

The Royalty Rights Fulfillment of the Song Creators on Musicians for Commercial Purposes

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Abstract. Copyright is a crucial part of Intellectual Property Rights (can be called IPR). It is an exclusive right of the creator which arises automatically based on declarative principles after a creation is realized in real form. In this case, Dhani Ahmad Prasetyo or more familiarly known as Ahmad Dhani, is the leader of the Dewa 19 music band, which is one of the legendary bands in Indonesia. Since Ahmad Dhani's creative work is one of the souls of the music scene in Indonesia, he forbids anyone from being a professional singer to perform his work for conventional needs. This is also in force to the former vocalist of Dewa 19, namely Once Mekel. He officially pursues a solo career who often performs Dewa 19 songs for commercial purposes without giving royalties. This is a violation of the copyright of a song and must be fulfilled by royalties towards the creator of the original musical work, namely Ahmad Dhani as the creator of the work. The research method in this study used descriptive-analytic research with normative juridical methods. Copyright is regulated in Law Number 28 of 2014 concerning Copyright. Commercial use of copyrighted works without permission will be subject to sanctions in accordance with the provisions of Article 113 paragraph (2) of Law No. 28 of 2014, with a maximum imprisonment of 3 (three) years and/or a maximum fine of IDR 500.000.000 (five hundred million rupiah)

Keywords: Royalty Fulfillment, Copyright Infringement, Unauthorized Use

INTRODUCTION

Copyright is one of the important lifeblood of Intellectual Property Rights (can be called IPR). According to Law No. 28 of 2014 concerning Copyright (hereinafter referred to as UUHC), copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations (Organization, 2018).

The exclusive right in question is a right that is intended solely for the holder, so that no other party may exploit this right without the permission by the copyright holder (Maramis, 2012). A song creation is a work of creation that is born based on intuition and understanding that comes from an individual or more so that it can be arranged using music to be acceptable to the ears of the public and in this case, the use of a song creation is an individual right that not everyone can use, which is called *mechanical right* or in terms of *performing right* (Fadhilah, 2022).

There are numerous copyright violations of music and song copyrighted works in the field of singer performance or procurement without permission. Viewed from the aspect of commercial needs, copyright infringement in the field of music is a copyright violation both in the aspect of using the work or in the use as a musical copyright work as performance of a musician (Febry Saputra, 2021).

In this case, three theories put forward by Robert M. Sherwood are relevant in protecting a copyrighted work as follows Dimiyati (2018):

1. *Reward Theory*, posits that individuals should be granted intellectual property rights as a form of acknowledgment and appreciation for their diligent efforts, warranting protection for their work.
2. *Incentive Theory*, states that someone needs to be granted Intellectual Property Rights as a means of providing incentives. It is believed that such incentive can increase exploration and research, thereby positively influencing the creators of musical compositions.
3. *Risk Theory*, explains that granting Intellectual Property Rights is essential, as in the case of copyrighted works, there is a possibility that someone else may have already produced similar content. Therefore, legal protection for the work becomes necessary to mitigate the risk of unauthorized used or duplication (Effendy, 2016).

In copyright, someone creates with the creator and the resulting creative work that is called a Creation. Copyright is useful for providing protection to someone's work or creation. One of the works protected by copyright is a song (Agus, 2020). A song means a work that is an interpretation of the thoughts and feelings of the songwriter, so that the output of the song certainly has a meaning obtained by the songwriter (Miladiyanto, 2015). This work is not only meant to interpret thoughts and feelings but can also be interpreted as a work that can be enjoyed by the general public and the feelings shared by society. In the process of making a song until it is mature, it needs to go through a very long process until the song becomes a song that can be accepted by the public, the songwriter needs to spend money, energy, hard work, and promotion, which must be done endlessly (Indriyani, Yunita, Muthia, Surniandari , & Sriyadi, 2019). Reflecting on the long process, song/music creations can be protected by copyright. There are two rights owned by the creator, namely moral rights and economic rights.

However, the actual situation is that the copyright holder provides broadcasting institutions with a permit or license for the dissemination of music and songs. Consequently, broadcasting institutions lack the authority to transfer or issue permit/licenses for music dissemination to any other parties, including aspiring musicians. The song must receive permission from the

creator of the work and pay a certain amount of royalties for commercial needs so that these both things are an obligation for users of musical copyrighted works (Ni Made Harini, I Nyoman Putu Budiarta, & Desak Gde Dwi Arini, 2021).

In 2023, there is anticipated to witness the emergence of remarkably unexpected developments. This was stated by Ahmad Dhani because vocalist Once Mekel often performed several Dewa 19 songs at commercial events, such as: Pupus, Kangen, Dua Sejoli, and Arjuna. This song is identical to Once Mekel as he is the vocalist. However, in the few years after Once Mekel decided to leave Dewa 19, Once Mekel, who often performed Dewa 19's songs, never paid royalties for the song's copyright.

Ahmad Dhani blamed the *LMKN* (National Collective Management Institute) and WAMI (Indonesian Music Arena). He firmly asked for a royalty payment report but it was never received by the creator of the work because the revamping of the *LMKN* must be confirmed because the musician must have obtained a performing rights license, which must be validated in advance by the copyright owner in this case, Ahmad Dhani as the leader of the Dewa 19 group, put a statement that whoever musicians who sing Dewa 19 songs for commercial events and all events that can generate profits for musicians. Therefore, the author discussed further regarding the fulfillment of royalty rights for song creators and musicians for commercial needs.

RESEARCH METHODS

The research method used in this research is a normative juridical research method, which was carried out by examining problems found in society. In legal events, an overview or description of the legal situation that applies in Indonesian positive law can be obtained. The method used in this research was descriptive analysis from primary and secondary legal sources. The primary legal source employed the regulations in Indonesia related to Copyright, namely Law No. 28 of 2014 concerning Copyright (can be called UUHC). Meanwhile, secondary legal sources used library sources from books and journals.

RESULTS AND DISCUSSION

Copyright on Copyrighted Works of Music and Song

Law No. 28 of 2014 concerning Copyright does not specifically mention the meaning of song or music copyright. This object is one of the works protected through UUHC as are

other objects regulated in article 40 UUHC, which is contained in Article 40 paragraph (1) sub (d) (Application et al., 2022) is the creation of songs or music with or without text. Therefore, all general rules apply to songs and/or music which also apply to other works, unless specifically stated they do not apply. In the explanation of Article 40 paragraph (1) of the UUHC, especially sub (d), it is emphasized that a song or musical work in the sense of the law is defined as one complete creative work. The complete understanding means that a song or music is an integral part of a creative work (Marbun, Azwar, & Wubdga, 2013).

Regarding the regulation of song and music copyright in the law as described above, one of the legal experts, namely Otto Hasibuan, raised the objection that what equates songs and music in this article does not cause problems. This is divided into three classifications as follows:

1. First, a song uses lyrics that come from a poem, while poetry is a literary creation that has its own protection in both the Bern Convention and the UUHC.
2. Second, a musical arrangement is a derivative work, which in the Bern Convention is protected as an independent work, but a musical arrangement is not part of a single creative work as there are derivatives of the musical arrangement.
3. Third, the UUHC recognizes that musicians are one element of actors who are holders of related rights. However, there was no further explanation as to whether the musician named as the perpetrator was a music producer or music performer or both.

Etymologically, songs and music literally have different meanings. Namely, a song is a musical unit consisting of a sequence of various notes. Thus, each song has a different form, whether the arrangement or lyrics with a different style. In practice, vocal and instrumental music has a difference. It can be sung with a singer or not, so that in the development of music starting from 1800, a lot of musical arrangements focused on tones that created calm rather than the many sentences created in a song arrangement (Yasa, Hendra, & Sukranatha, 2019).

Even though the meanings of songs and music are different, in terms of copyright, there seems to be no significant difference between the two things. Even though there are differences in international law, the Copyright Law does not regulate in detail the differences between both of them. Thus, in the sense of the Copyright Law, both forms are an object of protection that can be protected according to statutory regulations. This is related to the protection of a copyrighted work of song or music. What is often questioned is whether songs or music are protected as creations according to law (Adela & Isradjuningtias, 2022).

This problem has become a cliché so that many people sing songs that do not belong to them for commercialization of the personal needs of the musicians who perform the songs. Copyright

protection is never given to ideas or notions because creative works must have a distinctive form, is personal and show originality as a creation that was born based on ability, creativity and expertise so that the creation can be read and heard. Therefore, a song sung with an arbitrary melody and lyrics is not a creation that is protected under the law.

Regulations Regarding Song Copyright in Indonesia

Copyright Law No. 28 of 2014 concerning Copyright in Article 1 paragraph (1) defines copyright in general, where copyright is an exclusive right that arises based on declarative principles. The declarative principle is a system that does not require recording. So if the creator does not register his creation, namely the song creation, the creator has received this in full. Copyright Law No. 28 of 2014 concerning Copyright provides exclusive rights to creators, in this case, these exclusive rights consist of moral rights and moral economic rights (Albar AF, 2018).

Article 5 UUHC regulates that moral rights are rights that are eternally inherent in the creators of works with the aim of:

- a. Keep to include or not include his name on the copy in connection with the use of his work for the public.
- b. Using an alias or pseudonym
- c. Changing his creations according to appropriateness in society
- d. Change the title and subtitle of the work
- e. Defending their rights in of distortion of the work, mutilation of the work, modification of the work or anything that is detrimental to their personal honor or reputation.

When accessing or viewing music shows on several platforms today, from YouTube to television stations, the song content being broadcast always ends with the name of the composer of the music being broadcast. This is based on the UUHC contained in Electronic Copyright Information, which is one of the moral rights of the Song Creator. while the economy is regulated in article 9 UUHC, economic rights are the right to do the following:

- a. Creation Publishing
- b. Procurement of Creations, in all its forms.
- c. Translation of Creation
- d. Adaptation, Arranging, Transformation of Creation
- e. Distribution of the Work or copies thereof
- f. Creation Show
- g. Announcer of Creation
- h. Creation Communications

i. Creation Rental

Based on this explanation, exclusive rights have a valid period of time. This is based on Article 58 of Law No. 28 of 2014 concerning Copyright which states that; Economic rights are a form of appreciation for the creator's work, namely songs that can be enjoyed by the public. Considering from the implementation of economic rights, moral rights have a lifetime. Based on the validity period of the exclusive right, a conclusion can be drawn that Copyright can be inherited. Which in accordance with Article 58 of Law No. 28 of 2014 concerning Copyright can be transferred in whole or partially because:

- a. Inheritance
- b. Grant
- c. Waqf
- d. Testamentary written agreement
- e. Other reasons that are justified in accordance with statutory provisions.

One form of economic rights owned by creators is by granting licenses either by record labels or individual music production houses, which in this case is stated in Article 80 of Law No. 28 of 2014 concerning Copyright, namely:

"Copyright holders or owners of related rights have the right to grant a license to other parties based on a written agreement to carry out actions as referred to in economic rights, economic rights of performers, economic rights of phonogram producers, and economic rights of screening institutions."

Regarding the licensing agreement stipulated by the creator of a musical work through a production house to provide economic rights to users of the work conventionally, therefore the license agreement stipulated by the creator of a musical work through a production house has stipulated a royalty fee which will be determined for *public performance financing* so that in the determination of this fee has been regulated in such a way as to use the song and provide appreciation for the economic rights and moral rights that the creator of the song creation has to fulfill these two rights (Syahputra, Kridasaksana, & Arifin, 2022).

Fulfillment of Music Royalties by Once on the Song Creator Ahmad Dhani Based on Copyright Law

Statements represented by Ahmad Dhani from Dewa 19 said that they had banned all musicians from singing songs from Dewa 19 based on the provisions of Article 113 paragraph (2) of Law No. 28 of 2014 concerning Copyright, stating that;

"Any person who without rights and/or without the permission of the creator or copyright holder commits a violation of the economic rights of the creator as intended in Article 9

paragraph (1) letter c (translation of works), letter d (adaptation, arrangement, transformation of works), letter f (performance of creations), and letters (communication of creations) for commercial use that shall be punished by a maximum imprisonment of (three) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah)

Based on Article 113 paragraph 2 of the Copyright Law No. 28 of 2014, it is prohibited for a performer to perform a song for commercial purposes without permission from the creator of the song. However, it is not based on one article but several provisions in Law No. 28 of 2014 must be read as a whole, which Article 23 paragraph 5 of Law No. 28 of 2013 explains as follows:

"Everyone can make commercial use of works in a performance without first asking permission from the creator by paying compensation to the creator through the Collective Management Institute."

Reviewing from this article, there is an assumption that as long as compensation has been paid to the National Collective Management Institute (LMKN), there is an opportunity for each musician to be able to perform a song from the composer in a performance which is in accordance with the fulfillment of royalty fees. In this case, the songwriter must be a member of the National Collective Institution (LMKN), in accordance with the provisions of Article 87 of the Copyright Law No. 28 of 2014, which states that (Karim, 2021):

- 1) *To obtain economic rights, every creator, copyright holder, owner of related rights become a member of the Collective Management Institution so that they can collect reasonable compensation from users who utilize copyright and related rights in the form of commercial public services.*
- 2) *Users of copyright and related rights who utilize the rights as intended in paragraph (1) pay royalties to the creator, copyright holder or owner of related rights through the National Collective Management Institute (LMKN).*
- 3) *Users as referred to in paragraph (1) make an agreement with the Collective Management Institution, which contains an obligation to pay royalties for copyright and related rights used.*
- 4) *It is not considered a violation of this Law, commercial use of works and/or related rights products by users as long as the user has carried out and fulfilled the obligations in accordance with the agreement with the National Collective Management Institute (LMKN).*

Based on the provisions of Article 87 of Law No. 28 of 2014 concerning copyright, it is not obligatory for a creator to be registered with the National Collective Management Institute

(LMKN), but if the creator joins the National Collective Management Institute (LMKN), it makes easier to require a royalty payment mechanism. This is inversely proportional to if the music creator has not been registered with the National Collective Management Institute (LMKN) in the condition that the creator, copyright holder, and owner of related rights have not joined then the royalties obtained or collected have not been saved and will be announced by the institution for 2 (two) years known by the creator and copyright holder of the work. This is inversely proportional to if the creator is part of the National Collective Management Institute (LMKN) like Ahmad Dhani, then royalties must be immediately distributed to copyright holders or works owned through the institution in accordance with Article 15 of Government Regulation No. 56 of 2021 concerning management of copyright royalties songs or music (Muthmainnah, Pradita, & Bakar, 2022).

The party who is obliged to pay royalties in music concerts is the organizer or event organizer with the amount of royalties that must be paid by the organizer being 2% (two percent) of ticket sales from the gross proceeds and then adding free tickets of 1% (one percent) plus production costs music multiplied by 2% (two percent). This is in accordance with the Decree of the Minister of Law and Human Rights Number; HKI.2.OT.03.01-02 of 2016 jo. LMKN Decision Number; 20160512KM/LMKN-Pleno/Royalty Tariff/2016.

In the problem between Ahmad Dhani as the leader of the Dewa 19 group and the song copyright holder against Once Mekel as a musician, Ahmad Dhani did not receive even a cent of the royalties collected by the National Collective Management Institute (LMKN). This is the main problem that arises because Once Mekel, for 7 (seven) years becoming a solo musician, did not collect royalties in the field of public performance so that it became a polemic regarding the costs of fulfilling royalties. This was contrary to Copyright Law No. 28 of 2014 and Government Regulation No. 56 of 2021 concerning Management of Song or Music Copyright Royalties.

Resolving this problem requires legal action, which legal action is a form of protection of Human Rights (HAM). Thus, the problems experienced by Ahmad Dhani and Once Mekel regarding music intellectual property can be done in 2 (two) ways, namely; Preventive settlement or repressive settlement. In a preventive solution, Ahmad Dhani must make efforts to prevent something that will be experienced again in the future, namely by announcing it via the YouTube channel and other mass media that there is a prohibition on performing the song Dewa 19 at events called commercial music concerts. Meanwhile, the repressive route attempts to resolve disputes that have occurred. Based on Article 95 of Law No. 28 of 2014 concerning copyright, dispute resolution can be carried out through litigation or non- litigation efforts,

namely litigation efforts through the Commercial Court and non- litigation efforts through Alternative Dispute Resolution.

In this case, Once Mekel has committed the violation based on a unanimous decision. Once Mekel or the event organizer who invited Once Mekel as a guest star must provide compensation in the amount of money equal to the license agreement owned by Ahmad Dhani as the leader of the Dewa 19 group, which is also stated in the commercial court decision. Payment of compensation must be made no later than 6 (six) months after the decision becomes legally binding.

CONCLUSIONS AND RECOMMENDATIONS

Copyright constitutes an exclusive entitlement grounded in an inherent and self-executing principle. The originator acquires a direct exclusive privilege, and those wishing to utilize the copyrighted work within the realm of performance require a license. This license serves as a means for the creator to receive royalties from the work's usage and necessitates registration with the National Management Collective Institute (LMKN).

Musical performances or live concerts represent a mode of public communication wherein the remuneration of royalties holds paramount significance for creators. Failure to adhere to this process would contravene the economic rights of the creator. According to Article 113, paragraph (2) of Law No. 28 of 2014, violation may result in imprisonment for up to 3 years and/or a fine of a maximum of IDR 500,000,000. Additionally, copyright infringers are obliged to provide compensation within 6 months following the final decision (Adela & Isradjuningtias, 2022).

In this case, there are two steps to resolve the problem through preventive efforts as an effort by the songwriter to impose a ban on other people as a preventive measure on other people, which has been done by Ahmad Dhani as the leader of the Dewa 19 group. In other words, they can carry out dispute resolution of copyright through settlement of litigation resulting from the Commercial Court or Non-Litigation resulting from Alternative Dispute Resolution.

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