

## LEGAL PROTECTION OF SONGWRITERS WHOSE WORKS ARE USED ON SOCIAL MEDIA WITHOUT PERMISSION BASED ON COPYRIGHT LAW

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### **Abstract**

*Intellectual property rights are exclusive rights in the fields of technology, science or art and literature. Ownership of intellectual property is not a product, but the result of human thought and creativity, which is in the form of ideas or opinions. Copyright infringers can also be civilly sanctioned with damages for infringement. Damage lawsuit in the form of a request to hand over all or part of the income earned by the infringer from the use of the creation. Legal protection of copyright songs and music for infringement on the Internet, although it is clearly stated in the Copyright Act No. 28 Year 2014, the application of this law is still not effective. This is because people still do not know about copyright laws that protect the copyright of songs and music and what actions are prohibited by law. The same applies to song copyrights. Musicians are not required to register their songs with the National Intellectual Property Office just to protect song copyright because copyright does not arise from the fact of registration.*

*Keywords: Exclusive Rights; Copyright; Music.*

### **INTRODUCTION**

Indonesia is one of the developing countries in Southeast Asia with a population that has various kinds and types of interest in the world of entertainment. It is possible that there are more and more types of entertainment to meet human needs. This includes music or songs.

By following the development of technology, especially in the field of *entertainment*, the more diverse the types and types of media for playing music/songs. Various applications and social media nowadays spoil people even more. Without any charge, now someone can play their favorite music/song without any obstacles. Likewise, the same thing if viewed from the point of view of the creator, where the creator as the full owner of copyright becomes flexible in creating a work. With the creation of more and more musical works / songs, it is undeniable that there are also many creators of musical works or songs who defend their Intellectual Property Rights so that they are not used at will from irresponsible parties.

Intellectual property rights are exclusive rights in the fields of technology, science or art and literature. Ownership of intellectual property is not a product, but the result of human thought and creativity, which is in the form of ideas or opinions. The term intellectual property rights is equivalent to the word *Intellectual Property Rights*. According to W.R. Cornish, the term *Intellectual Property Rights* has multi-dimensional characteristics where each country has different arrangements from one another, to the point that it is difficult to

compile a generally accepted definition of *Intellectual Property Rights*. (Marwanto, Ardika Komang;, 2019)

Intellectual Property Rights have benefits for all parties with their creativity and intellectual power in establishing works protected from IPR, one example is in the field of Copyright. Copyright is the exclusive right of a creator who is present by his will in accordance with the declarative principle after a creation is transformed into a real form, without reducing restrictions in accordance with legal provisions. (Article 1 paragraph (1) of Copyright Law No. 28 of 2014). To realize the exclusive right, a creator is trying to defend it by registering with the copyright institution, but even in this context, the creation of human works must be with the concept and his own thoughts.

Copyright is divided into economic rights (*economic rights*) and moral rights (*moral rights*). Economic rights are rights in order to obtain economic benefits from creation rights and related product rights. Moral rights are rights attached to the creator or party that cannot be eliminated or removed without any reason, even if the copyright or related rights have been transferred. (Atmadja, Hendra Tanu;, 2003)

One of the creative works in the field of art is a song. A song is a musical unit that is divided from the arrangement of various tones that are sequential and complex. In this day and age, copyrighted works of song or music have become part of human life. With the development of technology, the way people enjoy music and songs has now changed. In the past, people listened to music using vinyl records, cassettes, VCDs and DVDs. Until now, even the development of technology, especially the internet, has become a person's main interest in his life, now people can easily listen to music through various *digital music platforms* and can even watch music videos easily, especially in this legal writing, namely through *Youtube, Instagram, and Tiktok*. The development of this technology has increasingly brought a positive impact on human circles, but it does not rule out the possibility that there are also negative effects and several problems that threaten the existence of songwriter rights.

The formulation of problems in a study is important in order to solve the main problems that exist so that it is clear and systematic so that it can determine the right problem solving and can achieve the desired goals. Referring to the background described above, the author can formulate the formulation of the problem to be studied, namely: How is copyright protection for songwriters whose works are used on social media without permission under the Copyright Act?

Referring to the background and problem formulations that have been described above, the authors are interested in carrying out research with the title **Legal Protection Against Songwriters Whose Work Is Used On Social Media Without Permission Under the Copyright Law.**

## **RESEARCH METHODOLOGY**

In this research, the approach used is a case study approach by examining cases related to the topic of discussion in the research. In research, primary data (or basic data) is data obtained directly from the applicable regulations, while data from library materials is called secondary data. Included in the category of secondary data used in this research are as follows : 1). Primary legal materials, primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of laws and regulations, and judicial decisions; 2). Secondary legal materials, which consist of *textbooks*, opinions of legal scholars, cases, jurisprudence, journals, and recent research results related to the research topic.

Data collection in this study was carried out by reading literature on concepts, principles, and regulations related to Music Copyright Protection, collecting information from previous cases showing the use of this method in resolving Copyright disputes, and collecting laws and regulations relating to the resolution of Copyright disputes. The data analysis method used in this research is descriptive. Therefore, because this research will not reach general conclusions (generalization), the results will be descriptive qualitative.

## **RESULTS AND DISCUSSION**

### **Legal Protection of Songwriters Whose Works Are Used on Social Media Without Permission Under the Copyright Law**

The validity of the license agreement has not been specifically regulated in Book III of the Civil Code, but can be based on Article 1338 of the Civil Code concerning the principle of freedom of contract (*partij autonomie*) which is also closely related to the provisions of Article 1320 of the Civil Code concerning the valid terms of the agreement. (Kusno, Habi;, 2016) Then, agreements made in accordance with Article 1320 of the Civil Code have binding legal force.

In particular, for copyrighted works of songs, the validity of the license agreement is not only based on the provisions of the agreement in the Civil Code, but based on and must

meet the requirements set out in the UUHC, the license agreement must be prepared in writing and must be registered with the Ministry of Law and Human Rights, Directorate General of Intellectual Property Rights.

The position of copyrights or copyright has long been recognized from the international community. As one form of intellectual work that is protected on IPR, copyright has a vital role for the progress of a country. The role of copyright for a nation can be a way to support and protect the creation, dissemination of works of art, science and technology literature in order to accelerate the growth and intelligence of the nation's life as mandated in Act No. 25 Year 2000 in the development of education, particularly research programs, advancement of capacity and improvement of human resources science and technology. (Saidin, H OK;, 2014).

A work can provide economic value to creators and licensees through commercial sales in the market. Obtaining a work requires a process of time, thought, money, time and hard work until the work of the creator is usually so miserable for the creator. In contrast, within certain limits of copyright law, then the results of someone's creation can be justified taken by others with the permission of the owner concerned. That is, the "social value" of copyright can be delegated to others. (Syamsudin, M; Riswandi, Budi Agus;, 2005)

Article 40 paragraph (1) of Law No. 28 of 2014 selects creations that can be protected are creations in the fields of science, art and literature that include works: (Law Number 28 Year 2014 on Copyright, 2014) : 1) Books, pamphlets, embellishments of published works, as well as all other written works, lectures, lectures, speeches, and other similar creations; 2) Teaching aids that are made for the benefit of education and science; 3) Songs or music with and without text; 4) Drama or musical drama, dance, choreography, puppetry, and pantomime; 5) Fine art in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage and applied art; 6) Architecture; 7) Map; 8) The art of batik; 9) Photography; 10) Portrait; 11) Cinematography; 12) Translations, commentaries, adaptations, anthologies, databases, and other works of authorship; 13) Video games, and 14) Computer Programs;

All creations of a person, group of people or legal entity are protected from the law because the creation automatically attaches copyright that should be respected from others. (Isnaini, Yusran;, 2009) According to articles 1 point 2 and 28 CHU, the Creator is an individual or legal entity that individually or jointly creates a new creation, original and different from other creations. (Angg007;, 2023) The concept of legal protection is contained

in the UUHC which explains about protected creations, one of which is a song (Article 40 paragraph (1) letter d). According to Suhastjarja in, a song is a manifestation of the contents of the human heart, ideas or ideas formed from elements of rhythm, rhythm and harmony arranged and combined into a single unit, so that it can be sung, understood and appreciated by others who hear it. Legal protection arises and is given to legal subjects in the form of deterrent and repressive legal instruments. (Tigita; , Widyaswara;, 2018) In terms of copyright, legal protection is addressed to the exclusive rights of the creator of the creation, so that the legal protection of the subject song is the creator himself. According to Article 4 of the Copyright Act, the exclusive rights of musicians are protected including moral rights and property rights. Moral rights are attached to the creator or performer and cannot be taken or eliminated without cause, even if the copyright or copyright has been transferred. (Darmestha, Made Dwi;, 2019) Furthermore, Article 5 paragraph (1) of the Copyright Law concerning the moral rights of musicians can be divided into two, namely the right to be recognized as the creator (copyright or paternity), that the identity of the creator must be included in the creator's creation, and the right to protect the integrity of the creation, especially prohibited from modifying the creation that has the potential to damage the reputation of the creator. (Hidayah, Khoirul;, 2017).

The period of validity of moral rights according to Article 5 paragraph (2) of the CHU shall be indefinite and non-transferable as long as the creator is alive, but the exercise of such rights may be transferred in accordance with a will or for other reasons after the death of the author. Under Article 9 of the UUHC, economic rights prohibit other parties from using copyrighted works for commercial purposes without the author's permission.

In reality, there are often violations of the exclusive rights of songwriters in everyday life. The government through the rules of the Copyright Act delegates options for Song creators to deal with dispute issues by way of court and out of court. Then the handling mechanism for creators who want to defend their rights: (Hidayah, Khoirul;, 2017)

1. Civil Lawsuits are discussed in Article 98 of the UUHC, Songwriters can file a lawsuit for compensation at the commercial court from infringement of their copyright.
2. Criminal Charges discussed in Articles 112-118 UUHC, the filing of civil lawsuits can still be done together with criminal charges. Before criminal proceedings are carried out, mediation efforts must be carried out first before criminal charges are carried out. (Rahma, Harsina; Nurhayati, Yati;, 2020)

3. Dispute resolution carried out outside the court can be carried out in the form of negotiation, mediation, conciliation, and other methods chosen by the parties in accordance with applicable laws.

The situation of personal use of songs is on the rise. Musicians who have gone to great lengths and effort to create copyrighted works will not receive any compensation for the use of their songs. To anticipate piracy, songwriters and third parties can enter into a written agreement/license that regulates the use of the song. (Law Number 28 of 2014 on Copyright, 2014)

Regarding the making of an agreement, the parties should pay attention to the conditions specified in Article 1320 of the Civil Code so that the agreement they make is legally binding on the parties. In addition, the agreement must be based on the terms of the agreement, a specific problem and a good purpose. (Matompo;, Harun;, 2017) Copyright infringement is basically on moral rights and economic rights owned from the creator. If we look at Article 9 paragraph 3 UUHC, the party is said to commit copyright infringement if the fulfillment of the elements (Syafrinaldi H;, 2006)

The variety of copyright infringement that exists requires the government to quickly respond to the problem. One way that is done is, the delegation of sanctions for copyright infringers. Referring Sudikno Mertokusumo on sanctions is a response, consequences or consequences of violations of social rules sanctions are delegated to copyright infringers have varying weights are equal to the form and type of violation. Based on Article 113 of the Copyright Act sanctions that can be imposed, namely: (Law No. 28 of 2014 on Copyright, 2014)

1. Copyright infringement in the form of leasing the creation for material gain without permission can be sanctioned in the form of imprisonment for a maximum of 1 year and or a maximum fine of Rp. 100,000,000.00.
2. Copyright infringement in the form of translation, adaptation, arrangement or transformation, performance of a work or communication of a work can be sentenced to a maximum imprisonment of 3 years or a maximum fine of Rp. 500,000,000.00.
3. Copyright infringement in the form of publishing, duplicating, distributing or announcing a work can be sentenced to a maximum imprisonment of 4 years and a maximum fine of Rp. 1,000,000,000.00.

4. Copyright infringement in accordance with the elements of Article 9 paragraph (3) of the Copyright Act is sanctioned with a maximum imprisonment of 10 years or a maximum fine of Rp. 4,000,000,000.00.

In addition to criminal sanctions, copyright infringers may also be civilly sanctioned with damages for infringement. Suit for damages in the form of a request to hand over all or part of the income earned by the infringer of the use of the work. (Kusno, Habi;, 2017)

## **CONCLUSION**

\In the context of song copyright, cover song activities used for commercial purposes without the permission of the creator or copyright owner constitute copyright infringement. The government, through the Ministry of Communication and Information Technology (Kemenkominfo), has a role in curbing social media that facilitates song download features by blocking to prevent unauthorized use of copyrighted works. The Copyright Act of 2014 provides a solid foundation for the government in efforts to prevent and prosecute copyright infringement through the internet media. Articles 54 and 55 of the Copyright Law regulate the prevention of copyright infringement and related rights implemented through information technology facilities.

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