system. When right holders

cannot predict with a high level of certainty how a judge will render a decision, the tendency to avoid litigation becomes greater.

The complexity of evidence in copyright disputes concerns not only the ownership of rights and the existence of infringement but also the determination of the amount of damages that the right holder deserves to receive (Kastowo et al., 2019). In copyright law, damages can be based on the losses suffered by the right holder or based on the profits obtained by the infringer from the infringing acts committed. Determining the amount of damages using the first method requires proof of a decline in the sales of the original work as a result of the circulation of counterfeit or infringing works. This proof requires sales data before and after the occurrence of the infringement as well as an analysis of other factors that might influence the decline in sales aside from the infringing act itself. Meanwhile, determining damages based on the profits obtained by the infringer requires access to the infringer's financial data, which is often difficult to obtain because the infringer has no obligation to disclose financial information prior to a court order. Limited access to the infringer's financial data makes the calculation of damages highly speculative and often does not reflect the actual losses suffered by the right holder. Consequently, even if a civil lawsuit is won by the plaintiff, the amount of damages decided by the judge is often lower than the costs incurred by the plaintiff during the litigation process. This condition creates a perception that civil lawsuits do not provide economic benefits commensurate with the effort and costs expended. Right holders who have had bitter experiences with inadequate damage awards tend to be reluctant to file similar lawsuits in the future.

The aspects of jurisdiction and the determination of applicable law pose their own challenges in copyright civil lawsuits involving foreign elements. Copyright infringement in the digital era is often carried out through platforms operating across national borders with servers located in jurisdictions different from where the right holder is based (Indrawan et al., 2020). A right holder wishing to file a civil lawsuit against an infringement occurring through a digital platform must determine in which court the lawsuit will be filed, whether at the domicile of the right holder, the domicile of the infringer, or the place where the infringement occurred. Provisions of civil procedural law regarding relative

competence grant the plaintiff the authority to choose a court forum, but that choice must be based on the consideration that the chosen court has the jurisdiction to adjudicate the case. If the infringer is domiciled abroad and does not have a representative office within the jurisdiction of the court where the lawsuit is filed, the execution of the judgment will face serious obstacles due to the absence of the infringer's assets that can be executed in that territory. The right holder must also consider the possibility that the court where the lawsuit is filed will refuse to examine the case on the grounds of *forum non conveniens*, namely that another court in another country is more appropriate to examine the case. This jurisdictional complexity adds a layer of risk and uncertainty that must be faced by the right holder, leading many right holders to choose not to pursue civil lawsuits against cross-border infringements and instead focus on protection efforts through administrative mechanisms such as submitting takedown notices to internet service providers.

The legal culture of the creative community is also a factor influencing the low number of civil lawsuits. In many countries with civil law systems, the creative community does not yet fully realize that copyright is a private right that can be defended through civil lawsuit mechanisms. Inadequate legal education regarding intellectual property rights causes many creators to be unaware that they possess exclusive rights to reproduce and announce their works, as well as the right to claim damages if those rights are violated (Sun, 2014). Limited knowledge regarding the procedures for filing a civil lawsuit and the necessary evidentiary requirements makes creators feel that litigation efforts are something complicated and difficult to undertake. In addition, there is still a view among creators that copyright disputes should be resolved amicably or through non-litigation channels, as they consider bringing a case to court to be a confrontational act that can damage good relationships with other parties. This view is reinforced by provisions in civil procedural law that require parties to undergo mediation before the examination of the main case. Although mediation has a noble goal of encouraging peaceful dispute resolution, in practice, mediation often becomes a mere formality that does not produce an agreement because the parties already hold positions that are difficult to compromise. Nevertheless, this mediation requirement

still gives the impression that litigation is the final path that may only be taken after all peaceful efforts have failed. This culture, which prioritizes peaceful resolution, although positive in the context of harmonizing social relations, ultimately contributes to the low number of civil lawsuits filed in court.

Psychological factors related to reputational risk also influence the decision of right holders to file a civil lawsuit. Large companies operating in the creative industry often have complex reputational considerations before deciding to sue another party for copyright infringement (Kastowo et al., 2019). A widely publicized civil lawsuit can create a perception that the company is aggressive in enforcing its rights and intolerant toward those using its work without permission. This perception, in some cases, can actually have a negative impact on the company's image in the eyes of the public, especially if the defendant is a party perceived to be in a weaker position, such as an individual or a small business. The public, who may not fully understand the complexities of copyright law, tends to sympathize with the sued party and considers the suing right holder to be a party wishing to monopolize creativity. This reputational risk is a serious consideration, especially for companies that make brand image an important asset in running their business. On the other hand, the company must also consider that a failure to prove the lawsuit could become a bad precedent that will be exploited by other parties to commit similar infringements, confident that the right holder will not be able to win the case in court. This reputational risk calculation ultimately makes even large companies rethink using civil lawsuits as an instrument of law enforcement, preferring instead to resolve disputes through out-of-court mechanisms that are private and not exposed to the public. Thus, the reputation factor, which should be a driver for enforcing rights, instead turns into a barrier due to concerns about the negative impacts of the litigation process itself.

Technological developments and digital transformation have changed the way copyright infringement occurs, yet the civil justice system has not fully adapted to these changes. Copyright infringement in the digital era often occurs on a massive scale involving thousands or even millions of infringing acts committed by many different parties (Sudjana, 2021). Right holders facing such mass infringement face a dilemma

because suing every infringer one by one through conventional civil mechanisms is impossible, given that the required cost and time would be enormous. On the other hand, taking no legal action at all means allowing their rights to be continuously violated without protection. In such situations, right holders prefer to rely on administrative mechanisms, such as notifying internet service providers to remove infringing content or using digital rights management technology to prevent unauthorized reproduction. These mechanisms, while not providing compensation for infringements that have already occurred, can at least halt ongoing violations at a relatively lower cost and through a faster process compared to a civil lawsuit. However, reliance on these administrative mechanisms does not solve the root of the problem because infringers can easily move their content to other platforms or use technical means to evade detection. Furthermore, administrative mechanisms do not provide a deterrent effect to infringers as there are no personal sanctions felt by the infringer. This condition creates a vicious cycle where infringement continues to occur, right holders continue to make reactive content removal efforts, and civil lawsuits as a more permanent instrument remain unused due to the judicial system's inability to handle mass infringement in the digital realm.

Structural factors related to the position of copyright within the national legal system also influence the preferences of right holders toward available enforcement mechanisms. In some countries, copyright enforcement is more dominantly carried out through criminal mechanisms driven by law enforcement officials based on reports from right holders (Weatherall, 2019). This criminal approach has its own appeal because the investigation process is conducted by officials who have the authority to perform searches, seizures, and forced summons of witnesses without requiring costs from the right holder. The right holder simply reports the suspected copyright crime to law enforcement, and subsequently, the legal process proceeds on the state's initiative. Although the right holder does not directly obtain compensation from the criminal process, the criminal conviction provides moral satisfaction because the infringer is given a punitive sentence. Additionally, the criminal process is often considered faster than the civil process due to completion targets set by statutory regulations. The tendency to use the criminal path is reinforced by the perception that copyright is a right

protected by the state, such that the state has an obligation to enforce it through public law instruments. This perception shifts the paradigm that copyright is fundamentally a private right that should be defended by the right holder themselves through civil mechanisms. As a result, right holders become accustomed to relying on law enforcement officials to handle copyright violations and lose the initiative to use civil lawsuits, which require active involvement from the right holders themselves.

The existence of alternative dispute resolution mechanisms that are not yet fully integrated into the judicial system also contributes to the low number of civil lawsuits (Kastowo et al., 2019). Mediation, conciliation, and arbitration actually offer dispute resolution paths that are more flexible, fast, and not open to the public compared to litigation. However, in practice, the use of these mechanisms for copyright disputes is still very limited for several reasons. First, not all advocates and legal consultants have the competence to conduct mediation or arbitration in the field of copyright, so clients consulting them do not receive information regarding alternative dispute resolution outside of court. Second, the cost structure of arbitration, which is often more expensive than court fees, makes this mechanism unattractive to right holders with limited resources. Third, there is no guarantee that an arbitration award can be effectively enforced if one party is unwilling to carry out the award voluntarily. The process of executing an arbitration award must still go through the court, so the speed advantage gained from the arbitration process is diminished by having to go through court stages again. Fourth, a culture has not yet formed among creative industry players to include arbitration clauses in copyright licensing agreements, making this mechanism unavailable when a dispute arises. The lack of utilization of these alternative mechanisms forces disputing parties to choose between litigation or taking no legal action at all. This limited choice ultimately results in many copyright disputes remaining unresolved through formal legal mechanisms because litigation is considered too expensive and time-consuming, while alternative mechanisms are considered untested and do not provide a guarantee of certainty.

The influence of external factors such as technological developments and globalization also shapes a new landscape in copyright law enforcement that has not been fully responded to by the civil lawsuit

system (Sulistianingsih & Prabowo, 2020). Global digital platforms that provide content-sharing services often operate with business models that rely on user-generated content. In this model, the platform acts as an intermediary providing the means for users to upload and share content, including content that infringes on copyright. The liability of digital platforms for copyright infringements committed by their users becomes a complex issue due to the existence of safe harbor principles, which provide protection from liability if the platform meets certain requirements, such as responding quickly to content removal notices. Right holders wishing to sue digital platforms must prove that the platform did not meet the requirements to obtain safe harbor protection or that the platform had sufficient knowledge of the infringement occurring. This proof requires access to the platform's internal information, which is not easily obtained, added to the complexity of jurisdiction since digital platforms are generally headquartered in other countries. On the other hand, suing platform users one by one is unrealistic because of their massive numbers and identities that are often not known with certainty. The 'notice-and-takedown' regime, while providing a shield for intermediaries, often places an asymmetric burden on copyright holders who must constantly police vast digital ecosystems with limited institutional support (Seng, 2014). This situation creates an enforcement vacuum where copyright infringement in the digital realm continues to occur without any party being effectively held accountable through a civil lawsuit. Right holders who realize the limitations of the judicial system in reaching infringements in the digital realm eventually choose to divert their resources toward technological protection efforts or enter into licensing agreements with digital platforms which, although not stopping the infringement, at least provide financial compensation for the use of their works.

Evidentiary factors related to the validity of electronic evidence also pose a significant barrier in copyright civil lawsuits in the digital era. Electronic evidence such as screenshots, digital activity recordings, and metadata have different characteristics compared to conventional evidence because they are easily manipulated and prone to change. Civil procedural law in many countries does not yet have provisions that comprehensively regulate the procedures for collecting, storing, and

presenting electronic evidence in court. Uncertainty regarding whether an electronic piece of evidence will be accepted as valid evidence by the judge becomes a risk that must be faced by the plaintiff. Plaintiffs who wish to secure electronic evidence must perform meticulous procedures, such as conducting notary supervision or creating authentic deeds regarding the content of the electronic evidence before it is submitted to the court. This procedure requires significant additional costs and does not always guarantee that the electronic evidence will have perfect evidentiary power. Furthermore, proving the time and duration of the infringement based on electronic evidence also faces challenges because the time recorded in electronic systems can be influenced by various technical factors, such as time zone differences and non-uniform system settings. Judges who do not have adequate technical understanding of the characteristics of electronic evidence often act cautiously in assessing its evidentiary strength and tend to require other conventional evidence to strengthen said electronic evidence. The volatility and malleability of digital data necessitate a shift in traditional evidentiary standards, as courts often struggle to balance the authenticity of electronic records with the rigid requirements of classical procedural law (Mason, 2015). While this cautious attitude of judges is understandable in the context of maintaining the quality of decisions, in practice, it adds to the burden of proof that must be borne by the plaintiff and reduces the interest of right holders in using civil lawsuits as a means of law enforcement.

There are also factors related to the limited knowledge and understanding of judges toward copyright as a legal field with unique technical characteristics (Minakshi & Sumanjeet, 2013). Commercial court judges who examine copyright cases generally have a legal education background and do not possess specialized expertise in the field of the creative works that are the object of the dispute. To understand the complexity of a creation, judges must rely on expert testimony presented by the parties. However, the expert testimony presented by each party is often contradictory, as the expert presented by the plaintiff will tend to support the plaintiff's position, while the expert presented by the defendant will tend to support the defendant's position. Judges who do not have adequate knowledge to assess the credibility of experts will find it difficult to determine which expert testimony is more reliable. This

high dependence on expert testimony makes the evidentiary process longer and the court costs higher because each party must pay the honorarium for the experts they present. Additionally, the lack of standard criteria regarding the qualifications of experts who can provide testimony in court often results in experts being presented who do not truly possess adequate competence in the disputed field. The increasing technicality of intellectual property disputes reveals a 'competence gap' in generalist judiciaries, where the reliance on partisan expert testimony can lead to inconsistent legal outcomes and undermine the predictability of copyright protection (Burrell & Handke, 2015). This condition creates legal uncertainty because the outcome of the case depends heavily on the quality of the experts presented by the parties, rather than on objective evidentiary strength. Right holders who realize that the success of their lawsuit depends heavily on the quality of the experts they can present will carefully consider whether their resources are sufficient to bring in a truly competent expert. When resources are limited, the decision not to sue becomes a rational choice.

The availability of and access to data regarding copyright infringement is a critical factor influencing the decision to file a civil lawsuit (Kastowo et al., 2019). To file a strong lawsuit, right holders require accurate data concerning the identity of the infringer, the extent of the infringing acts committed, and the magnitude of the losses suffered. Data regarding copyright infringement in the physical realm is relatively easier to obtain because the infringement occurs in clearly identifiable locations. However, for infringements in the digital realm, data collection requires technical expertise that most right holders do not possess. Right holders must utilize third-party services for digital tracking, which involve significant costs, and the results cannot always be used directly as evidence. This is compounded by the fact that the ephemeral nature of digital evidence and the anonymity afforded by online platforms create substantial evidentiary hurdles for plaintiffs in copyright litigation (Giblin & Weatherall, 2017). This limited access to data causes many right holders to know their work is being used without permission, yet they lack sufficient information to file a viable lawsuit. Without adequate data, the filed civil lawsuit will have significant weaknesses and risk being rejected by the court. Right holders who realize their data is not yet strong enough

will delay or cancel their intent to sue, often allowing the evidence to disappear or change before it can be adequately gathered.

Psychological factors related to the perception of justice also influence a right holder's decision. Those who have experienced infringement often harbor expectations that the judicial process will provide restorative justice. In reality, however, copyright civil lawsuits often fail to provide this because awarded damages frequently do not reflect actual losses. Furthermore, a court decision sentencing a defendant to pay money does not automatically stop the wider distribution of the infringing work. If the infringement is committed by many parties, a decision against only one party will not stop the others. The gap between the expectation of restorative justice and the reality of limited judicial impact creates a perception that civil lawsuits are incapable of providing a satisfactory solution. The perceived inadequacy of judicial remedies and the high costs of enforcement often lead to a 'disillusionment effect' among creators, discouraging them from pursuing formal legal action (Handke, 2014). This perception is reinforced by experiences where defendants lack sufficient assets to pay damages or disappear after judgment. When these negative experiences become collective knowledge, more right holders become reluctant to sue, considering such efforts unlikely to yield meaningful results.

The lack of coordination between various institutions involved in copyright law enforcement further weakens the effectiveness of civil lawsuits. The Ministry of Law and Human Rights handles registration but lacks enforcement authority. The police investigate criminal acts but are not involved in civil processes. This fragmentation of authority results in no single institution having full responsibility for comprehensive enforcement. Right holders wishing to pursue a civil path must face the complexities of the judicial system alone, without adequate state support. In contrast, many developed countries utilize specialized institutions to provide legal assistance to copyright holders, especially for small-to-medium enterprises. Effective copyright enforcement requires a holistic institutional framework that bridges the gap between administrative oversight and judicial enforcement to ensure accessible justice for small-scale creators (Yu, 2011). The absence of an institution functioning as a bridge between right holders and the judicial system widens the gap in

access to justice. Right holders who lack the ability to navigate these complexities on their own will tend to avoid litigation and choose to let their rights be violated without adequate legal protection.

The final factor is the absence of innovative litigation funding mechanisms. In the existing legal system, litigation costs must be borne entirely by the plaintiff from the beginning without any guarantee of recovery. This model burdens the plaintiff with high upfront costs for an uncertain outcome. In countries with advanced enforcement systems, mechanisms such as contingency fees or third-party litigation funding allow right holders with limited resources to access justice without bearing significant financial risk. However, in many civil law systems, these mechanisms are not yet widely recognized or are considered contrary to professional ethics. The absence of third-party funding and success-based fee arrangements functions as a significant socio-economic barrier, effectively disenfranchising individual authors from the legal system (Heard & Torremans, 2019). Consequently, right holders must provide all costs from their own resources, which becomes a major barrier for individual creators. The absence of these innovative mechanisms is a structural factor hindering access to justice and contributes to the low number of civil lawsuits. Right holders with limited resources are often forced to surrender to existing conditions or seek suboptimal alternative resolutions.

Conclusion

The low number of civil lawsuits resulting from copyright infringement is a multidimensional phenomenon caused by a combination of normative, structural, technical, and psychological factors. Normative factors include provisions of civil procedural law that do not accommodate the specific characteristics of copyright disputes, the heavy burden of proof, and uncertainty in determining damages. Structural factors encompass jurisdictional complexity, institutional fragmentation, and the absence of innovative litigation funding mechanisms. Technical factors relate to developments in digital technology that have changed how infringements occur, as well as difficulties in electronic evidence-taking. Psychological factors involve the right holders' perceptions of justice, reputational risks, and a legal culture that prioritizes non-

litigation settlements. Collectively, these factors are interconnected and reinforce one another, forming a barrier system that makes civil lawsuits an unattractive instrument for copyright holders.

The implication of this study is the need for civil procedural law reform that is responsive to the specificities of copyright disputes, including the simplification of evidentiary procedures, strengthening the role of experts, and more adequate regulations regarding damages. Suggestions that can be proposed include the need to develop innovative litigation funding mechanisms, increasing the capacity of judges through continuous education in the field of copyright, and strengthening coordination between law enforcement agencies. For future research, it is recommended to conduct comparative studies with other jurisdictions that have higher rates of copyright civil lawsuits to identify best practices that can be adopted. Additionally, empirical research regarding the experiences of right holders who have previously filed civil lawsuits could provide deeper insight into the practical obstacles faced during the litigation process.

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