

## JURIDICAL REVIEW LIMITS FOR THE USE OF CREATIONS BY OPPORS ASSOCIATED WITH THE ROYALTY COLLECTION SYSTEM IN INDONESIA

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### Abstract:

The development of the digital world has affected intellectual property rights, one of which is song or music copyright. Songs created by a songwriter or sung by a singer aim to convey a message and express what the songwriter or singer feels and sees. Songs are objects that are protected by law so they cannot be used carelessly, permission is needed to use songs that are the work of other people or parties. In Law Number 28 of 2014 concerning Copyright, it regulates how the licensing process goes so that the song can be sung by other than the creator.

The research method used is normative juridical research, namely research that is oriented based on the main legal material by examining theories, concepts, legal principles, legal systematics, level of legal synchronization, legal history, comparative law, and statutory regulations. invitation related to this research.

The creator of the song is the copyright holder. The songwriter may use a creation as long as there is a license permit, which in the agreement is what is called royalties. In Law Number 28 of 2014 concerning Copyright it is explained that royalties are compensation for the utilization of economic rights. In each use, there are economic rights that are the rights of the creator, copyright holder, or owner of related rights. In collecting royalties, it can be delegated to an institution in the form of a legal entity, called LMK. The aim of the research was to find out the relationship between the use of works by creators and the royalty collection system in Indonesia.

Keywords: Copyright, Creator, Royalty.

## I. INTRODUCTION

The development of the digital world in Indonesia is currently affecting Intellectual Property Rights (IPR). One of them is song copyright. According to Law Number 28 of 2014 copyright is an exclusive right consisting of moral rights and economic rights. Moral rights are rights that are eternally inherent in the creator to maintain his rights in the event of creation distortion, mutilation of creation, or things that are detrimental to his self-honor or reputation. While economic rights are the exclusive right of the creator or copyright holder to obtain economic benefits from creation. The person who creates (creator) has the right that arises from his creation, to control his creation circulating in the community. In terms of economic rights, a work that is reproduced without the author's permission is then sold to the public, it will benefit other people who reproduce the work. Meanwhile, the creator will feel disadvantaged for this act because morally the name of the creator is being sold and materially the creator does not benefit from the creation that is reproduced by someone else.<sup>1</sup>

There are more and more ways to use copyright from moral rights and economic rights, one of which is to use it from a digital perspective. The use of internet technology makes changes to creations that were previously only in physical/conventional form, now they can be converted into digital forms. One example of a digital product is music in MP3 or MP4 format. Behind this convenience, there are risks that can occur. This convenience is actually used by parties who are not authorized to distribute/distribute by parties who do not have legal rights, it is easy for a creation to be changed or modified. An creator may use a work as long as there is a license permit, so a creator, a copyright holder must first register his work (original) with the Minister of Justice and Human Rights through the Directorate General of Intellectual Property Rights, and after receiving a decision it will be registered in the Public Register of Works and announced in the Supplement to the State Gazette of the Republic of Indonesia this is an embodiment of moral rights, while the embodiment of the economic rights of the creator is that the creator gets royalties from what he creates. Black's law dictionary defines royalties as "Payment made to an author or inventor for each copy of a work or article sold under a copyright or patent", or more simply, that is a payment given to the creator for his work which is sold or commercialized by the user based on copyright or patent law.<sup>2</sup>

In return for granting a license, the copyright holder gets royalties from the licensee or user. The amount of royalties received by the copyright holder depends on the contents of the license agreement. In an effort to protect copyright in Indonesia, a Collective Management Institute or known as the Institution was established to collect royalties for songwriters, hereinafter referred to as LMK. In Article 87 to Article 93 UUHC regulates LMK, tasked with managing copyright royalties in the field of songs and music, each of which represents the interests of the creator and the interests of the owner of the related rights. That's why LMK has the authority to collect, collect and distribute royalties from commercial users according to Article 89 UUHC. Collection of royalties by creators can be delegated to LMK. LMK is expected to be a solution for the use of royalties which in turn will bring economic rights to creators. To carry out this collection, LMKs are required to coordinate and determine the amount of royalty that is the right of each with the intention that it is in accordance with the prevalence in practice based on justice. After LMK has recorded music and songs and distributed them to the public, songwriters will be able to use these songs in various ways of exploitation, including broadcasting on TV stations, radio, sharing via the internet, it is hoped that this will be the case. However, in reality there are still parties who take advantage of the benefits of music and songs, with the alibi of using it for commercial actions.<sup>3</sup>

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<sup>1</sup> Gatot Supramono, *Hak Cipta dan Aspek-Aspek Hukumnya*, P.T. Rineka Cipta, Jakarta, 2010, hlm 2.

<sup>2</sup> Sulthon Miladiyanto, *Royalti Lagu/Musik untuk Kepentingan Komersial Dalam Upaya Perlindungan Hak Cipta Lagu/Musik*, Jurnal Synta 3 idea, Vol. 13, No. 2 (2019).

<sup>3</sup> Edward James Sinaga, *Pengelolaan Royalti atas Pengumuman Karya Cipta Lagu dan/atau Musik*, Jurnal Ilmiah Kebijakan Hukum Vol. 14, No. 3, hlm. 556 (2020).

In this case, the use of royalties delegated to LMK raises several opinions. There are creators who do not want to join while there are creators who voluntarily join LMK. For example, musician Ahmad Dhani as the songwriter for Band Dewa 19 who doesn't want to join LMK and wants to take care of his own royalties by entering into a licensing agreement with anyone who wants to use his songs commercially. The use of royalties also raises 2 (two) questions which are regarding "Is every creator obligated to manage royalties authorized by the authorized institution, namely LMK?" And the second is "Can creators continue to obtain their economic rights apart from collecting royalties by LMK by entering into a separate license agreement?"

## II. METHODS

This research is related to the limitations of the use of works by songwriters in relation to the royalty system in Indonesia using normative juridical research methods. The author uses library research (library research). By using secondary data in the form of Law Number 28 of 2014 concerning Copyright. This research was carried out to solve the proposed legal problems so as to obtain descriptive results which should be able to provide answers to the questions that arise in this research.

## III. RESULTS AND DISCUSSION

### 1. Obligation of Management of Royalties by Collective Management Institutions

Legal protection which is defined as a protection for legal subjects in this case creators. The law functions to provide clarity on the relationship between copyrighted works and creators or copyright holders or people who use creations. The existence of legal clarity will provide convenience to law enforcement. Even though according to copyright law, copyright protection is automatic, which is obtained by the creator from the moment the creation is realized in a tangible form, and does not have to go through a recording process, if it is recorded, it will be better and more profitable, because by recording, there will be formal evidence of the existence of copyright. if not proven otherwise. there is a recording process if there is imitation or plagiarism of a copyrighted work, it is easier for the creator to prove his rights and file a lawsuit, because there is formal proof of registration.<sup>4</sup>

The management and collection of royalties can be delegated to an institution in the form of a legal entity, called the Collective Management Agency or hereinafter referred to as LMK. The provisions of Article 1 number (21) of Law Number 28 of 2014 concerning Copyright defines LMK as an institution in the form of a non-profit legal entity that is authorized by the Author, Copyright Holder, and/or Related Rights owner to manage its economic rights in the form of collecting and distributing royalties. Thus, those who manage economic rights in the form of withdrawing, collecting, and distributing Royalties from Users that are commercial in nature are LMK. As stated in Article 87 paragraph (1) to paragraph (3) of Law Number 28 of 2014 concerning Copyright:

- 1) To obtain economic rights every Author, Copyright Holder, Related Rights owner becomes a member of the Collective Management Organization in order to be able to collect reasonable compensation from users who make use of Copyrights and Related Rights in the form of commercial public services.
- 2) Users of Copyrights and Related Rights who make use of the Rights referred to in paragraph (1) pay Royalties to Authors, Copyright Holders, or Related Rights owners, through the Collective Management Institution.
- 3) The user as referred to in paragraph (1) enters into an agreement with the Collective Management Organization which contains an obligation to pay royalties for the Copyright and Related Rights used.

So based on UUHC provisions, creators, copyright holders, and related rights owners are not required to manage royalties that are authorized by the authorized institution, namely LMK.

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<sup>4</sup> Hendra Tanu Atmadja. 2004. *Hak Cipta Musik atau Lagu*, Jakarta: Hatta Internasional. hlm 39.

This provision is in line with the Constitutional system (UUD 1945) that citizens have the freedom to associate and assemble. In this case, they also have the freedom to determine the management and collection of their own royalties without authorizing LMK.

## **2. Collection of Royalties by means of a Separate License Agreement**

Commercial use of songs is not considered a copyright infringement provided that users fulfill their obligations under the agreement with LMK to pay royalties for songs based on article 87 paragraph (4) of Law No. 28 of 2014 concerning Copyright. Article 89 paragraph (4) of Law Number 28 of 2014 concerning Copyright stipulates that regarding guidelines in determining the amount of royalties set by LMK (in this case what is meant by LMKN) and approved by Menkumham. This means that the lack of clarity in terms of determining the amount of royalties can still be resolved.

Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions. Exclusive rights consist of moral rights and economic rights. The provisions of Article 9 of Law Number 28 of 2014 concerning Copyright defines economic rights as the exclusive right of the Creator or Copyright Holder to obtain economic benefits from Works, for example to obtain royalty payments for using protected copyrighted works such as songs and or music.<sup>5</sup> Judging from the rights owned by the creator or copyright holder, especially economic rights, the creator or copyright holder can manage and collect royalties independently by making a license agreement separately. Because according to PP 56/2021, right owners who have not been consolidated into an LMK are no exception from this rule. Therefore, regulation is very important because not all related rights owners, copyright holders and also creators join LMK, which leads to an independent or independent movement.

Article 9 PP 56 of 2021 confirms:

- 1) Everyone can make commercial use of songs and/or music in the form of commercial public services by submitting a license application to Copyright Holders or Related Rights owners through LMKN.
- 2) The license agreement as referred to in paragraph (1) shall be recorded by the Minister in accordance with the provisions of the laws and regulations.
- 3) The implementation of the license as referred to in paragraph (1) is accompanied by the obligation to provide a report on the use of songs and/or music to LMKN through SILM.

In determining the royalty payment, it is more appropriate to involve and discuss with the party that will be the object of the royalty amount, namely commercial users. This means that there is a stage of negotiation beforehand and it is clearly stated in the civil agreement between the LMKN and commercial users and for that there is a royalty amount that has been mutually agreed upon. Therefore, there must be a clear calculation formula set by the LMKN and the recognition of economic rights should have been approved which should indeed belong to the creators, copyright holders and rights owners related to Menkumham and an agreement has also been reached from the users of commercial songs. This means that all stakeholders have agreed and agreed on the amount in determining the amount of the royalty. With clarity, doubts about the existing ambiguity will be eliminated and this is also clear evidence. It is stated that LMK has the authority to manage its economic rights in the form of collecting and distributing royalties. With the existence of laws and regulations, it is the government's role in protecting the creators of the works that have been created. Even though regulations have been established that regulate copyright or have regulated the amount of prison terms and fines, this does not necessarily make the public aware that a work is a copyright attached to the Author or Copyright Holder who has authority over exclusive rights, because this also not far from the people's thinking that a song belongs to everyone, even though if we trace it more deeply a copyrighted work is not easy to produce, which in the process of making a creation requires thought, perseverance and patience to produce the creation of the song. If the user uses the right to

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<sup>5</sup> Sudjana, "Eksistensi dan Kewenangan Lembaga Manajemen Kolektif (LMK) dalam Perspektif Hukum Indonesia", *Jurnal Hukum Sasana*, Vol. 6, No. 1, hlm . 1 (2020)

publish songs without having a permit or license agreement from the creator or copyright holder, the user's actions fall into the category of copyright infringement against Law Number 28 of 2014 concerning Rights. Create. Moreover, in this business, the user never pays royalties for broadcasting songs at his place of business. It can be concluded that carrying out a separate license agreement can be carried out without having to be bound by the LMK as long as there is an agreement between the two parties.

#### **IV. CONCLUSION**

1. An creator, copyright owner or also the holder of a right related to the work created in the form of art, science, or both can be said to have copyright, which is a personal right, material rights which exclusively belong to them. Copyright is also referred to as an exclusive right created by individual creativity, either from their "brain processes" or "heart processes" in the form of concrete or intangible products. Humans must undergo a protracted process to produce work of high quality and value. Human creativity cannot be formed instantly. In this way, it makes sense to grant exclusive rights and rewards to the owner of copyrighted works which can be called economic rights. In order to manage economic rights, in this case royalties, creators or copyright owners, the Indonesian government has formed an agency called the Collective Management Institute, hereinafter referred to as LMK. The management and collection of royalties can be delegated to LMK as stipulated in Law Number 28 of 2014 concerning Copyright. However, the regulation does not mention that creators are required to join LMK for management and collection of royalties. That way, it means that it doesn't matter if a creator or copyright owner does not authorize the management of royalties to LMK.
2. Apart from being regulated in Law Number 28 of 2014 concerning Copyright, the management and collection of royalties is also regulated in Government Regulation Number 56 of 2021. These two regulations only regulate the implementation process, the amount of royalties, and related parties who have authority to manage and collect royalties but there are no rules governing the prohibition of processing and collecting royalties independently, in this case making a separate royalty agreement. So that way the creator or owner of the copyright can still carry out economic benefits on the Work, for example to get royalty payments for the use of protected copyrighted works such as songs and or music by entering into a separate license agreement.

#### **V. SUGGESTION**

1. There needs to be more massive socialization of the meaning of copyright for songwriters, so that in the future issues regarding the distribution of songs, the understanding of this license agreement can be understood by songwriters. Then here is the government's role in cracking down on song piracy, so that the songwriters are no longer harmed by irresponsible people.
2. It is necessary to create an integrated system that contains a list of creations, especially songs in one application managed by the Government, so that the government can find out one by one the data sources of creators and works that are published, whether there are changes, additions or other things, so that it is more guarantee legal certainty regarding the distribution of royalties for songwriters and music.

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