

COPYRIGHT INFRINGEMENT IN VIRTUAL CONCERTS

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Abstract

So far, technological advances have encouraged the formation of new patterns of life, with creative and innovative ideas, concepts, and thoughts. In the music industry, for example, various digital media and virtual concert venues have developed as a form of breakthrough in dealing with various obstacles due to the Covid-19 pandemic. Virtual concerts are interesting to study because they allow the Author to announce his creation for the first time as the basis for the existence of a Copyright and perform musical performances, including choreographed works. However, on the other hand, it eases other people to fix or record the virtual concert without permission, then distribute it for commercial purposes. In this regard, normatively, the Copyright Law has norms to prohibit such illegal acts. Having said this, this research is addressed to examine how the regulation and implementation of the Copyright Law is for the choreographic works performed in Virtual Music Concerts. The type of research utilizes normative juridical with empirical juridical support. In the perspective of legal certainty, the results of the study conclude that choreographic works do not include works that are managed by the National Collective Management Organization's potential royalty revenue, as is the case with song and/or musical creations. Therefore, to achieve legal certainty in copyright protection, the authority of the National Collective Management Organization needs to be broadened to include the management of royalties for the use of choreographic works for commercial purposes which has implications for the revision of the Copyright Law and Government Regulation No. 56/2021.

Keywords: Copyright; Virtual Concert; Royalty

A. Introduction

Normatively, Copyright is the exclusive right of the Author that arises automatically based on declarative principles after a Work is manifested in its tangible form.¹ In the perspective of declarative principles, technological advances make it easier for Authors to obtain Copyright protection, especially in making publications² of copyrighted works including

¹ Article 1 paragraph 1 *Law No. 28 Year 2014*.

² Publication is the reading, broadcasting, exhibition, of a work by using any means, whether electronic or non-electronic or doing so in any way so that a work can be read, heard, or seen by others, Article 1 paragraph 11, *Ibid*.

Song and/or Musical Creations and related Choreographic works. The creation can be announced online by uploading it through various Over the Top (OTT) services such as YouTube, Instagram, and other OTT services. In addition, performing rights for song and/or music and choreography works can be implemented through music concerts.

The Coronavirus Disease 2019 (Covid-19) pandemic is a global phenomenon that has had impact on social life. Not a few music events were affected, including the cancellation of the bands, Lacuna Coil and Vulvodynia, at the Hammersonic Festival in March 2020. The organizers had to postpone the Hammersonic event to 2021.³ Furthermore, a study commission by South African Cultural Observatory showed that 90% of the live music industry lost income due to Covid-19, and 25% indicated that they would not be able to continue with any elements of their business under the lockdown.⁴ This phenomenon has had a detrimental impact on the music industry, including music concerts which serves as a source of income for performers, authors, and concert organizers. To get around this, the music industry has embraced livestreaming and is using virtual concert as an alternative.

Since the beginning of the Covid-19 pandemic, the Korean Pop (K-Pop) music industry has massively organized Virtual Concerts and launched a new platform for holding such concerts. Spectators can create accounts from certain platforms and purchase tickets to gain access to virtual concerts. In such an event, the choreography becomes the main attraction and holds the same importance as the song. Among them, the choreography of the song "Gangnam Style" performed by PSY is very popular and danced in various countries. In addition, the trend of "dance challenge" through the TikTok platform is also able to raise the popularity of a song. Such developments prompted the need to strengthen the protection of choreographed works.

In accordance with the declarative principle, the Author without releasing or registering his Work can own the Copyright from holding a concert, either virtually or conventionally.

³ Dadang Dwi Septiyan, "Perubahan Budaya Musik di Tengah Pandemi Covid-19," *Jurnal Musikolastika*, no. 1 (2020): 32, <https://doi.org/10.24036/musikolastika.v2i1.37>.

⁴ World Intellectual Property Organization, "The Impact of COVID-19 Pandemic on Creative Industries, Cultural Institutions, Education and Research", Accessed June 21, 2022, https://www.wipo.int/edocs/mdocs/copyright/en/wipo_cr_covid_19_ge_22/wipo_cr_covid_19_ge_22_study.pdf

Admittedly, commercial Virtual Concert is not a temporary trend. Since 2021, several artists have started to hold hybrid concerts, combining conventional concerts with virtual concerts. For example, in March 2022, K-Pop group BTS held a conventional and virtual “Permission to Dance” concert at Seoul's Olympic Stadium.⁵ The label that houses BTS, Big Hit Music, announced that the concert managed to gather 2,460,000 spectators consisting of 45,000 spectators at the Olympic Stadium, 1,020,000 online viewers, and 1,400,000 spectators in theaters.⁶ This means, holding virtual concerts provides great benefits and can become a model for future concerts. In short, advances in technology open up opportunities and at the same time great profit potential for Authors and Performers. Along with that, Virtual Concerts open opportunities for people to commit copyright infringement such as broadcasting and/or recording without permission. For instance, as the Covid-19 forced people to meet virtually via video communication platforms that features screen-sharing technology such as Zoom Meeting, it can also create copyright issues as protected content can be shared illegally.⁷ However, the act towards the copyright infringement is seen as a violation of Copyright on song and/or music creations. This means that Choreographic Creation is still neglected and has not been properly managed in the music show business.

Based on the background of the problem above, this article is structured to examine the root causes of the main problems regarding: 1) How is the regulation of Copyright for Music and Choreography in Indonesia; and 2) How is Copyright protection implemented in Virtual Concerts.

In the practice of legal research, the types of legal research are generally divided into 3 types, namely: a) normative legal research; b) normative-empirical legal research; and c)

⁵ Sage Anderson, “Can’t Make It to Seoul? Here’s How to Watch BTS’ Permission to Dance on Stage Concert Online,” *Rolling Stone*, March 11, 2022, <https://www.rollingstone.com/music/music-news/stream-bts-permission-to-dance-on-stage-seoul-concert-online-1320288/>.

⁶ Kistyarini, “Konser BTS Permission To Dance On Stage – Seoul Ditonton 2,46 Juta Orang,” *Kompas*, March 15, 2022, <https://www.kompas.com/hype/read/2022/03/15/205936066/konser-bts-permission-to-dance-on-stage-seoul-ditonton-246-juta-orang>.

⁷ Manoranjan Mohanty, Riyanka Jena, Priyanka Singh, “Can Zoom video conferencing tool be misused for real-time cybercrime?”, *Wiley Interdisciplinary Reviews: Forensic Science*, no. 1 (2021): 2, <https://doi.org/10.1002/wfs2.1419>.

empirical legal research.⁸ The type of research used is normative legal research which is supported by empirical research. Its direction is to examine the regulatory norms and the real implementation of positive legal provisions. The positive law in question is the Law No. 28 Year 2014 (Copyright Law) which is related to the practice of organizing Virtual Concerts in Indonesia and abroad and its comparison. The types of data used include secondary data through literature studies which is supported by primary data obtained through interviews. Then, the approaches used in this research are the statute approach and the comparative approach analyzed by qualitative methods.

B. Discussion

B.1. Music and choreography copyright regulations in Indonesia

As mentioned above, Copyright protection is declarative. This means that the work automatically gets Copyright protection since the work is completed without the need to register it first. However, there are some exceptions to protection as regulated in Article 41 of the Copyright Law, namely:

- a. The results of the work that have not been realized in tangible form;
- b. Any ideas, procedures, systems, methods, concepts, principles, findings, or data even though they have been expressed, stated, described, explained, or combined in a Work; and
- c. Tools, objects, or products that are created only to solve technical problems or whose form is only intended for functional needs.

In line with the declarative principle, the provisions of Article 64 paragraph (2) of the Copyright Law affirm that the Registration of Works and Related Rights products is not a requirement to obtain Copyright and Related Rights. It is recognized that the recordation of a work is important when a dispute arises regarding the status of ownership of the right to the work as initial evidence in court.

⁸ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 29.

In relation to the declarative principle, technological advances make it easier for songwriters to announce their work by uploading their recordings to music platforms such as Soundcloud, YouTube, and others. Authors can also hold virtual concerts to introduce their songs to the public. With the use of digital media, Authors can obtain Copyright recognition and can enjoy protection of their exclusive rights.

The provisions of Article 40 paragraph (1) letters d and e of the Copyright Law confirms that songs and/or music including choreography are protected works. Normatively, Intellectual Property Rights are exclusive and absolute which means this right can be defended against anyone and the owner has a monopoly right on their work.⁹ By law, copyright holders have exclusive rights which include moral rights inherent in the Author and economic rights that can be enjoyed by the author but are generally owned by the producer. In this context, apart from the exclusive rights of choreographers and songwriters, related rights are also regulated, namely exclusive rights for performers, namely dancers and singers, phonogram producers, and broadcasters.¹⁰

In the context of managing economic rights, the Copyright Law has regulated provisions regarding licenses. A license is a permit granted by the Author or Related Rights Owner to another party as outlined in a written agreement regarding the rights and obligation of both parties, including a clause on obligation to pay royalties.¹¹ Unless agreed otherwise, the licensee has an obligation to provide royalties to the licensor for the duration of the license which does not exceed the term of the copyright and related rights. In the license agreement, the amount of royalties and the procedure for giving royalties are determined based on an agreement in accordance with the prevailing practice and fulfills the element of justice.

⁹ Budi Agus Riswandi and Siti Sumartiah, *Masalah-masalah HAKI Kontemporer* (Yogyakarta: Gitnagari, 2006), 3-4.

¹⁰ Article 1 paragraph 5 *Law No. 28 Year 2014*.

¹¹ Hulman Panjaitan and Wetmen Sinaga, *Performing Right Hak Cipta atas karya Musik & Lagu serta Aspek Hukumnya (Edisi Revisi)* (Jakarta: UKI PRESS, 2017), 136.

B.1.1. Mechanism of royalty management for song and/or music copyrighted works

Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties (Government Regulation No. 56/2021) was drafted with the aim of providing legal protection and certainty to Authors, Copyright Holders, and Related Rights owners. The goal is to optimize the management of royalties in the use of songs and/or music by users for commercial purposes, including in analog and digital forms. Categorically, its scope includes Copyright and Related Rights. In the field of Copyright, the use of public services that are commercial in nature include: performances of works, announcements of creations, and communication of works. In the field of Related Rights, the use of commercial public services includes broadcasting and/or communication of performers' show and the provision of wired or wireless phonograms that can be accessed by the public. Royalty payments to Authors, Copyright Holders, and/or Related Rights Owners are made through the National Collective Management Organization. As stated in Article 3 paragraph (2) letter c Government Regulation No. 56/2021, music concerts are a form of commercial public service. This means, music concerts are the object of royalty management.

In order to implement royalty management, it is necessary to have integrated data in the song and/or music data center used by the National Collective Management Organization to administer an orderly, transparent and accountable management of royalties. Among other things, a license application for the commercial use of songs and/or music is submitted through the National Collective Management Organization which is then registered with the Ministry of Law and Human Rights. Its implementation is accompanied by the obligation to provide reports on the use of songs and/or music to the National Collective Management Organization through the Song and/or Music Information System.¹² In this regard, the provisions of Article 10 paragraph (1) Government Regulation No. 56/2021 states that Royalty Subject is any person who makes commercial use of songs and/or music in the form of public services and is

¹² Article 9 paragraph (3) *Government Regulation No. 56/2021*.

commercial in nature under the License Agreement. The problem is, the Government Regulation does not stipulate a License agreement for commercial use for performances. However, such use is still subject to the obligation to pay royalties through National Collective Management Organization.

To support the legality of royalty collecting from users, every Author, Copyright Holder, and Related Rights owner must become a member of the Collective Management Organization. Such membership is interpreted as granting authority to the Collective Management Organization to administer, manage, and collect royalties from commercial users. Furthermore, in accordance with its function, the National Collective Management Organization will coordinate and determine the amount of royalties that are the rights of each Collective Management Organization in accordance with customs and based on justice. The royalty scheme set by the National Collective Management Organization will then be ratified by the Ministry of Law and Human Rights.¹³ The amount of the royalty rate can be seen from the Decree of the Ministry of Law and Human Rights No. HKI.2.OT.03.01-02 of 2016 concerning Ratification of Royalty Rates for Users who make Commercial use of Works and/or Music and Song-related Rights Products. The Ministry of Law and Human Rights ratified a number of National Collective Management Organization decisions regarding the amount of royalties in every form of public service.

B.1.2. Choreography copyrights

Sahat Sidabukke¹⁴ as a practitioner explained that in practice, the choreographer receives his rights through a “free agreement” with the producer. The detachment agreement in question is an agreement between a choreographer and a producer by paying in full at the beginning of the agreement followed by a transfer of economic rights so that the choreographer only has moral rights for a period of 25 (twenty-five) years. From a legal perspective, a

¹³ Article 13 paragraph (1), (2), and (3) *Government Regulation No. 56/2021*.

¹⁴ Interview with Sahat Sidabukke, advocate and legal consultant at Sidabukke & Partners. November 13, 2021.

“disposal agreement” has the same meaning as a sales agreement.¹⁵ In response to such a practice, the provisions of Article 18 of the Copyright Law stipulates the precondition of having to be paid in full so that there is a transfer of Economic Rights on the creation but the rights will be transferred back when the agreement reaches a period of 25 (twenty five) years.¹⁶ The problem is that Article 18 of the Copyright Law only stipulates a cut-off sale agreement for the creation of books and/or all other written works and songs and/or music with or without text. This means that the Copyright Law does not regulate the same provisions for choreographic creations.

In practice, the use or transfer of the Economic Rights of choreographic creations can be carried out through a sales agreement or through a license. The difference is that in a final sale agreement there is a transfer of economic rights, and the Author only gets a fee once and no longer receives royalties for his creation.¹⁷ The end-of-sale agreement is enforced because there is a concern that the choreographic creation will not sell if it has been used from a business perspective because the disposal agreement is considered more profitable for the user of the creation. Users prefer to pay the fee all at once and can enjoy the commercial value without being bothered by the percentage of sales profits.¹⁸ Meanwhile, the Author is also more concerned with instant profits, so that they can then focus on creating new works.

According to the Copyright Law, song and/or music copyrighted works and choreographic copyrighted works are works that have performing rights. Each work relates to the rights of the Author, Copyright Holder, and Related Rights Owner. In practice, there is an imbalance in the management of royalties because there is no royalty management institution such as song and/or music copyrighted works. South Korea, which has many choreographed works, does not yet have a special institution that manages Royalties for these works of art. In

¹⁵ A cut-off sale agreement is an agreement that requires the Author to submit his work through payment in full by the buyer so that the economic rights over the work are transferred entirely to the buyer indefinitely, or in practice known as sold flat, elucidation of Article 18 *Law No. 28 Year 2014*.

¹⁶ Article 18, *Ibid*.

¹⁷ Erna Tri Rusmala Ratnawati, “Akibat Perjanjian Jual Beli Hak Cipta dengan Sistem Jual Putus (*Sold Flat*),” *Jurnal Widya Pranata Hukum*, no. 2 (2019): 159, <https://doi.org/10.37631/widyapranata.v1i2.44>.

¹⁸ *Ibid*.

the country of ginseng, choreographers also receive royalties or fees in full and there is no official set rate.¹⁹

As with song and/or music copyrighted works, for every video clip that includes a choreographed creation in a commercial location, the choreographer has the right to receive royalties for playing the video clip. In the context of a music concert, the choreographer is entitled to receive a percentage of the profit from ticket sales based on the rates set by the National Collective Management Organization. The application of a "disposal agreement" on choreographic copyrighted works should be stopped. In the future, choreographic works must be treated the same as song and/or music copyrighted works and there is no separation in performing rights.

B.2. Copyright protection implemented in virtual concerts

A virtual concert can be interpreted as a performance by musicians individually or in groups without face to face but can be enjoyed by the audience like a live performance. Virtual concerts are a revolution during the Covid-19 pandemic which is now known as online concerts. Many such virtual concerts are held for free or with ticket sales.

The free virtual concerts are generally carried out for promotion of new album releases, entertainment for fans, and fundraising such as solidarity action concerts by Indonesian musicians with the label "Concert #dirumahaja". In that event, Najwa Shihab together with Narasi TV managed to raise funds of Rp. 9,000,000,000.00 (nine billion rupiah) to be distributed to vulnerable groups, especially health workers and small communities who are forced to work outside the home.²⁰ As for the commercial Virtual Concert with a lot of ticket sales in the K-Pop music industry. SM Entertainment, the agency that houses a number of well-known K-Pop artists such as BoA, EXO, NCT, and SuperM together with Naver launched the first virtual concert hosting platform under the name "Beyond Live". This platform was first

¹⁹ Joy Kim, "Potential Crisis and Opportunity in K-pop Choreography Copyright," *International Journal of Advanced Culture Technology*, no. 3 (2021): 255, <https://doi.org/10.17703/IJACT.2021.9.3.253>.

²⁰ "Solidaritas Lawan Corona: 28 March 2020," Narasi, accessed October 29, 2021, <https://www.narasi.tv/konser-musik-dirumahaja/28-maret>.

used in April 2020 to showcase the SuperM group and managed to reach more than 75,000 viewers.²¹ In addition, BLACKPINK under YG Entertainment at the end of January 2021 held a commercial Virtual Concert through YouTube and managed to get 280,000 viewers.²² This concert is interesting to note because BLACKPINK performed the Original Song and Choreography, Cover Version Song, and one of the BLACKPINK members announced her composition song for the first time.

To organize a commercial Virtual Concert, the organizer needs to pay attention to important things, such as licensing and royalty payments. In terms of licensing, Ellora Sukardi²³ reminded that there are different points of view that need to be considered, namely: the original song and the cover version. In practice, holding concerts will be easier to perform original songs because the Performers already have permission from the publisher, management, and producer. In addition, Virtual Concert also allows songwriters to announce their creations. For example, even though ROSÉ as a member of BLACKPINK has not officially released her song, based on declarative principles, ROSÉ has obtained the Copyright for her song ever since she performed it “in front of” a virtual audience of 280,000. Through that virtual publication, she is entitled to obtain Copyright protection. In this regard, a virtual concert that has good audio and visual quality invites other parties to fix and reproduce it without permission.

Furthermore, the cover song concert only featured songs created by other people. By law, if it is not for commercial purposes, it is not considered a copyright infringement.²⁴ To be sure, the creation and dissemination of Copyright content by displaying cover songs or dance covers through digital technology is often considered as an appreciation. Many authors feel happy and let the cover version be made because it can increase the popularity of their work.

²¹ IQ, “Beyond Live: K-Pop band SuperM sell 75,000 virtual tickets,” IQ, April 27, 2020, <https://www.iq-mag.net/2020/04/beyond-live-k-pop-band-superm-sell-75000-virtual-tickets/>.

²² Tarida Angelina and Riki Noviana, “YG Entertainment Announces Their Investment In Big Hit Entertainment’s Venewlive Live Streaming Platform,” VOI, February 10, 2021, <https://voi.id/en/lifestyle/32083/yg-entertainment-announces-their-investment-in-big-hit-entertainment-s-venewlive-live-streaming-platform>.

²³ Interview with Ellora Sukardi, lecturer at Faculty of Law, Universitas Pelita Harapan. November 8, 2021.

²⁴ Article 43 paragraph d *Law No. 28 Year 2014*.

To hold a commercial virtual concert, the organizer must still ask for permission from the Author and pay royalties. The rest, if the organizer fixes it and distributes it commercially, for that it is necessary to make a license agreement with the Author.

As far as royalties are concerned, there are mechanisms in place. According to Sahat Sidabukke²⁵, the party responsible for or the intermediary in licensing arrangements is the agency/label which is now generally the organizer of the Music Concert. This agency is responsible for paying royalties calculated from ticket sales through the National Collective Management Organization. However, in practice not all Authors claim royalties from the appearance of the Cover Version. Ellora Sukardi²⁶ once held an orchestra concert using the Cover Version and sold a number of tickets. In the event, the songwriter gave permission without paying royalties. This means as an Exclusive Right, the Author can require users to pay royalties or nothing.

In accordance with National Collective Management Organization Decision Number: 20160512KM/LMKN-Pleno/Tarif Royalti/2016 concerning Ratification of Royalty Rates for Music Concerts, the determination of the amount of royalties for Music Concerts is divided into Music Concerts with ticket sales and free Music Concerts. The royalty rate for Music Concerts with ticket sales is calculated based on the gross ticket box sales multiplied by 2% (two percent) plus complimentary tickets (complementary tickets) multiplied by 1%.²⁷ Meanwhile, the royalty rate for free music concerts is calculated based on the music production cost multiplied by 2%. The provisions of the royalty rates are currently in effect.

B.2.1. Copyright infringement in organizing virtual concerts

In organizing a Virtual Concert, there are several potential violations of the Copyright Law. First, Actions in the form of Reproduction²⁸ and/or Commercial Use of Works without

²⁵ Interview with Sahat Sidabukke, advocate and legal consultant at Sidabukke & Partners. November 13, 2021.

²⁶ Interview with Ellora Sukardi, lecturer at Faculty of Law, Universitas Pelita Harapan. November 8, 2021.

²⁷ Article 1 paragraph (4) *Keputusan LMKN Nomor: 20160512KM/LMKN-Pleno/Tarif Royalti/2016 tentang Tarif Royalti untuk Konser Musik*

²⁸ Reproduction is the process, act, or method of duplicating one copy of a Work and/or phonogram or more by any means in any form, permanently or temporarily, Article 1 paragraph 12 *Law No. 28 Year 2014*.

the permission of the Author or Copyright Holder.²⁹ Second, actions that violate the Economic Rights of Performers, such as broadcasting or communicating on the Performers' performances, fixation of the performances that have not been fixed, duplicating the fixation results of their performances in any way or form, distributing the fixation of the performance or its copies, renting the fixation to the public, and the provision of publicly accessible show fixations.³⁰ Third, acts that violate the economic rights of the Phonogram Producer, such as duplicating the phonogram in any way or form, distributing the original phonogram or its copy, renting to the public a copy of the phonogram, and providing publicly accessible phonograms with or without cables.³¹

Based on the above provisions, it is possible to identify forms of violations or potential violations in the implementation of Virtual Concerts. First, unauthorized reproduction in MP3/Phonogram format which is considered to violate the economic rights of the Author/Copyright Holder, Performer, and Phonogram Producer. Doubling is done, both for virtual concerts and conventional concerts. They fix the results of the music concert into a phonogram and then sell it physically (CD) or upload it on music platforms such as Spotify, Apple Music, and others. This action violates the provisions of Article 9 paragraph (3) of the Copyright Law. Before the virtual concert era, a person who wanted to reproduce without permission had to wait for the release of the original phonogram or live album on CD and then duplicated and uploaded to various platforms. Fixation and reproduction without permission is considered a violation of Article 23 paragraph (2) letter b of the Copyright Law. Several platforms that are often used to upload illegal fixations like that include YouTube, Soundcloud, Spotify, and Google Drive. In addition to violating Article 9 paragraph (3) and Article 23 paragraph (2), the perpetrator's actions also violate the provisions of Article 24 paragraph (2) of the Copyright Law.³²

²⁹ Article 9 paragraph (3), *Ibid.*

³⁰ Article 23 paragraph (2), *Ibid.*

³¹ Article 24 paragraph (2), *Ibid.*

³² The provisions of Article 24 of the Law No. 28 Year 2014 states that: "The economic rights of a Phonogram Producer include the right to implement it themselves, to grant permits, or to prohibit other parties from doing: a) reproduction of Phonograms in any way or form; b) distribution of the original phonograms or copies thereof; c)

Second, as with the phonogram of Live Albums, one can fix and sell concert videos on DVD. According to the Copyright Act, such rights only belong to performers who can collaborate with platforms like Netflix to launch concert films. However, along with the trend of virtual concerts, one can easily reproduce with the screen-recording method or other methods which then upload the resulting video to the YouTube platform or Google Drive. This clearly shows a violation of the rights of the Author or Copyright Holder and Performer.

Third, broadcasting without permission or illegal live streaming which can generally be found openly on live streaming platforms such as Twitch. Apart from that, it can also be done behind closed doors via the Zoom platform with the screen sharing method. For example, a person who has the access of BLACKPINK's Virtual Concert that costs at least \$29.99³³, can hold a Zoom Meeting and shares the screen among 10 more person. This scenario would bring a loss for at least \$299.9 that affects both Copyright owners and Related right holders. In accordance with the provisions of Article 54 letter a of the Copyright Law, the Government has the authority to prevent infringement of Copyright and Related Rights through information technology-based means. One of them is by supervising the act of fixation and distribution recording using any media on the Copyright and Related Rights Products. This should also apply to copyright infringement act as mentioned before that happens in Virtual Concerts. To sum it up, Copyright Law can be implemented in the above-mentioned copyright infringement acts that potentially happens in the Virtual Concerts.

B.2.2. Efforts to address digital copyright infringement

In preventing infringement of Copyright and Related Rights through information technology-based means, Article 54 of the Copyright Law states that the government is authorized to:

rental to the public of a copy of the phonogram; and d) provision of publicly accessible wired or wireless phonograms.”

³³ Rania Aniftos, “Blackpink Announces ‘The Show’ Global Livestream Concert Experience”, Billboard, June 18, 2022, <https://www.billboard.com/music/pop/blackpink-the-show-global-livestream-concert-9493117/>.

- a. Supervision of the creation and distribution of copyright infringing content and related rights;
- b. Cooperation and coordination with various parties, both at home and abroad in preventing the creation and dissemination of copyright infringing content and related rights; and
- c. Supervision of the act of recording using any media on Works and Related Rights products at the venue.

If there is an upload of a Virtual Concert without the permission of the Author as mentioned above, the perpetrator can be threatened with a criminal sentence as stipulated in Article 113 paragraph (3) of the Copyright Law.³⁴

The procedures and steps for taking action against Copyright infringement as stipulated in Article 55 and Article 56 of the Copyright Law³⁵ are further regulated by a Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Content Closure and/or or User Access Rights Violation of Copyright and/or Related Rights in Electronic Systems. Procedurally, the prosecution of infringement of Copyright and/or Related Rights through the electronic system is regulated as follows:

- a. Submission of Copyright infringement reports

Violations of Copyright and/or Related Rights carried out through an electronic system for commercial use, can be reported in writing in Indonesian to the Ministry of Law and Human Rights through the Directorate General of Intellectual Property (DJKI). The report can be made by the Author, Copyright Holder, Related Rights Owner, Copyright or Related Rights license

³⁴ The provisions of Article 113 paragraph (3) of the Law No. 28 Year 2014 states that: "Every person who without rights and/or without permission of the Author or Copyright holder commits a violation of the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

³⁵ Article 56 paragraph (2) of the Law No. 28 Year 2014 reads: "Further provisions regarding the implementation of closing content and/or access rights of users who violate Copyright and/or Related Rights in electronic systems or make electronic system services The electronic device as referred to in paragraph (1) is stipulated by a joint regulation of the Minister and the minister whose duties and responsibilities are in the field of communication and informatics"

holders, the National Collective Management Organization or the Collective Management Organization, Associations who are authorized, or other parties who are authorized.³⁶ The report will then be subjected to an administrative examination. If it meets the requirements in accordance with Article 3 paragraph (3),³⁷ the report is recorded in the register of receipt of reports of infringement of Copyright and/or Related Rights. If the report does not meet the requirements, then the report is returned to the complainant accompanied by reasons and is deemed to have been withdrawn.

b. Report Verification

The Directorate General of Intellectual Property formed a verification team³⁸ to verify the reports that have been registered. Verification of the report is carried out within a maximum period of 3 (three) working days from the date the report is recorded in the registrar.³⁹ In the event that the verification results find sufficient evidence and are deemed to meet the elements of Copyright and/or Related Rights violations, a recommendation is made in the form of closing part or all of the content that violates Copyright and/or Related Rights in the electronic system or making the electronic system services inaccessible.⁴⁰

Recommendations are submitted by Directorate General of Intellectual Property to the Ministry of Communication and Information through the Directorate General of Information Applications (DJAI) no later than 1x24 hours from the date of signing the report verification results. If the verification results are not found sufficient evidence and deemed not to meet the

³⁶ Article 2 paragraph (2) *Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Content Closure and/or or User Access Rights Violation of Copyright and/or Related Rights in Electronic Systems.*

³⁷ The report must meet the following requirements: a) the identity of the reporter; b) proof of rights to the Works and/or Related Rights Products; c) site address; d) the type and/or name of the content that violates the Copyright and/or Related Rights; e) type of violation; and f) other information regarding content that violates Copyright and/or Related Rights.

³⁸ Based on Article 8 paragraph (3) *Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Content Closure and/or or User Access Rights Violation of Copyright and/or Related Rights in Electronic Systems.* Systems, the verification team consists of the following elements: a) the Ministry of Law and Human Rights; b) Ministry of Communication and Information; and c) associations related to Copyright and/or Related Rights.

³⁹ Article 9, *Ibid*

⁴⁰ Article 10 paragraph (1), *Ibid.*

elements of Copyright and/or Related Rights infringement, the verification results are submitted by the verification team to the Directorate General of Intellectual Property and submitted to the complainant along with the reasons within a maximum period of 2x24 hours from the date the verification results were signed.

c. Closure of content and/or access rights

Closing of Content and/or Access Rights is an effort made so that content that violates Copyright and/or Related Rights on internet sites cannot be accessed.⁴¹ The Ministry of Communication and Informatics shuts down internet sites or blocks or closes Content and/or Access Rights of users who violate Copyright and/or Related Rights based on recommendations as a form of action. Recommendations can be declared urgent and not urgent. For recommendations that are declared urgent, action is carried out within a maximum period of 1x24 hours.⁴² Meanwhile, the time period for recommendations that are not declared urgent can be done no later than 5x24 hours.⁴³

The closure of content and/or user access rights is determined by the Directorate General of Information Applications which is then submitted to the Directorate General of Intellectual Property within a maximum period of 3 (three) working days from the date of stipulation.⁴⁴ In the event that the internet site closure or blocking is carried out in its entirety, the Ministry of Law and Human Rights requests a court order within 14 (fourteen) working days from the date of the closing decision and accompanied by a copy of the Ministry of Communication and Information Technology's decision.⁴⁵

d. Reopening of content and/or user access rights

Content owners and/or user access rights can apply for the reopening of their content accompanied by sufficient supporting documents as evidence for the following reasons:⁴⁶

- 1) There is no violation of Copyright and/or Related Rights;

⁴¹ Article 1 paragraph 5, *Ibid.*

⁴² Article 13 paragraph (2), *Ibid.*

⁴³ Article 13 paragraph (3), *Ibid.*

⁴⁴ Article 14 paragraph (1) and (2), *Ibid.*

⁴⁵ Article 16 and 17, *Ibid.*

⁴⁶ Article 18 paragraph (2) and (3), *Ibid.*

- 2) The existence of cooperation or permission from the parties as referred to in Article 2 paragraph (2),⁴⁷
- 3) There is a mediation process with the reporter for Content Closure and/or User Access Rights; and/or
- 4) Court Decision.

e. Legal remedies

Objections to the closure of content and/or user access rights can be submitted to the State Administrative Court.⁴⁸ The recommendation to reopen content and/or user access rights was submitted by the Directorate General of Intellectual Property to the Ministry of Communication and Information. Furthermore, the Directorate General of Information Applications will reopen content closures and/or user access rights within a maximum period of 2x24 hours from the receipt of a court decision that has permanent legal force.⁴⁹

In addition to the Copyright Law and the Joint Regulation of the Ministry of Law and Human Rights and the Ministry of Communication and Information, recording without a permit is prohibited under Law Number 11 Year 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (ITE Law). In Article 32 of the ITE Law, the following prohibitions are regulated:

- “(1) Any person intentionally and without rights or against the law in any way alters, adds, reduces, transmits, damages, removes, transfers, hides an Electronic Information and/or Electronic Documents belonging to other people or public property.⁵⁰

⁴⁷ The parties in question are: a) the Author; b) Copyright Holders; c) Related Rights Owners; d) Licensee of Copyright or Related Rights; e) National Collective Management Organization or the Collective Management Organization; f) Association that has the power of attorney; or g) Other parties who have power of attorney.

⁴⁸ Article 20 paragraph (1) *Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Content Closure and/or or User Access Rights Violation of Copyright and/or Related Rights in Electronic Systems.*

⁴⁹ Article 20 paragraph (2) and (3), *Ibid.*

⁵⁰ According to Article 48 paragraph (1) of the ITE Law, elements of this act can be subject to a maximum imprisonment of 8 (eight) years and/or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

- (2) Any person intentionally and without rights or against the law in any way transfers or transfers Electronic Information and/or Electronic Documents to the Electronic System of another person who is not entitled to.”⁵¹

Based on the description above regarding the efforts to take action against copyright infringement digitally or through electronic systems, it can be concluded that the Copyright Law previously regulated the closure of content and/or user access rights. Authors, Copyright holders, and/or Related Rights owners may report their Copyright content including virtual concerts spread in commercial electronic systems to the Ministry of Law and Human Rights. If there is sufficient evidence, the Ministry of Law and Human Rights recommends the Ministry of Communication and Information as the authorized party to close it. Then a Joint Regulation of the Ministry of Law and Human Rights and the Ministry of Communication and Information was issued which explained in more detail the procedure for closing content and/or user access rights. In contrast to the procedure in Indonesia, in South Korea it is regulated that reporting of copyright infringement can be directly reported to the platform provider to take actions in the form of closing accounts, deleting illegal content, and reopening.⁵² This means, in terms of time, prosecution can be carried out more quickly. However, the platform provider can be relieved of its responsibility to take such action if it has previously made a public warning that the platform provider imposes responsibility for Copyright infringement on other parties.⁵³

In South Korea, the parties authorized to take action against copyright infringement are the Ministry of Culture, Sports, and Tourism (MCST) and the South Korean Copyright Commission (KCC). KCC operates an Online Copyright infringement reporting portal. Another difference with Indonesia, anyone can report copyright infringement content through the portal. Interestingly, KCC provides a monthly incentive program for whistleblowers who report copyright infringement the most in the form of coupons or gift cards with a maximum

⁵¹ According to Article 48 paragraph (2) of the ITE Law, elements of this act may be subject to a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

⁵² Article 103 *South Korea Copyright Act*.

⁵³ Korean Copyright Commission, *Introduction to Korean Copyright System* (Gyeongsang: Korean Copyright Commission, 2015), 67-68.

value of 3 million won or around 35 million rupiah per person annually.⁵⁴ Internet users' involvement in reporting copyright infringement can increase public awareness of the importance of copyright protection.

Meanwhile, with the speed of content dissemination through social media and such reporting procedures, the procedure for closing content and/or user access rights in Indonesia is not fast enough. However, in the perspective of Copyright, the action against the closure of content and/or Copyright must still be accompanied by strong evidence. Moreover, for the sake of legal certainty, efforts to open up user access rights must also be regulated for perpetrators who are proven not to have violated Copyright and/or Related Rights. So far, the effectiveness of the regulation on closing content and/or user access rights can be seen from the decision by the Ministry of Communication and Information to close 360 internet content in early 2021, including copyright infringement. Meanwhile, throughout 2020 the Minister of Communication and Information has closed 2,859 content that violates Intellectual Property.⁵⁵

C. Conclusion

The trend of Virtual Concerts makes it easier for people to access, fix and distribute it illegally. It means, there is an urgency to strengthen the provisions regarding choreographic works. Royalties on song and/or music creations have been specifically regulated in Government Regulation No. 56/2021. However, there is no regulation or institution that manages royalties for choreographic creations. In practice, only "disposal agreements" or sale agreements are used. This means that the management of royalties on Choreographic Works is not carried out as well as the management of royalties on Song and/or Musical Works even though both have performing rights. The enforcement of a disposal agreement is not in line with the harmonious copyright management ecosystem. Organizing commercial Music Concerts, both conventionally and virtually, requires permission and at the same time payment

⁵⁴ Intellectual Property Office, *International Comparison of Approaches to Online Copyright Infringement: Final Report* (Wales: Intellectual Property Office, 2015), 69.

⁵⁵ Detikcom Team, "Awal 2021, Kominfo Take Down 360 Konten Internet," Detik News, February 9, 2021, <https://news.detik.com/berita/d-5365981/awal-2021-kominfo-take-down-360-konten-internet>.

of royalties, for both Original Song and Cover Version. Copyright infringement on virtual concerts occurs in the form of duplication in MP3 format, duplication in MP4 format, and Illegal Live Stream. Enforcement efforts that can be taken are fully based on the Copyright Law, ITE Law, and the Joint Regulation of the Ministry of Law and Human Rights and the Ministry of Communication and Information regarding the closure of content and/or user access rights.

Government should take two concrete steps as follows: First, expand the authority of the Collective Management Organization and the National Collective Management Organization to manage royalties for choreographic works including dance. Thus, it is necessary to revise the Copyright Law and Government Regulation No. 56/2021. The direction is to revise the provisions of Article 89 paragraph (1) of the Copyright Law to add the scope of the National Collective Management Organization's authority so that it reaches the interests of the Author and Related Rights Owner in the field of choreography and dance. In line with that, changing the title of Government Regulation No. 56/2021 to "Management of Copyright Royalties for Song and/or Music and Dance or Choreography". Second, increasing the use of Technological Control Means to Protect Copyrights. In this case, the Government needs to strengthen supervision of recording without permission, including the fixation of virtual concerts.

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