

Legal Protection for Musical Work Copyright Holders Pertaining to the Fulfillment of Economic Rights in the Form of Royalties

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Abstract

The legal right of the owner of intellectual property is referred to as copyright. Simply put, copyright is the right to copy. This implies that the only people who have the exclusive right to replicate the work are the original authors of the items and anybody they give permission to. Copyright law grants original content producers the exclusive right to further use and replicate that work for a certain period of time, after which the copyrighted object becomes public domain. Moreover, Copyright arises automatically after the creator realizes his idea into a tangible form so that the creation will get legal protection without having to be registered. The problem that often occurs today is that there are other parties who use the creation without rights and permission of the creator or copyright holder causing economic harm. This article aims to find out what are the legal protections for copyright holders if there are illegitimate users that use copyrighted works for commercial purposes without permission and are not paying royalties. Further, this article will also look into what are the legal consequences for users who do not fulfill the economic rights of the copyright holder in the form of royalties. From the results of this study, it can be concluded that the form of legal protection for copyright holders is the fulfillment of the economic rights in the form of royalties and criminal penalties for those who without rights and permission use the work for commercial purposes. The legal consequences for users who do not fulfill the economic rights as aforementioned are subject to imprisonment or criminal fines as stated in Article 113 paragraph (1) to paragraph (4) of Law Number 28 of 2014 pertaining to Copyright.

Keywords: Legal Protection; Copyright; Economic Rights

A. Introduction

Indonesia is a diverse country with many ethnicities, languages, cultures, and customs. Along with the rapid development of the arts, many individuals began to develop abilities in sculpturing, painting, dance, music, and so on in order to preserve Indonesia's identity as a country. According to Gatot Soepramono, a person who makes anything is the work of his creation in general, which is not only utilized for himself but is also reproduced so that it may be shared with others.¹ A copyrighted work may generally be reproduced by others since the individual who developed it has limited competencies and cannot do it alone in large quantities in response to community demand.²

Every human being has a capable mind which enables them to produce science, technology, and works of art. In this case, works of art that are successfully created must receive respect and appreciation that is a form of creative expression from the creator.³ The creation that has been developed is the work of a person or group of people that must get legal protection, namely copyright. When someone makes a product that is regarded as unique and requires substantial conceptual effort to create, that product becomes intellectual property that must be secured from unlawful imitation. Computer software, art, poetry, graphic designs, musical lyrics and

¹ Gatot Soepramono, *Hak Cipta dan Aspek-Aspek Hukumnya* (Jakarta: P.T. Rineka Cipta, 2010), 1.

² *Ibid.*

³ Emma Valentina Teresha Senwe, "Efektifitas Pengaturan Hukum Hak Cipta Dalam Melindungi Karya Seni Tradisional Daerah," *Jurnal LPPM Bidang Ekosobudkum*, no. 2 (2015): 12.

compositions, books, films, original architectural designs, website content, and so on are examples of one-of-a-kind inventions. Copyright is one legal protection that may be utilized to protect an original production.⁴

Intellectual Property Right (“IPR”) is an intangible movable object resulting from human intellectual activity, expressed in copyrighted works or in the form of discovered works, that must be protected under Indonesian law.⁵ Copyright is one type of intellectual property right that exists because of human creativity and must be protected both economically and morally. The exclusive right of the creator emerges immediately based on the declarative principle once an invention is realized in a tangible form without decreasing restrictions in line with the rules of the laws and regulations is known as copyright. Not all sorts of work can be protected by copyright. Ideas, discoveries, concepts, or theories are not protected by copyright. Copyright law does not protect brand names, logos, slogans, domain names, or titles. An original work must be in physical form in order to be copyrighted.⁶ This means that in order to be protected by copyright, any speech, discovery, musical score, or idea must be written down in tangible form.

In Indonesia, there is Law Number 28 of 2014 addressing 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

⁴ U.S. Copyright Office. "Copyright Authorship: What Can Be Registered", U.S. Copyright Office, January 28, 2021,

<https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf>

⁵ Nurjannah, Kekayaan Intelektual, <http://nurjannah.staff.gunadarma.ac.id/>

⁶ U.S. Copyright Office. "What Does Copyright Protect?", U.S. Copyright Office, <https://www.copyright.gov/help/faq/faq-protect.html>

purposefully or inadvertently breach their rights.⁷ 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 Article 5 to 7 of Law Number 28 of 2014, which are rights that are eternally attached to the creator himself. The following is the moral right of the creator:⁸

1. To include or not to include his name on the copy in connection with the use of his work for the public;
2. Use aliases or pseudonyms;
3. Change his creation according to propriety in society. Change the title and subheading creation;
4. Defend their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation.

It shall be known that moral rights cannot be transferred as long as the creator is still alive. However, the exercise of moral rights can be transferred by will or other reasons after the creator dies. If the exercise of moral rights is transferred, the recipient can release or refuse by making a refusal to exercise the rights stated in writing.⁹ Further, Economic rights in copyright are the exclusive rights of creators or copyright holders to obtain economic benefits from their works. The economic rights attached to creators or copyright holders are: a) Publishing works; b) Reproduction of creation in all its forms; c) Creation translation; d) Adapting, arranging or transforming

⁷ Article 9 Paragraph (3) of Law No. 28 of 2014

⁸ Monica Ayu Caesar Isabela, "Moral Rights and Economic Rights in Copyright", Kompas, March 26, 2022, <https://nasional.kompas.com/read/2022/03/26/03000031/hak-moral-dan-economic-rights-in-copyright>

⁹ *Ibid.*

works; e) Distribution of creations or copies thereof; f) Showcasing the Creation; g) Creation communication; and h) Leasing the Creation. Everyone who exercises the economic rights of the creator must obtain permission from the creator or copyright holder.¹⁰ Commercial reproduction of works is prohibited if there is no permission from the creator. In addition, the copyright law also regulates economic rights over photographs or portraits. Everyone is prohibited from commercially using, duplicating, and distributing portraits made without the written consent of the person being photographed or their heirs.

In this case, the government's lack of socialization regarding copyright law can be attributed to a number of factors, namely; written regulations are exclusively created by a group of people, there is a lack of public interest in reading regulations, and the government's role in providing legal counseling is limited. As a result, many Indonesians are unaware that artists or producers, as creators or copyright holders of a musical work, have rights over the economy that is produced. Economic rights are the ultimate rights of authors or copyright holders to profit economically from their works.¹¹ The economic benefits in issue can exploit his inventions to generate economic benefits that a creator or copyright holder can enjoy.

Since the government has not socialized the Copyright Law, many individuals are unaware that a work contains legal economic rights of the author of the musical work and cannot be used for commercial reasons without the consent of the music copyright

¹⁰ *Ibid.*

¹¹ Article 8 of Law No. 28 of 2014

holder. As in the case of Halilintar Anofial Asmid and Lenggogeni Umar Faruk (in this case as the Defendant) or commonly known as Gen Halilintar, who was sued by PT. Nagaswara Publisherindo, Yogi Adi Setyawan, and Pian Daryono (in this case as Plaintiffs) for failing to fulfill the economic rights of copyright holders in the form of royalty payments. According to the case in Decision Number 82/Pdt.Sus-HKI /Cipta/2019/PN Niaga Jkt.Pst, the Defendant violated economic rights by utilizing without rights and without consent from the Plaintiffs.

In Decision No. 82/Pdt.Sus-HKI/Cipta/2019/PN Niaga Jkt.Pst, it was stated that the Defendant did not commit an unlawful act (PMH) in the form of violating song/music copyrights because he had carried out performance (*pengumuman*) activities without permission from the Plaintiff, but this contradicts the fact that the Defendant did not ask permission from the composer of the song in advance so that it was considered that the Defendant did not fulfill the economic rights of the creator or copyright holder for his musical work. The lawsuit was brought because the Defendant modified, reproduced in digital form, published, and distributed the work on social media without the permission of the Creator or Copyright Holder of the musical work and did not pay royalties, since this is a form of commercial use of the work.

Commercial economic rights of authors or copyright holders include performing creations, announcements of creations, and creation communications, as per Article 9 of Law No. 28 of 2014 concerning Copyright jo. Article 2 paragraph (1) Government Regulation No. 56 of 2021 concerning Management of Song and/or

Music Copyright Royalties.¹² While the publication of a music is a sort of commercial public service, anyone who wishes to use the music for commercial reasons must pay royalties to the Author and Copyright Holder via the National Collective Management Institute (“LMKN”).¹³ Moreover, following Article 9 paragraph (2) of Law No. 28 of 2014, a person can use a musical work if he obtains permission from the author or copyright holder¹⁴ and pays royalties to the creator or copyright holder through LMKN. This must be done if you wish to utilize a musical piece commercially in order to give the creator of the musical work economic rights. This is consistent with Article 35 paragraph (2) of the Copyright Law, which provides that the owner of a copyrighted work in the form of music has the right to royalties from the use of the work.

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.

¹² Article 9 of Law No. 28 of 2014; Article 2 paragraph (1) Government Regulation No. 56 of 2021

¹³ Article 2 paragraph (1) Government Regulation No. 56 of 2021

¹⁴ Article 9 paragraph (2) of Law No. 28 of 2014

B. Discussion

The advancement of technology in the globalization era simplifies a wide range of activities, allowing many things to be easily accessed online in a matter of seconds. Of course, this has both positive and negative consequences for society. This phenomenon enables anyone to freely and effortlessly conduct research, business transactions, and communications; access journals; and so on.¹⁵ However, it is also inevitable that men will most likely misuse and manipulate the freedom it offers for personal gain, such as profit and satisfaction—for example, piracy.

In this regard, *Kamus Besar Bahasa Indonesia* defined piracy as taking other people's creations without their permission or knowledge. Further, the Black's Law Dictionary established that piracy is commonly associated with the theft of IPRs through some form of copying the original.¹⁶ From the two definitions above, piracy simply means an illegal act or crime that always aims to exploit the Creator's work without acknowledging his creation.

In the context of the musical industry, Goldman Sachs predicts that global music market revenue - including recorded music, music publishing, and live events - will exceed \$87.6 billion by the end of this year and reach \$153 billion by 2030.¹⁷ This proves that the music industry is growing rapidly over the years, and will continue to grow. This is because songs are a common form of

¹⁵ Syed Shah Alam, Nik Mohd. Hazrul Nik Hashim, Maisarah Ahmad, Che Aniza Che Wel, Sallehuddin Mohd Nor, Nor Asiah Omar, Negative and positive impact of internet addiction on young adults: Empirical study in Malaysia *Intangible Capital*, no. 3 (2014): 619-638.

¹⁶ Piracy is "the unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law." Black's Law Dictionary 1169 (7th ed. 1999)

¹⁷ Retrieved from <https://gulfbusiness.com/the-rapidly-changing-music-industry-landscape/>, 11 December 2022

entertainment that many people enjoy throughout time. Especially in this modern era, songs have a great impact on their creators because they have business potential that can benefit the songwriters.¹⁸

Through the overwhelming violations pertaining to copyright in the musical industry, this paper aims to discuss the (1) legal protection for copyright holders against illegal users who uses their works for commercial purposes without permission and does not pay royalties, and the (2) the legal consequences for illegal users who do not fulfill economic rights of the copyrights holder in the form of royalties.

B. 1. Legal Protection for Copyright Holders Against Illegal Users Who Uses Their Works for Commercial Purposes Without Permission and Does Not Pay Royalties

In the domain of musical works, there are typically two kinds of users, namely, non-commercial and commercial users. Non-commercial users refer to those who listen or use the music for their own enjoyment, while commercial users are those that use the musical works for commercial purposes to attain economic benefits.

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

¹⁸ Bambang Kesuo, *Pengantar Umum Mengenai Hak Atas Kekayaan Intelektual (HAKI) Di Indonesia* (Jakarta: Rineka Cipta, 1987), 76.

or material form according to the creator's wishes.¹⁹ 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 in accordance with 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,²⁰ whereas Economic Rights are the Copyright Holder's exclusive rights to obtain economic benefits from Works. These rights are granted through licenses and royalties. The economic rights that copyright holders can exercise in accordance with Article 9 paragraph (1) for their creations are:

- a. Publishing;
- b. Reproducing;
- c. Translating;
- d. Adapting, arranging;
- e. Sharing;
- f. Showing;
- g. Announcing;
- h. Communicating; and

¹⁹ Henry Soelistyo, *Hak Cipta Tanpa Hak Moral* (Jakarta: PT Raja Grafindo Persada, 2011), 12.

²⁰ Article 5 (1) of Law no. 28 of 2014

i. Renting.

To exercise the economic rights of the copyright holder in accordance with Article 9 paragraph (2) of Law Number 28 of 2014, the user must obtain permission from the creator, and when used for commercial purposes other than those requiring a permit, the user is required to pay royalties or compensation to the creator in accordance with Article 80 paragraph (3) of Law Number 28 of 2014 concerning Copyright, and the amount of royalties is regulated in accordance with Article 80 paragraph (3) of Law Number 28 of 2014 concerning Copyright. This is because songs and music are legally protected as objects or creations, and they cannot be used arbitrarily. Hence, any actions contrary to this may result in legal action.

Therefore, when it comes to legal protection for the copyright holder against Illegal Users Who Uses Their Works For Commercial Purposes Without Permission And Does Not Pay Royalties, it can be found in Law Number 28 of 2014 concerning Copyright in Article 40 paragraph (1) letter d, which states that protected works include works in the scientific field, arts, and sastra consisting of songs and/or music with or without text. However, if the musical work's copyright protection period has expired, the song will no longer have copyright protection. The referred to work is protected as a separate work, without prejudice to the original work's copyright. This is in accordance with Article 58 paragraph (1), which states that the copyright protection period for songs is said to be valid for the creator's life and continues for 70 years after the creator's death, beginning January 1 of the following year.

Furthermore, copyright holders' protection piracy and reproduction. The notion is emphasized in Article 1 number 23 of Law No. 28 of 2014, which stipulated that piracy is the illegal

reproduction of Works and/or Related Rights products, as well as the widespread distribution of goods resulting from the duplication for economic gain. Any party who then illegally uses it is infringing on your rights as a creator. Piracy is also commonly linked with reproduction or duplication. Article 1 number 12 of Law No. 28 of 2014 defined illegal reproduction as the process, act, or method of making one or more copies of a work and/or phonogram in any way and in any form, permanently or temporarily. Such protection against any actions relating to piracy or duplicating a creation without permission are listed in Article 113 paragraph (3) and (4) of Law No. 28 of 2014, which elaborated the sanction posed to the users. These laws act to guarantee the creator's exclusive control and enjoyment of the results of his work, and, if necessary, with the assistance of the state, to enforce the law. As a result, legal protection is critical for copyright owners, both individually and collectively, because the law ensures that society's interests are protected.²¹

B. 2. Legal Protection for Copyright Holders Against Illegal Users Who Uses Their Works for Commercial Purposes Without Permission and Does Not Pay Royalties

Every copyrighted work contains economic rights. This means that if there are any other parties or users who want to use the music for commercial purposes are obligated to fulfill the economic rights by paying royalties to the LMKN or Yayasan Karya Cipta Indonesia ("YKCI") as well as acquire the permission of the creator or the copyright holder.²² The reason behind such requirements is due to the fact that music is a human intellectual work that is legally

²¹ Tim Lindsey et al., *Hak Kekayaan Intelektual Suatu Pengantar* (Bandung: PT Alumni, Bandung, 2005), 59.

²² Tim Lindsey, *Hak Kekayaan Intelektual* (Bandung: PT Alumni Bandung, 2006).

protected by the law. Thus, asking permission and paying royalties is an obligation that arises from using musical works for commercial purposes.²³

Copyright infringement towards musical works, does not only damage the local or domestic music industry, but also has a direct negative impact on the creators or copyright holders. This is due to the fact that the creators or copyrights holders have exerted their energy, creative thinking, hard work, and production costs in order to produce their musical works, but parties who uses these copyrighted musical works for commercial purposes illegally are able to reap the economic benefits without having to exert any efforts, which is unfair for the creators. Within this context, there are three types of illegally using copyrighted musics, namely:²⁴

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 released 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 copyrights holder, LMKN or YKCI as its endorsee is authorized to issue a letter notifying that the musical works used by a party is protected by the law, and thus subject to a royalty payment.

²³ *Ibid.*

²⁴ *Ibid.*

Within this context, letters that can be issued by LMKN or YKCI are:²⁵

1. Introduction Letter (*surat pemberitahuan*)

A letter consisting of an introduction that the musical works used by the user is a song/music that is protected by the law.

2. Reminder Letter (*surat untuk mengingatkan*)

A letter that is aimed to remind users that they have an obligation to pay royalties that is regulated under Law No. 28/2016 concerning Copyrights, which will have legal consequences, if the user refuses to do so.

3. Warning Letter (*surat peringatan*)

A letter of warning will be issued by the LMKN or YKCI, if the previous letters are disobeyed or ignored.

If after the issuance of the series of letter, the user still refuses to fulfill the payment of royalties or to takedown the copyrighted musical works, then LMKN or YKCI has the authority to report the user to the authorities for violating the economic rights of the creator or copyrights holder that are protected under Article 9 paragraph (1) of Law No. 28/2016, in which paragraph (3) of the same article explains that if a party was to use the musical works for commercial purposes without permission, then they will be considered to have violated the economic rights of the creator or copyrights holder. The consequences of violating the aforementioned articles are regulated under Article 113 paragraph (1), (2), (3) and (4) of Law No. 28/2016, which states that:

²⁵ Yosepa Resent and Siti Mahmudah, ed. Etty Susilowati, Implementasi Lembaga Manajemen Kolektif Nasional (LMKN) Sebagai Collecting Society Dalam Karya Cital Lagu (Menurut Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta), no.2 (2016).

Article 113 paragraph (1)

“Every person who violates the economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use is punishable by imprisonment for a maximum of 1 (one) year and/or a maximum fine IDR 100,000,000 (one hundred million rupiah).”

Article 113 paragraph (2)

“Everyone who without rights and/or without permission of the creator or copyright holder violates the creator's economic rights as intended in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be punished with a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000.000,00 (five hundred million).”

Article 113 paragraph (3)

“Everyone who without rights and/or without permission of the creator or copyright holder violates the creator's economic rights as intended in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for commercial use shall be punished with a maximum imprisonment of 4 (four) years and/or criminal fine amounting to Rp. 1,000,000,000.00 (one billion rupiah).”

Article 113 paragraph (4)

“Everyone who meets the elements as referred to in paragraph (3) which is carried out in the form piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp 4.000,000,000.00 (four billion rupiah).”

C. Conclusion

In conclusion, the implementation of copyrights in Indonesia is based upon the declarative principle, which means that creations that are in tangible forms will receive legal protection. This legal

protection is regulated under Law No. 28/2016 which ensures and guarantees the economic rights of creators and copyright holders. Through this particular law, it is regulated that other parties who use copyrighted musical works for commercial purposes must pay a royalty fee and acquire the permission of the creator or copyright holder. In addition to that, Law No. 28/2016 also regulates upon the consequences of not fulfilling the aforementioned requirements, which are imprisonment and fines. However, even though such clear laws and regulations have been established, there are still a lot of people that commit piracy and overlook the need to fulfill the economic rights of creators.

A suggestion that the author has to the government is to socialize more on the proper method of using a copyrighted work. By doing so, the authors hope that the public will become more aware of the economic rights that the creator holds over their creation and appreciate the hard work that is put into these musical works by paying royalty fees and asking the creator or copyright holders permission before using their works.

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