



The Exclusivity of Music/Song Creators is Guaranteed by Copyright Law Number 28 of 2014

Volume 10 Issue 2
(September, 2024)
e-ISSN 2716-5191

Hidayat Rumatiga¹, Muhammad Aminulloh¹, Nurwati¹,
Ani Yumarni¹, Sylvia Haura Carolina Devi¹,
Suparlan Kelutur¹

¹Faculty of Law, Universitas Djuanda, Bogor, Indonesia

ARTICLE INFO

Article history:

Received: May 7, 2024

Revised version received: July 19, 2024

Accepted: July 19, 2024

Available online: Sept 29, 2024

Keywords:

Exclusive, guarantee, music, rights, songs.

How to Cite:

Hidayat Rumatiga, *et al.* 2024. "The Exclusivity Of Music/Song Creators Is Guaranteed By Copyright Law Number 28 Of 2014" *Jurnal Hukum De'Rechtsstaat*

Corresponding Author:

Hidayat Rumatiga

hidayat.rumatiga@unida.ac.id



ABSTRAK

Terdapat kesalahpahaman dari sudut pandang pengguna bahwa musisi adalah orang yang butuh pengakuan dan butuh uang. Padahal, musisi sangat menginginkan eksklusivitas musisi yang dijamin oleh undang-undang, karena undang-undang itu berat sebelah. Dalam pasal 9 UUHC, setiap penggunaan ciptaan berhak cipta yang mengandung penggunaan komersial wajib memperoleh izin dari pencipta. Ayat (3) semua orang yang tidak memiliki izin dilarang memperbanyak atau memperoleh penggunaan komersial. Penelitian ini bertujuan untuk mengkaji dan menganalisis hak eksklusif pencipta musik atau lagu yang dijamin oleh UU. Penelitian ini bersifat yuridis empiris dengan pemilihan sampel menggunakan teknik random sampling dan purposive sampling yang disesuaikan dengan sampel yang dipilih. Data yang diteliti meliputi data primer, yaitu data yang diperoleh dari informasi yang diperoleh dari wawancara dengan pihak terkait dari LMK, dan data sekunder merupakan data yang mendukung informasi atau mendukung kelengkapan data primer, kemudian dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa eksklusivitas pencipta lagu/musik adalah untuk memperoleh hak moral, hak ekonomi dan hak pengalihan. Pencipta yang memiliki ciptaan harus memperoleh manfaat dari ciptaannya, sehingga apabila tidak memperolehnya, diperlukan perlindungan hukum.

Available online at <https://ojs.unida.ac.id/LAW>

Copyright (c) 2024 by Jurnal Hukum De' Rechtsstaat (JHD)

ABSTRACT

There is a misunderstanding from the user's perspective that musicians are people who need recognition and need money. In fact, musicians really want the exclusivity of musicians guaranteed by law, because the law is biased. In article 9 of the Copyright Law, every use of copyrighted creations that contain commercial use must obtain permission from the creator. Paragraph (3) all people who do not have permission are prohibited from reproducing or obtaining commercial use. This study aims to examine and analyze the exclusive rights of music or song creators guaranteed by law. This study is empirical juridical with sample selection using random sampling and purposive sampling techniques that are adjusted to the selected sample. The data studied include primary data, namely data obtained from information obtained from interviews with related parties from LMK, and secondary data is data that supports information or supports the completeness of primary data, then analyzed descriptively qualitatively. The results of the study indicate that the exclusivity of song/music creators is to obtain moral rights, economic rights and transfer rights. Creators who own creations must obtain benefits from their creations, so if they do not obtain them, legal protection is needed.

1. Introduction

Indonesia has lots of talented musicians, so much music and songs have been created that can be enjoyed by fans in Indonesia and even liked by people abroad. It is not easy to create music/songs that are easy to listen to (easy listening), it requires in-depth ideas and knowledge about music as well as a strong taste in music. Because creative works of music and songs are not easy to just create, legal protection is needed for musicians (which in this case focuses on) songwriters to protect their creative works.

Song copyright is the exclusive right of the creator or person who creates the music or work. Even though it is exclusive, it is not easy for copyright holders to maintain it. The problem is, it is not easy to answer how an act can be called imitating a creation, adopting a creation, broadcasting a creation, and displaying a creation without the creator's permission. Someone can take some of the lyrics from an existing song, but create a different melody and arrangement.¹

Music or song users themselves can be divided into two parts, namely non-commercial music or song users and commercial music or song users. Non-commercial users are users who use copyrighted works in the form of songs or music only for their own benefit or enjoyment. Meanwhile, commercial users are users of music or songs who have commercial purposes because by playing the songs or music, they will make a profit. Users of commercial music or songs include hotels, discos, restaurants, karaoke places, television stations, radio stations, and so on. In this era, music and songs created through the creative initiative of creators are no longer for personal consumption but are widely used by users.

Generally, song copyright is divided into three parts, namely: Mechanical Rights (the right to get royalties from song production in several media), Performance Rights (the right to get royalties from performances that play certain songs), and Synchronization Rights (the right to get royalties if the song is used in films, advertisements or videos).

¹ Adi Juardi, *Efektivitas Lembaga Manajemen Kolektif dalam Memungut Royalti Karya Cipta Musik dan Lagu pada Pelaku Bisnis Karaoke Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta*, Jurnal Hukum De'rechtsstaat, Vol. 4 No. 2, 2018

The user of the song is not the singer but the organizer. So the person who has to pay royalties is not the singer but the organizer (EO) or concert provider or cafe owner or something else. There is a misconception from the user's perspective that musicians are people who need recognition and need money. In fact, musicians really want the exclusivity of musicians guaranteed by law, because the law is biased. In article 9 UUHC, every use of copyrighted work that contains commercial use must obtain permission from the creator. Paragraph (3) all persons who do not have a permit are prohibited from duplicating or obtaining commercial use.

The next problem is that there is another article that allows you to use it without the author's permission if you sing with the name of the singer even though you don't have permission. While the creator as the owner of the power can give power to the Collective Management Institute (LMK) to manage royalties, the songwriter as the owner of the exclusive right can create restrictions on certain users to prohibit them from singing songs created by the songwriter.

Copyright is attached to the creator, so LMK cannot prohibit song users from singing songs written by the creator. In line with this, in the license letter made by LMK there is a clause that LMK can prohibit or not allow anyone to sing with the permission of the creator. The transfer of copyright cannot be done only orally, but must be done in writing, either without a deed or with a deed. Being transferable or assignable is proof that copyright is a material right. In the terminology of the Indonesian Copyright Law, transfer can take the form of granting a license to another party or third party.

Musical works/songs are intangible assets. When the goods are licensed to LMK, LMK must agree with the songwriter if there is a singer who is not allowed to sing the song. In terms of originality and individuality, there are exclusive rights of the copyright holders of musical works and songs.²

Another problem arises because music and song copyrights are intangible movable objects (*onlichamelijke zaken*), intangible assets are objects that move due to the stipulation of law, such as state bonds, letters from companies. trade, intellectual property, such as copyright, patent rights, trademark rights and others.³ Musical works/songs are intangible assets. When the goods are licensed to LMK, LMK must agree with the songwriter if there is a singer who is not allowed to sing the song.

In Article 1 point 22 it is explained that the Collective Management Institute (LMK) is an institution in the form of a non-profit legal entity which is authorized by the Creator, Copyright Holder and/or Related Rights Owner to manage its economic rights in the form of collecting and distributing royalties. The power of attorney given in written form only licenses economic rights, does not include exclusive rights attached to musicians/songwriters.

Then the problem became even more intense with the case of Ahmad Dhani and Once, where Ahmad Dhani prohibited Once Meikel from singing songs written by Ahmad Dhani. After this case became widespread, musicians who felt that their exclusive rights were being neglected also voiced the same thing regarding the exclusivity of songwriters, the extent to

² <https://www.kemenparekraf.go.id/ragam-ekonomi-kreatif/pentingnya-hak-cipta-musik-bagi-musisi-begini-cara-mendaftarkannya> (access on 13 Oktober 2023).

³ Exclusive rights are rights that are only reserved for the creator, so that no other party can exploit these rights without the creator's permission. Copyright holders who are not creators only have part of the exclusive rights in the form of economic rights. See the explanation of Article 4 of the Copyright Law Number 28 of 2014

which the exclusivity of musicians/songwriters is protected by Copyright Law Number 28 of 2014.

Based on the background above, the author believes that there is a need for more in-depth research regarding the level of awareness (users) of commercial song users to also look at the exclusive rights owned by musicians/songwriters so that no one feels that their rights have been neglected.

The problem formulation in this research is 1) how the exclusivity of music/song creators is guaranteed by the Copyright Law Number 28 of 2014. 2) how users (commercial users) can enjoy copyrighted music/songs without having to violate their rights. exclusive creator of music/songs.

The aim of this research is 1) to ensure that the exclusivity of the creators of music/song works is guaranteed by Law Number 28 of 2014 concerning Copyright. 2) to find out how users (commercial users) can enjoy creative works of music/songs without having to violate the exclusive rights of the creators of music/song works. The long-term goal that will be achieved from the research results is to increase the awareness of users (commercial users) in using other people's copyrighted works for commercial purposes..

The targeted outcomes of this research are 1) publication in accredited scientific journals; and 2) the creation of an analysis result regarding the level of legal awareness for users (commercial users) in using other people's copyrighted works so that the creator's exclusivity is maintained, so that this formulation can be a basis for consideration in formulating strategic policies or regulations, especially in terms of improving the Law. -Law Number 28 of 2014 and Government Regulation Number 56 of 2021. The additional output from the results of this research can be additional teaching material in the field of Intellectual Property Rights Law, especially regarding Copyright, which can be used by academics and other legal practitioners.

2. Method

2.1. Location and Research Design

This research is empirically juridical in nature, namely research conducted on legal phenomena that occur in society. The legal phenomenon in this research which is the object of research is the exclusive rights of song/music creators.

2.2. Population and Sample

The population in this study were musicians/songwriters, singers and commercial song users. The sample in this study were 2 (two) songwriters, 2 (two) singers, 3 (three) commercial song users.

2.3. Method of collecting data

The data collection method was carried out in two ways, namely data collection through literature and data collection through interviews.

Data collection techniques through literature are carried out by collecting books, statutory regulations, scientific articles and other relevant documents. Data collection techniques through interviews were carried out using indirect interview techniques. What the researcher means by indirect interviews is that they can use the results of interviews with experts, songwriters/music composers conducted through mass media, YouTube, TV broadcasts and so on.

2.4. Data analysis

The data obtained, both primary data and secondary data, were analyzed descriptively qualitatively. Qualitative descriptive analysis is a data analysis method by classifying and selecting data obtained from research in the field according to its quality and truth, then connecting it with theories, principles and legal rules which are used as analytical tools in research from literature studies. so that answers to the problems studied are obtained.

3. Results and Discussion

3.1. Results

3.1.1 Provisions of laws and regulations regarding the rights of song creators

3.1.1.1 1945 Constitution

The Constitution is a constitution that contains human rights which guarantee the rights of every person to be recognized, protected and guaranteed, as well as the right to fulfill welfare. In relation to song or music creators, they have moral rights, namely the government guarantees that every person who has creativity in the form of art and culture must obtain legal protection so that they can fulfill their needs in making their lives prosperous. Apart from that, Article 33 of the Constitution also emphasizes the national economy as an effort to realize community prosperity. The rights of a songwriter must reach him to be able to utilize his rights to fulfill his living needs. The constitution is the highest legal regulation that guarantees everyone's right to live with dignity and worth. As a songwriter, of course the 1945 Constitution is a protective regulation.

3.1.1.2 Law Number 28 of 2014 concerning Copyright

This law is a special regulation that regulates copyright, through this law the government and the state protect every songwriter. The following are several provisions in the Copyright Law that provide protection for the copyright of song/music creators.

Article 1 paragraph (1) Copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a creation is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations

Article 1 paragraph (4) The Copyright Holder is the Creator as the owner of the Copyright, the party who legally received the right from the Creator, or another party who received further rights from the party who legally received the right.

Article 1 paragraph (20) A license is a written permission granted by the Copyright Holder or Related Rights Owner to another party to exercise economic rights to their Creation or Related Rights product under certain conditions. Paragraph (21) Royalties are compensation for the use of the Economic Rights of a Work or Related Rights Product received by the creator or owner of the related rights.

3.1.2 Copyright problems

Copyright problems that occur in Indonesia continue to occur, here the researchers have collected several copyright cases in Indonesia, including the case of the Stinky bank group, in this case the creator of the song "Maybe", who is also the guitarist for the band Stinky, forbade Andre Taulani to sing the song Maybe because he didn't get royalties from it.

3.2. Discussion

Exclusive rights are rights attached to the songwriter, which is an asset that can be utilized at any time by the rights holder. Exclusive rights are part of the government's efforts to protect the rights of song or music creators to ensure legal protection and legal certainty as well as in the field of copyright. The work of a songwriter/music composer is something of value that can be used to meet life's needs and for one's welfare. There are rights attached to the exclusivity of song/music creators, namely: Moral rights, Economic rights, and transfer of economic rights.

3.2.1 Moral Rights

Moral rights are the rights that a songwriter has. According to Efridani Lubis, moral rights are what the state must appreciate towards songwriters/music as a gift from God. What a songwriter/music composer produces through the work of the brain is valuable because not everyone has the abilities that a songwriter/music composer has.

In accordance with the provisions of Article 5 of the Copyright Law, moral rights are the right of the creator to continue to include his name on the copy if it is related to the use of his work for the public. The creator has the right to use his original name or pseudonym, change the title, and maintain his rights if modified and other actions as stated in Article 5 of the Copyright Law.

3.2.2 Economic Rights

In accordance with the provisions of Article 8 of the Copyright Law, creators have the right to obtain benefits from the results of their work. Benefit in the Indonesian dictionary means use, benefit.⁴ So it can be understood that the creator can use the results of his work to get a decent payment if someone else wants to use his song in a concert or at an event for which there is a fee.

Users of works in the form of other people's songs or music must ask for permission, then enter into a contract with the songwriter if they want to sing their song at an official event, live broadcast on a TV show or other event, the amount received by the rights holder and user of the work.

Basically, copyright law protects the economic rights to what is created by a song/music creator. So in Article 41 there are provisions regarding protection for songwriters.

In the results of Btarifia Filza Zahra's research entitled Legal Protection of Copyright of Song Works Against Commercialization by Re-Singing Uploaded on YouTube, it was found that there was a copyright violation committed by Hanin Dhiya who sang Payung Teguh's song Akad. Because it doesn't ask permission from the song owner and doesn't give economic rights to the copyright holder.

3.2.3 Right to Transfer or Inherit

Article 16, (1) Copyright is an intangible movable object; (2) Copyright can be transferred or transferred, either in whole or in part because: a) inheritance; b) grant; c) endowments; d) will; e) written agreement; or f) other reasons that are justified in accordance with the provisions of statutory regulations; (3) Copyright can be used as an object of fiduciary guarantee.

⁴ Suyud Margono dan Amir Angkasa, *Komersialisasi Aset Intelektual: Aspek Hukum Bisnis*, PT Grasindo, Jakarta, 2002, Hlm. 39

The provisions of this article indicate that song/music creators have the right to transfer their rights to their heirs, donate them, endow them, make them in a written agreement, apart from that copyright can be used as fiduciary collateral.

The exclusivity of the songwriter needs to be protected to give him his rights. Song works do not have to be recorded by an official institution but must be registered with the Directorate General of Intellectual Property.⁵

The institution that has the role of managing royalties from each songwriter/music composer is the Collective Management Institute (LKM). Music or song creators have the privilege to transfer their copyright to anyone they wish, just like the rights to other objects, a holder of inclusive rights to a work of art in the form of a song or music can transfer those rights, either to close family or to other people based on the provisions of laws and regulations.

By transferring their inclusive rights to other people, those rights will be transferred from them to the person who receives the transfer, so that the creator of the song or music can no longer receive royalties from the use of their creative work, cannot claim royalties or other forms of legal remedies. This transfer of rights can be done while the rights holder is still alive, because if the rights holder dies, those rights will fall to their heirs. The heirs will receive those exclusive rights to be used to claim royalties from the results of the music or song work.

From the discussion, according to the author, the exclusive rights of a music or song creator can be enjoyed, protected, transferred, and inherited. Music creators can improve the economy of a nation with sales, use, everyone who sings or uses the music produced can get incentives or payment from singing the song of the legal creator.

Even from the results of his work, the music creator will issue zakat or tax which will have implications for economic growth. Zakat is one of the instruments to improve the community's economy. In addition to zakat, the results of musical works used to buy land can be donated for the development of the community and state economy, of course with sustainable waqf management.⁶

According to Nurwati, it has been proven that using Copyright assets for Music and Song Works to be commercialized or used as credit collateral is the main and important thing for economic growth.⁷ From this perspective, it can be understood that copyright assets can increase the economic growth of a country or nation, which can realize welfare as the goal of the state. The goal of the state is to realize welfare.

4. Conclusion

Based on the results and discussion in this research, it can be concluded that the exclusivity of song/music creators is obtaining moral rights, economic rights and transfer rights. Creators who own works must obtain benefits from their work, so if they do not get them, legal protection is needed.

⁵ Edward James, *Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu dan/atau Musik*, Jurnal Ilmiah Kebijakan Hukum, Vol. 14, No. 3, 2020

⁶ Yumarni, Ani; Nuraeni, Ani; Rumatiga, Hidayat. "Pengawasan Pengelolaan Tanah Wakaf Dalam Kewenangan KUA Kecamatan Nanggung Kabupaten Bogor dalam Pendekatan Konsep Kesejahteraan Sosial," *KRTHA BHAYANGKARA Journal*, 2023, 17.3: 657-672.

⁷ Nurwati; Sulistiyono, Adi; Roestamy, Martin. "Model Pengembangan Jaminan Fidusia Bagi Pemilik Hak Cipta Karya Musik dan Lagu Sebagai Objek Jaminan Untuk Mendapatkan Kredit Perbankan di Indonesia." *Jurnal Sosial Humaniora*, 2020, 11.2.

Acknowledgment

The implementation of this research cannot be separated from the support of other parties, including Chancellor of Djuanda University, Rector of Djuanda University, Board of Research and Community Service of Djuanda University.

References

- Adi Juardi, "Analisis Hukum Terhadap Hak Ekonomi Pencipta Karya Musik Dan Lagu Yang Di Cover Version Pada Platform Digital," *Jurnal Ilmiah Living Law*, 2023, 15(2).
- Ani Yumarni; Ani Nuraeni; Hidayat Rumatiga. "Pengawasan Pengelolaan Tanah Wakaf Dalam Kewenangan KUA Kecamatan Nanggung Kabupaten Bogor dalam Pendekatan Konsep Kesejahteraan Sosial", *KRTHA BHAYANGKARA Journal*, 17(3), 2023: 657-672.
- Adi Juardi, "Efektivitas Lembaga Manajemen Kolektif dalam Memungut Royalti Karya Cipta Musik dan Lagu pada Pelaku Bisnis Karaoke Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Jurnal Hukum De'rechtsstaat*, 2018, 4 (2).
- Andre Pratama, *Perlindungan Hak Moral Bagi Pencipta Lagu di Indonesia*, Skripsi, Universitas Islam Indonesia, Yogyakarta, 2012
- Edward James, *Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu dan/atau Musik*, *Jurnal Ilmiah Kebijakan Hukum*, Vol. 14, No. 3, 2020
- Hulman Panjaitan, "Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan Perlindungan Hukum Bagi Pencipta Karya Cipta Musik dan Lagu", *Tô-râ*, 2019, 5 (1).
- Iswi Hariyani, *Prosedur Mengurus HKI Yang Benar*, Pustaka Yustisia, Yogyakarta, 2010.
- Kemenparekraf, <https://www.kememparekraf.go.id/ragam-ekonomi-kreatif/pentingnya-hak-cipta-musik-bagi-musisi-begini-cara-mendaftarkannya> (access on 13 Oktober 2023).
- Nurwati; Adi Sulistiyono; Martin Roestamy. "Model Pengembangan Jaminan Fidusia Bagi Pemilik Hak Cipta Karya Musik Dan Lagu Sebagai Objek Jaminan Untuk Mendapatkan Kredit Perbankan Di Indonesia". *Jurnal Sosial Humaniora*, 2020
- Otto Hasibuan, *Hak Cipta di Indonesia*, Alumni Bandung, 2008
- Sufiarina, "Hak Prioritas Dan Hak Eksklusif Dalam Perlindungan HKI", *Adil Jurnal Hukum*, 2012, (3) 2.
- Suyud Margono dan Amir Angkasa, *Komersialisasi Aset Intelektual: Aspek Hukum Bisnis*, PT Grasindo, Jakarta, 2002
- Tommy Hottua Marbun, "Perlindungan Hukum Hak Cipta Terhadap Karya Cipta Lagu dan Musik dalam Bentuk Ringtone pada Telepon Seluler", *Transparency: Jurnal Hukum Ekonomi*, 2013.
- Law Number 28 of 2014 concerning Copyright