



# Legal Protection of Content Creators *Against* the Use of Other People's Content for Promotion in TikTok *Affiliate* (Pesefective of Sharia and Positive Economic Law)

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**Abstract:** TikTok is a video-based entertainment media as well as a medium for advertising goods and services. Content creators who have many followers have the opportunity to get support from companies, both large and small. Seeing this, makes people compete to increase the number of their followers. The benefits obtained from this support open up business opportunities for most people. In Islamic economic law, the benefits obtained from the results of work are part of economic rights. The purpose of this article is to analyze legal protection for content creators against the use of other people's content for promotion in TikTok affiliates which will be analyzed using a sharia perspective and positive economic law. This study uses library research and observation methods, this researcher uses normative legal studies. The results show that the protection that applies in Islamic law and positive law has placed the position of creators as people who receive high priority. Law No. 28 of 2014, the Law on Information and Electronic Technology, and several verses of the Qur'an and hadith are important basic sources of copyright protection. Specifically, in the Qur'an it is explained that copyright infringement which can cause harm to the creator is prohibited in religion, as stated in the letter al-Baqarah 188.

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## INTRODUCTION

The TikTok application was founded by a company from China, Bytedance in 2016, TikTok users continue to grow significantly and even dominate the market in western countries (Oliver, P. G., & Lalchev, S., 2021). Indonesia itself as a country with large internet users is of course a country with TikTok users also increasing dramatically. Based on data from *We Are Social*, there were around 106.51 million TikTok users in Indonesia in October 2023.

Now TikTok has presented a program, namely TikTokShop Affiliate or TikTok Affiliate. In this program, TikTok users who have a large number of followers (influencers) of at least 1000 means that they can register as TikTok affiliates and can promote products or services from a company. and benefit from every sale generated (Nisa Maulan Shofa, 2023). Promotion of goods on TikTok affiliates can be done in two ways, namely live streaming and making videos.

In the affiliate program, if you have registered, affiliators no longer need to buy the goods they want to promote, but can get them without capital because they only need to submit a free sample to the store that will promote the product. The commission system offered is *pay per sale*, which provides a percentage of the total selling price purchased by consumers through *live streaming* or direct links in the video content. The commission given is approximately 10% of the price of the product sold. Therefore, the more products you sell, the higher the commission you receive.

However, in practice it does not run smoothly, there are obstacles. This starts with other users (TikTok affiliators) recording *live streaming* videos belonging to famous celebrities or affiliators. Then repost the recording on their own account with a different storefront or product.

From this event, the importance of strengthening the creator by Law Number 80 of 2019 concerning Electronic Information and Transactions which states that electronic information containing intellectual works, internet sites, and intellectual works contained therein get protection in accordance with applicable laws. Article 26 point 1 of the ITE Law states that any information through electronic media concerning a person's personal data requires the consent of the person concerned.

Sharia Economic Law (HES) also pays attention to the protection of creators' rights. In Sharia Economic Law, there is the concept of "*al-malikiyyah*" which means ownership rights. Content creators have ownership rights over their work and are entitled to benefit from their work. Using other people's content without permission can be categorized as a form of "*ghash*" (appropriation) and "*ta'alluq bil-ghash*" (linkage to appropriation) which is prohibited in Sharia Economic Law. As explained in Qs. An-Nisa: 29.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: *O you who have believed, do not eat of one another's wealth by means of false means, except by way of a mutually acceptable trade between you. And do not kill yourselves; surely Allah is Most Merciful to you.*

Based on the above problems, an in-depth analysis is needed regarding the legal protection of content creators for the use of their content by others for promotion at TikTok Affiliate. This analysis needs to be carried out from two legal perspectives, namely positive law and sharia economic law, with the title "Analysis of Legal Protection Against Content Creators for the Use of Content by Others for Promotion at *TikTok Affiliate* (Positive Law Perspective and Sharia Economic Law)".

## METHODS

This article uses a qualitative method. Which aims to analyze legal protection for content creators against the use of other people's content for promotion in TikTok affiliates which will be analyzed using the perspective of sharia and positive economic law. This type of article is a library research, with data collection techniques through observation of literature related to this research study. This article uses a normative legal research method. meaning research that examines the law directly to see the development of law that is running in society. This research is used to conceptualize norms and regulations that have been written so that humans can behave well.

## RESULTS AND DISCUSSION

TikTok is a video-based entertainment media as well as a medium for advertising goods and services. Content creators who have many followers have the opportunity to get endorsements from companies, both large and small scale. Seeing this, makes people compete to increase the number of followers. the benefits obtained from endorsements, open up business opportunities for most people. In sharia economic law, the benefits obtained from the work are part of economic rights. Distributing, publishing, selling works and others are rights that should be obtained by the creator. Because in Islam, humans are encouraged to try accompanied by tawakal to achieve success. Of course, the wealth obtained from the halal and good way gives a positive effect to the creator in the future. This is inversely proportional to the re-uploader. Sometimes using videos

without permission, modifying, etc., although it cannot be denied that not all of them are like that. These actions, deserve a reprimand because they can cause harm to others. The loss is not only material, but moral as the right to get appreciation from the public for the work. Not a few uploaders ignore this explanation. Their main priority is to become famous in an unwise way. This is prohibited by religion because it is a wrong act.

Regardless of the benefits obtained, religion has forbidden the use of works obtained by false means. In response to these problems, Allah provides various solutions to His servants who strive to achieve them, such as buying and selling, reviving dead land, and others. Harmonious relationships between people need to be established to avoid disputes in the community.

In Islam also states that the results generated by improper or legal means such as stealing, containing haram goods, or in an oppressive manner then the blessing of the goods is not as well as in his life. Because the property is a form of public benefit that needs to be maintained either individually or in society. Relationships that are established to raise awareness of respect for the work of others need to get a special place, especially for Indonesian society. Violations that occur as a result of crimes against copyright have classified the provisions for those who violate copyright law with sanctions that can provide a deterrent effect to the perpetrators such as: a. Maximum imprisonment for 7 years and a fine of Rp.5.000.000.000, - (five billion rupiah) for those who violate the act of reproducing a work or give permission for it; b. Maximum imprisonment of 5 years and a fine of Rp.500 (five hundred million) for those who violate the act of selling to the public a work of copyright infringement. c. For any person without the right / without the permission of the creator or copyright holder to infringe the economic rights of the creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and / or letter g for commercial use get a maximum imprisonment of 4 years and a maximum fine of Rp.1.000.000.000, 00.- (one billion rupiah).

The above discussion explains that providing protection to copyrighted works is part of respecting the creation which is the property of the creator. Violations that occur as a result of actions such as piracy, modification, distortion or the like are legally considered a prohibited activity and can be subject to applicable penalties. The regulations on the TikTok service also provide signs to users to maintain order in creating or expressing ideas. Original content that is emphasized must be conveyed to users in order to create a conducive atmosphere. User Generated Content in the TikTok application term of service, has explained that Intellectual Property Rights are well guarded and will block accounts that have problems regarding Intellectual Property Rights. The lack of knowledge for those who violate the policy about the importance of copyright for creators and actions that are sometimes less assertive make irresponsible parties increase. The desire to achieve fame in a direct way without going through processing or thinking about the concept is a quick step to popularity. Cases that stick out like a stepping stone to do more than to be a reflection material to improve the quality of self.

### **Definition of TikTok App**

Is an app that features a wide variety of cinematographic and audio-visual works in each video. The China-based app was created by Tautiao founder Zhang Yiming in 2016. The application made by ByteDance had a tremendous influence until it recorded an impressive achievement at the beginning of its release downloaded 49 million times by the public (Siti Nurhalimah et al, 2019). In the TikTok application, it displays various cinematographic features that allow users to create short videos accompanied by songs, create lip sync videos and upload them to application services. Not only about cinematography videos but it could be just uploading daily videos in order to highlight certain moments. The peak was during the early days of the Covid-19 pandemic, the TikTok application posted a new record in terms of increasing the number of users from 625 million users to reach 2 billion users at the beginning of Covid-19. A fantastic number passed its competitor, Instagram, with 1.5 billion users. The surge in the number of users was suspected by the emergence of the phenomenon of the spread of Coronavirus (Covid-19) which caused the majority of people during the pandemic to spend a lot of time staying at home. Based on the spread of the virus, the

government implemented PSBB (Large-Scale Social Restrictions) in various regions in Indonesia. To fill the time during the PSBB, people are increasingly downloading the TikTok application which offers special effects and filters for each video they want to upload to the application service. The TikTok application offers various community needs to appreciate themselves, as a medium of entertainment and communication, and release creative ideas for its users. The TikTok application is one of the services that is used not only for the benefit of the community but also helps the government, medics, and influencers / content creators socialize various interesting content or appeal messages to the public (Agia Dwi Visi Utami, Suci Nujiana, and Dasrun Hidayat, 2021).

### **Definition of Affiliates**

TikTok Affiliate or TikTok Shop Affiliate is a sales method that allows creators to monetize the content they have created. The trick is to promote a *brand's* products and then get a commission on the sales that have been generated. Any content creator can promote products that are relevant to their audience, of course, with a variety of creative ideas.

The way TikTok Affiliate works is basically the same as other *affiliate marketing platforms*. There are four parties involved in it, namely:

1. *Merchant*, a party that provides products to be sold
2. *Affiliate network*, a party that bridges *merchants* and *affiliate marketers*. Some *merchants* will usually cooperate with parties who want to collect product catalogs to be given to creators later.
3. *Affiliate marketers* or creators, those who promote *merchant* products through their TikTok videos.
4. *Consumer*, users who buy *merchant* products through *links* or codes provided by *affiliate marketers*.
5. *Merchants* or *affiliate networks* will provide unique codes to all *affiliate marketers*. After that, they can promote the code through the TikTok Affiliate video they have made.

Usually, they will directly include the product *link* in a video or in the profile bio. After that, the *merchant* will be able to track the transactions of each *affiliate marketer*, then give the right commission.

### **Legal Protection of TikTok Video Content Indonesian Law Regulating TikTok Content**

According to Sajipto Raharjo named legal protection is a form of protection to every element of society that get a loss or feel harmed by the rights granted by law. Based on Act No. 19 Year 2002 which has now been replaced by Act No. 28 Year 2014, copyright is a privilege that arises by itself which is realized factually with no regard to the provisions of applicable regulations. In copyright, there are some binding rights, namely economic rights and moral rights (Togi Prima Hasiolan, Rezki Pratami and Umaimah Wahid, 2020). Regarding the privilege needs to be explained that not just anyone brings or uses a work without the consent of the owner. Because in essence, a result of thoughts that are poured into the work is not everyone can and this is clearly the basis for a work that has been created by someone needs permission from the creator. (Yusran Isnaini, 2011).

Although legally copyright can be obtained directly when the creation is realized in reality. Legal registration and recording of copyrighted works has a good effect because there is formal evidence that can be a reference when problems occur. One of the creations that get legal protection is cinematographic works found in Law No.28 of 2014 Article 40 (1) letter M. Cinematographic work is a creation that contains moving images in the form of documentary films, advertising films, reportage, or films made with scenarios, and cartoon films. TikTok is part of cinematographic works in which there are works such as videos, songs, movies and others. But the problems that are often found related to cinematographic works are plagiarism, modification, and distortion of the creator's work (Regent et al, 2021).

The creative work uploaded to the TikTok application service is an idea by the Content Creator, that the idea is expressed in a video that can be made on the TikTok application. Over time, the TikTok application got its peak phase which had a lot of influence on its users so that among Content Creators competing to channel their creative ideas in order to gain fame and profit. Article 1 (3) of Law Number 28 of 2014 concerning Copyright explains that creation is a work that gets



protection because it contains science, art or literature that is repressed into imagination, thought and inspiration in a tangible form (Ni Nyoman Junita Krisnadiyanti and Ni ketut Supasti Dharmawan, 2021).

Protection of copyright is adjusted to the Act No. 28 Year 2014 which is the country of residence of the creator gives appreciation value by providing protection because a work produced from copyright is a form of contribution that is useful to society. it is naturally obtained by the creator and if there are parties who dare to violate the provisions by manipulating or reproducing the work without the permission of the creator, then legal sanctions in the form of compensation claims for civil cases to imprisonment for criminal offenses.

### **Use of Other People's Content on TikTok Content in Islamic Law**

Copyright infringement that occurs in the 'TikTok application is a form of utilization by irresponsible parties that causes harm to the creator or copyright holder. In the concept of religion and the state, the form of violation that occurs in relation to other people's property without the permission of the owner of the work is a crime and a sin.

Islam prohibits carrying out activities that can cause harm to others, especially violations that capitalize on lies, theft or the like. The TikTok application has provided supporting services that provide protection for the creator's intellectual work against modification, distortion, plagiarism and others. If someone wants to use the content, they must get permission from the content owner.

Other parties are not allowed to use their rights to the creator's content if there is no permission to minimize the losses obtained if the applicable provisions are not applied properly. real manifestations of violations of Intellectual Property Rights occur over time and the rapid development of science. One example is the user of other people's TikTok video content that is uploaded again which is widely done not only among young people but almost evenly distributed to various groups of internet service users, whether used for the benefit of general information or for profit.

In the view of MUI (Indonesian Ulema Council), the pattern of infringement that occurs against copyrighted works has caused unrest in various circles. Not a few that cause harm, especially to the copyright owner, society and the state. To prevent the recurrence of the problem again religious law and the State punishes prohibited and haram done. It is adjusted to the provisions of MUI fatwa No.1 Year 2003 on Copyright, Mui fatwa No. 1/MUNAS VII/MUI/5. 1/MUNAS VII/MUI/5/2005 on the Protection of Intellectual Property Rights and strengthened by Law No. 29 of 2014 on Copyright. 29 Year 2014 About Copyright. In the Al-Quran it has been explained that crimes that have the potential to cause harm, damage, falsehood and the like must be shunned and haram law. Some of the Qur'anic arguments related to the explanation above: Al-Qur'an— In surah al-Baqarah: 188 which reads

*"O you who are of the faith, do not eat your neighbor's wealth by means of false means, except in consensual transactions between you. And do not kill yourselves. Indeed Allah is Most Merciful to you."* (Q.S.2 [al-Baqarah]: 188) And in surah Ash-Shu'ara: 8 which reads

*"And do not harm man by depriving him of his rights and do not cause corruption in the earth".* (Q.S.42 [Ash-Shu'ara]: 8) Allah has provided several pleasures given to humans to always obey and stay away from all His prohibitions. Apart from the pleasures that Allah gives, the sense of dissatisfaction that humans have is one of the factors that religion prohibits actions that are outside of Islamic law. Sometimes all means are possible.

### **CONCLUSIONS**

Protection that applies in Islamic law and positive law has placed the position of the creator as a person who gets high priority. Law No. 28 of 2014, the Electronic Information and Technology Act, and some of the arguments of the Qur'an and hadith become the basic source of important copyright protection. Especially in the Qur'an it is explained that copyright infringement that can cause harm to the creator is prohibited in religion, stated in surah al-Baqarah: 188.

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