



Legal Protection of Copyright Songs Against the Piracy of Music and Songs

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Abstract

The development of world music is growing very rapidly, this is evidenced by the emergence of various new musical copyright works that make the creators compete to create the best songs, and music to make the work famous and get economic and moral benefits. However, high creativity and brilliant ideas are needed so that the music or song can be accepted by the public and become famous. This is the reason for someone to pirate the song or music. The piracy of songs and music is caused by the attitude of people who lack respect for a copyrighted work, the attitude and desire to obtain commercial benefits quickly and easily, has not formed a common understanding, attitudes, and actions of the creator in protecting his rights and lack of common understanding, attitudes, and actions of law enforcement officials in the face of copyright infringement. Piracy of songs and music is currently in the form of downloading songs or video clips on free or illegal download service providers.

Keywords: *Legal Protection; Copyright; Piracy*

Introduction

The development of digital technology has brought changes in the pattern of society in creating and enjoying creative works, including in the field of music. The emergence of various new musical creations and new music genres that are increasingly diverse add to the diversity of world music. With the existence of copyrighted music, the creator will get a lot of benefits both in terms of economic and moral.

However, making the song famous is certainly not easy, high creativity and bright ideas so that the music or song can be accepted by the public and become famous. This is the reason for someone to pirate the song or music. lack of public appreciation of a copyrighted work, as well as the desire to obtain commercial benefits quickly and easily, and the actions of law enforcement officials in the face of copyright infringement into several factors of copyright infringement songs.

Usually, violations on the internet are in the form of downloading songs or video clips on free or illegal download service providers. This is evidenced by complaints from some musicians to the government to block the sites of free download service providers that cause enormous losses for the creators and copyright holders of songs illegally announced over the internet. Copyright law is present to provide legal certainty to the artists or a person who by law guarantees exclusive rights to his creation.

Copyright infringement relating to moral rights and economic rights has occurred a lot caused by irresponsible people who seek profit for themselves. Ironically, the view is that copyright crime is not too evil among ordinary people and law enforcement officials.

In Indonesia, there is Law Number 28 of 2014 addresses Copyright as a legal umbrella for a person or a group of individuals who desire legal protection or legal certainty regarding their work so that their rights are not infringed by other parties that purposefully or inadvertently breach their rights. Copyright is an important basis for the development of the national creative economy. Copyright consists of two rights, namely moral rights and economic rights. Moral Rights are regulated under Articles 5 to 7 of Law Number 28 of 2014, which are rights that are eternally attached to the creator himself.¹

The internet can have a positive and negative impact, for negative impacts are the existence of crimes / criminal acts such as gambling, pornography, fraud, and crimes in the field of Intellectual Property Rights (IPR) such as music or song copyrights, where through the internet media a song is easy to download. Songs are one of the protected copyrights and as the domain of IPR as regulated in Article 58 letter (d) of Law Number 28 of 2014 concerning Copyright which is now referred to as UUHC which states that "Copyright Protection of Song or music Creations with or without text". As protected by UUHC a songwriter/creator is entitled to his copyright and economic rights, where copyright and economic rights are an appreciation of the results of his creativity.

Based on the data, the number of illegal music or song downloaders this year has pretty much reached 2.8 billion downloads. 23 illegal websites have been closed, but the four websites turned out to be recurrent websites, which in the previous year were also closed.

Problems that continue to develop due to the development of science and technology. For example, there are many Copyright violations, such as the proliferation of pirated Compact Disc (CD) sales by the public. In the end, it is very detrimental to the real rights holder who has sacrificed the energy, cost, and time to produce a copyrighted work. The events mentioned above have been going on for a long time, but have not been responded to proactively by officials or agencies related to Law Number 19 of 2002 concerning Copyright.

Issues regarding Copyright will touch on various aspects such as technological, industrial, social, cultural, and various other aspects. However, the most important aspect when connected with the protection of intellectual work is the legal aspect. The law is expected to be able to overcome various problems related to copyright. The law must be able to protect intellectual works, to be able to develop the creative power of society which ultimately aims at the success of Copyright protection.²

¹ Adella Clarissa, dkk. Legal Protection for Musical Work Copyright Holders Pertaining to the Fulfillment of Economic Rights in the Form of Royalties, hlm. 190-191.

² Sri Hartini, dkk, Legal protection of song-creating works against piracy of musical artworks that can be downloaded for free on the website Vol. 34 (2022).

Result

Intellectual creations and innovations, especially in the fields of art, literature, and science, can give birth to copyright. According to L.J., Taylor in his book *Copyright for Librarians* states that copyright protects the expression of an idea, not the idea itself. This means that copyright protects not only ideas but also objects that already exist in physical form. Therefore, the law only protects concrete works.³

Intellectual Property Rights are defined as an immaterial right that comes from the work of the brain in the form of intangible objects.⁴ This Intellectual Property Rights must get protection, this is because creating a work requires time, energy, thought, and costs for the creator. The protection of Intellectual Property Rights aims to appreciate an idea and idea in a work to a creator.⁵ One of the intellectual works that are part of intellectual property is copyright, copyright is defined as a right that arises after the existence of a creation derived from the copyright of the human mind. Copyright becomes one with the creator or copyright holder, therefore this exclusive right gives birth to economic rights and moral rights.⁶ One of the objects that get copyright protection is a song. Song is defined as a musical completeness with a series of consecutive tones.⁷ Songs are one of the works of art that get protection as contained in Law No. 28 of 2014 on Copyright in Article 58 letter d, currently, songs are used in various aspects of life both for entertainment or for economic gain.

Based on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, “The State of Indonesia is a state based on law.” In principle, the state has several times developed legal products for copyright protection by the constitution, namely as follows:

1. Law Number 6 of 1982 on Copyright;
2. Law Number 7 of 1987 on Copyright;
3. Law Number 12 of 1997 on Copyright;
4. Law Number 19 of 2002 on Copyright;
5. Law Number 28 of 2014 on Copyright.

Under copyright, there are two rights attached to it. These are Moral Rights and Economic Rights [11]. The law stipulates that moral rights and economic rights are:

Moral Rights

Article 5

- 1) The moral rights as referred to in Article 4 are rights that are eternally inherent to the Author to:
 - a. Continue to include or to exclude their name on the copy with respect to the public use of their Works;
 - b. Use an alias or pseudonym;

³ A. Arya, Titin, “Legal Protection of Song and Music Copyright According to Law Number 28 Year 2014”, *Ganec Swara, Mataram*, vol. 13, No. 1, 2019.

⁴ H. OK. Saidin, 2014, *Legal Aspects of Intellectual Property Rights*, 4th Printing, Jakarta: PT Raja Grafindo Persada, page 9.

⁵ P. Dina Amanda, *Legal Protection of Songs Uploaded Without the Authorization of the Creator on the Youtube Site*, Scientific Work: Udayana University, page. 4.

⁶ Anandita Reza Ekaputra, *Juridical Aspects of Copyrighted Works of Re-Sung Songs (Cover Song) on the Youtube Platform*, *Privat Law Volume 10 Number 1 (January-April 2022)*, page 56.

⁷ Otto Hasibuan, 2014, *Copyright in Indonesia, Special Review of Song Copyright, Neighboring Rights, and Collecting Society*. Bandung: PT Alumni, page 139.

- c. Change their Works to comply with appropriateness in society;
 - d. Change the title and subtitle of their Works; and
 - e. Defend their rights in the event of a distortion of Works, mutilation of Works, modification of Works, or other acts which will be prejudicial to their honor or reputation.
- 2) The moral rights as referred to in section (1) cannot be transferred as long as the Author is alive, but the exercise of these rights is transferable by testament or other reasons in accordance with the provisions of laws and regulations after their death.
 - 3) In the event of a transfer of the exercise of moral rights as referred to in section (2), the recipient may release or refuse the exercise of their rights with the condition that the release or refusal to exercise these rights is expressed in writing.

Article 6

In order to protect the moral rights as referred to in Article 5 section (1), the Author may have:

- a. Copyright management information; and/or;
- b. Copyright electronic information.

Economic Rights

Article 8

Economic rights are the exclusive right of the Author or the Copyright Holder to gain economic benefits from the Works.

Article 9

- 1) The Author or the Copyright Holder as referred to in Article 8 has the economic rights to engage in:
 - a. Publication of the Works;
 - b. Reproduction of the Works in all its forms;
 - c. Translation of the Works;
 - d. Adaptation, arrangement, or transformation of the Works;
 - e. Distribution of the Works or their copies;
 - f. Performance of the Works;
 - g. Communication of the Works; and
 - h. Rental of the Works.
- 2) Every Person who exercises the economic rights as referred to in section (1) is obligated to obtain permission from the Author or the Copyright Holder.
- 3) Every person is prohibited from exercising Reproduction and/or Commercial Use without any permission from the Author or the Copyright Holder.

From the perspective of the law, the protection of copyright in Indonesia is considered to be quite satisfying, especially in eradicating certain websites that contain copyright-infringing content. The state is

being considerate by accommodating legal certainty toward the creator of the works, beginning with the establishment of Law Number 28 of 2014 on Copyright, the commitment of the Ministry of Communication and Information to blocking the sites that provide copyright-infringing content is quite pleasing. But despite all of that, public awareness of the law is still lacking. As a consequence, no matter how many blockings are done, the sites will constantly grow because our society refuses to pay their respect to the copyright holder.

To earn economic rights in the form of royalties, producers and copyright holders must join the LMKN so that they may extract these benefits from users of their copyrighted works in a reasonable manner. Furthermore, because many artists are unaware of Copyright, the copyright holder of a musical piece is frequently unable to enjoy the economic rights to the work he has made. As a result, even if the work has not been recorded or published, the author or copyright holder of a musical work must make the work evident in a concrete form so that the artist's moral and economic rights are not violated by others.

All musical products are covered by copyright. The legal protection of intellectual property rights, particularly copyright, for songwriters is governed by Law Number 28 of 2014. The law acknowledges that copyright has existed since the work was completed. That is, once the creation is finished, it is realized in a real or material form according to the creator's wishes. As a result, the creator of his creation now has legal protection because the creation has been completed in a tangible form. This notion is stipulated under Article 1 number 1 of Law No. 28 of 2014, which said: "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions by statutory provisions."

In regards to exclusive rights, Article 4 of Law No. 28 of 2014 elucidated that copyright is an exclusive right consisting of moral and economic rights. Moral rights are rights that are eternally attached to the Creator.

Songs are one type of intellectual property that is protected by copyright. Law No. 28 of 2014 on Copyright has regulated the settlement that can be done in case of infringement of copyright. The settlement can be reached through litigation and non-litigation channels.

- a) Settlement through the Non-Litigation Track In the event of a song copyright infringement, the Copyright Act allows the settlement of disputes through non-litigation or settlement of cases outside the court. This is as stipulated in Article 95 paragraph 1 of Law Number 28 Year 2014 on Copyright that copyright infringement can be resolved through Alternative Dispute Resolution (APS) and arbitration.
- b) Settlement Through Litigation is also regulated in Article 95 paragraph 1 of Law Number 28 Year 2014 on Copyright, in addition to alternative dispute resolution and arbitration, settlement of copyright infringement can also be done through litigation. Litigation is the resolution of legal issues through the courts. The litigation path can be done in 2 (two) ways, namely criminal and civil settlement.

In the criminal path, the injured party can file a complaint with the authorities, while in the civil path, it can be done through the process of claiming compensation in the Commercial Court. Creators, copyright holders, and/or holders of related rights or their heirs who suffer economic losses have the right to compensation. Compensation is given and included along with the court's verdict on the criminal case of copyright and/or related rights. Payment of compensation to creators, copyright holders, and/or owners of related rights is paid no later than 6 (six) months after a legally binding court decision.⁸

⁸ Tina Marlina and Dora Kartika Kumala, 2019, *Legal Protection of Songwriters Whose Works Are Re-Sung (Cover) Without Permission for Commercial Interests in Internet Media*, Syntax Literate, Vol 4 Nomor 11, page 180-181.

Copyright infringement towards musical works, not only damages the local or the domestic music industry but also has a direct negative impact on the creators or copyright holders. This is because the creators or copyright holders have exerted their energy, creative thinking, hard work, and production costs to produce their musical works, but parties who use these copyrighted works for commercial purposes illegally can reap the economic benefits without having to exert any effort, which is unfair to the creators. Within this context, there are three types of illegally used copyrighted kinds of music, namely: ⁹

1. Plagiarism is usually carried out by duplicating an artist's entire album that is in the market by exactly copying the contents, cover, and packaging of the album.
2. Piracy is a form of reproduction or remake by compiling various copyrighted musical works from recording albums that sell well in the market.
3. Bootleg is carried out by making or distributing a video or audio recording of a performance that is not yet by the artist or under any other legal authority.

If a user was found to have violated the economic rights of a creator or copyright holder, LMKN or YKCI as its endorsee is authorized to issue a letter notifying that the law protects the musical works used by a party, and thus subject to a royalty payment.

When viewed in the aspect of civil law, strict law enforcement for copyright infringers is contained in Article 1365 of the Civil Code, which in the Article explains if there is someone who violates the law, which in this case results in harm to others, then the person who caused the loss must compensate. Sanctions for violations of this Article can be in the form of an award of compensation, namely compensation to the party alleged to have committed the violation. Article 96 paragraph 1 of Law Number 28 of 2014 concerning Copyright states that "Creators, Copyright holders and/or holders of Related Rights or their heirs who suffer losses of economic rights are entitled to compensation". Article 99 of Law Number 28 of 2014 concerning Copyright also explains that in essence the Creator, Copyright Holder, or owner of Related Rights has the right to file a lawsuit for compensation with the Commercial Court for infringement of Copyright or Related Rights products which can be in the form of a request to submit all or part of the income obtained from organizing lectures, scientific meetings, performances or exhibitions of works that are the result of infringement of Copyright or Related Rights products. The Creator, Copyright Holder, or the owner of Related Rights may request a provisional or interlocutory decision to the Commercial Court for:

- a. Request the confiscation of the Creation that is made by the Announcement or Duplication, and/or the Duplication tools used to produce the Creation resulting from Copyright infringement and Related Rights products; and/or
- b. Stop the activities of Announcement, distribution, Communication, and/or Copying of Creation which is the result of Copyright infringement and Related Rights products".

The mechanism for payment of compensation begins with the filing of a case related to the infringement committed by the infringer or in this case the party who uploaded the copyrighted work of someone else's song against the injured party to the Commercial Court. Upon submission, the court will issue a temporary determination of the case in question and will decide how much compensation payment to the uploader. Copyright infringers or uploaders pay the compensation to the Collective Management Institution accompanied by the original copyright holder as a witness that the uploader has fulfilled its

⁹ Tim Lindsey et al., *Intellectual Property Rights An Introduction* (Bandung: PT Alumni, Bandung, 2005), page 59.

obligation to pay compensation caused.¹⁰

The consequence of copyright (copyrighted works of music and songs) as an exclusive right is to prohibit other parties from utilizing the economic rights of copyrighted works of music and songs without permission from creators or legitimate copyright holders. Against any copyright infringement in the form of the absence of permission mentioned above, the UUHC has protected the creator in the form of a lawsuit for civil damages as well as the right of the state to criminal prosecution by Article 113 UUHC, which is as follows:

- 1) Any person who without right commits infringement of economic rights as referred to in Article 9 paragraph (1) letter (i) for the use of commercial facilities shall be punished with imprisonment shall be punished with imprisonment for 1 (one) year and/or a fine of at most a maximum of Rp. 100.000.000,- (one hundred million rupiah).
- 2) Any person who without right and/or without the authorization of the creator or copyright holder infringes economic rights as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for the use of commercial facilities shall be punished with a maximum imprisonment of a maximum of 3 (three) years and/or a maximum fine of Rp. 500.000.000,- (five hundred million rupiah).
- 3) Any person who without rights and/or without the authorization of the creator or copyright holder to infringe economic rights as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for the use of commercial facilities shall be punished with imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.- (one billion rupiah).
- 4) Any person who fulfills the elements as referred to in paragraph (3) in the form of piracy shall be punished with imprisonment of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.- (one billion rupiah).

According to Article 120 UUHC criminal offense of copyright infringement is a complaint offense. For violation of the exclusive rights of music creators, the law provides legal protection for the creator or holder of his copyright to file a lawsuit for damages through the commercial court. Copyright holders can ask the commercial court to withdraw from circulation and confiscate and store evidence relating to the violation of their copyright. This includes stopping the infringement to prevent greater losses.

It can be seen how the UUHC protects music copyright holders privately through the establishment of a commercial court as an authorized institution in addition to arbitration and alternative dispute resolution to decide disputes or copyright infringement with various rights as described above as well as the determination of the period of settlement of the case. With the establishment of the commercial court as an authorized institution to decide copyright disputes, then the principle of speedy justice and legal certainty can be realized immediately, given the establishment of time limits to resolve and decide the compensation claim for 90 (ninety) days since the lawsuit is registered and can be extended for a maximum of 30 (thirty) days with the approval of the Supreme Court.

Supreme Court. Against the commercial court's decision, only cassation legal remedies are available, and within 90 (ninety) days after the cassation application is received, the Supreme Court must decide on the cassation application.¹¹

¹⁰ Ni Luh Putu Pande Wulan Sari, dkk, 2021, *Judicial Review of Copyright Protection Against Copyrighted Works of Songs Uploaded to Websites Without a License Based on Law No. 28 of 2014 concerning Copyright*, E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum Volume 4 Nomor 3, page 844.

¹¹ Hulman Panjaitan, *Unauthorized Use of Copyrighted Music and Songs and Its Legal Effects*, page 117.

Conclusion

Infringement and piracy of music and songs provided by certain sites still occur repeatedly, these sites provide access to copyright-infringing content, are carried out by irresponsible parties, at the expense of the Economic Rights and Moral Rights of the Creator, and at times unlawfully give the Economic Rights to themselves. This, along with the community's support, allows the event to take place by choosing to enjoy the works illegally rather than buying the exact works from the original artists. This is what degrades our legal values and legal morals. It is also related to the rapid development of technology that has resulted in faster and more efficient piracy methods. These technological advances provide easier access for irresponsible parties to commit copyright infringement.

The legal consequences of violating the commercialization of cover songs without permission on social media can be subject to compensation claims if the creator suffers economic losses, but if unable to pay compensation then this action is automatically subject to fines or criminal sanctions following the rights violations committed by the perpetrators. Copyright infringers committed with commercial purposes will be sentenced to imprisonment or fines. Civil damages lawsuits through the commercial court and criminal charges in the form of copyright infringement criminal offense which according to the law is a type of criminal complaint.

We should be wiser in respecting other people's works because they hold such high artistic, cultural, and literary values as well as economic and moral values. One way to appreciate the work is to buy the content from the original artist and not commit piracy or copyright infringement that will harm the creator or copyright holder. In this way, the community also respects and appreciates copyrighted content. In addition, law enforcement officials, especially the Indonesian Police and the Ministry of Communication and Information Technology, should form a special working unit affiliated with eradicating sites that offer content that violates copyright, so that artists can calmly create high art without worrying about infringement of their work.

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