



Legal Protection on Economic Rights of Pirated Work of Songs in Intellectual Properties

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ABSTRACT

This research aims at finding out the legal protection of copyright according to positive laws of Indonesia, and the types of legal sanctions rendered if there is an infringement on the economic rights of a songwriter. This research applies the juridical normative method to literature studies. The data which is presented in this research is secondary data. The findings show that the protection over works on songs in Indonesia has been provided by Law No. 28, 2014 concerning Copyrights. The law states that a song is one protected intellectual property. In its practice, the protection over copyright follows the automatic protection system, which means that the protection is without the process of recordation. The legal consequence is that every person who illegally commits a copyright crime, either for economic rights or for commercial use, shall face criminal sanction. Besides, the other parties other than the creator can be prohibited to exploit the creator's economic rights. Within the sanction, other parties besides the creator are prohibited to exploit the creator's economic rights.

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1. Introduction

Intellectual property, which was known as Intellectual Property Rights in Indonesia usually abbreviated as HKI¹, has been an interesting discourse in societies, not only at the national but also at the international level. The cause is that intellectual property² has been traded globally³. Globalization, which has reached its influence since the 1990s, has warned global societies⁴ that intellectual property

¹ HKI is the right resulted from creative activities, which are human's clarity expressed to the public in various forms. These activities possess benefits that support human's life. They also possess economic value. See Muchtar AH Labetubun, (2019), *Penyelesaian Sengketa Hak Atas Logo (Suatu Kajian Overlapping Hak Cipta dan Merek) JHAPER*: Vol. 5, No. 1, Januari-Juni, p. 152.

² Intellectual properties consist of two, they are: 1) copyrights and neighboring rights, which include Science, Art, and Literature; and 2) Industrial Property Right, which include Patent, Trademark, geographical indication, Industrial design, Layout Design of Integrated Circuit, and trade secret. See Dara Quthni Effida, (2019), *Tinjauan Yuridis Indikasi Geografis Sebagai Hak Kekayaan Intelektual Non-Individual (Komunal)*, *Jurnal Ius Civile: Refleksi Penegakan Hukum Dan Keadilan*, Volume 3, No. 2, p. 59.

³ Globalization can minimize gaps between developed and developing countries through the open opportunities for the involvement of developing countries in international trade. See Betharia Noor Indah Sari, (2015), *Personalitas Hukum Internasional dalam Pasar Tunggal Asean*, Kencana, Jakarta, p. 41.

⁴ Jusuf Wanandi, (2006), *Global, Regional and National: Strategic Issues & Linkages*, Centre for Strategic and International Studies, Jakarta, p. 13.

can be held for trading by involving many countries. Of many intellectual properties, copyright⁵ is the creator's property.

In Indonesia, intellectual property laws have changed the nomenclatures four times. The first was started by copyrights, patents, and the Trade mark. The second term changed into Rights of Intellectual Property or related to Haki). The third was changed into Intellectual Property Rights). Lastly, after Presidential Regulation No. 44 of 2015 on the Law and Human Rights Ministry had been signed, it was changed into Intellectual Property. The reason for the change of the name is to adjust with other nations.

In the context of intellectual property (especially copyrights), the intellectual property itself is not only intended for art and culture but it can also be utilized for commerce and industry involving the creators. Thus, these protected properties of art and culture can improve the wealth either for the creators or for the nation and people.⁶ In the law of intellectual property rights, copyrights are protected by Law no. 28 of 2014 on Copyrights. The protection can be provided after the copyrights are present and they exist in real form instead of being an idea. The works must show authenticity, which indicates ability, creativity or being creative⁷, or expertise, so they can be seen, read, or heard. In line with technological advances and today's conditions, creativity is the main provision instead of financial capital. The world is a market, and information is the provision. Someone with high creativity has a big opportunity to do well develop.⁸ Thus, protection shall be provided for the creative resulting works.

The protection, as intended in the law of copyrights, is directly or automatically provided after the works are created or are present. It needs no registration. This means that the registration is not the cause of a work to be protected. Instead, legal protection on a work occurs because it is recorded. This is asserted in Law No. 28 of 2014, Article 1, Paragraph 1 on Copyrights (Laws on Copyrights). The paragraph states "Copyright means an exclusive right of the author vested automatically based on declaratory principle after Works are embodied in a tangible form without reducing under restrictions under the provisions of laws and regulations".

From Article 1 (1) we can conclude that copyright is an exclusive right of the creator. The right automatically comes out based on the declaratory principle after the work is embodied in tangible form. Still, it occurs without decreasing restrictions according to the provisions of laws and regulations. The protection is provided without the necessity to register first. Even though the recording of copyrights is the cause of a work protected, recording is voluntary, which means under no duress. However, copyright recording is strongly suggested for some reasons. Some of them are to easily facilitate when there is a dispute, and most importantly to provide safety for the owner.

The forms of protected works are created by the creator based on their ability, creativity, or expertise. A creator is someone or some people who work together, and their inspirations create a work based on their ability to imagine, proficiency, skill, or expertise, which is manifested into specific and personal work. When creating a work, the creator can utilize it for economic benefit. Article 1 Paragraph 3 of Laws of Copyrights clearly states about work. Work means any scientific, artistic, and literary works resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise

⁵ Rights can be divided into two, they are basic rights (human rights) which are absolute and cannot be interfered and Legal Rights which are given by the society through legal regulation. See Adrian Sutedi, (2009), *Hak Atas Kekayaan Intelektual*, Sinar Grafika, Jakarta, p. 38.

⁶ Indah Sari, (2016), Kedudukan Hak Cipta Dalam Mewujudkan Hak Ekonomi Sebagai Upaya Perlindungan Terhadap Intellectual Property Rights, *Jurnal Ilmiah M-Progress*, Volume 6, Nomor 2, p. 77.

⁷ Creative is the adjective of 'create'. Creation means the products of imaginations or thinking, which are mostly produced by artists, such as poet, composer, and painter. Creating means to create or to produce something as the result of ideas. Thus, creative means having the ability to create. See Hermawan Aksan, (2014), *Pendidikan Budaya dan karakter Bangsa Disiplin, Kerja Keras, Kreatif dan Mandiri*, Nuansa Cendikia, Bandung, p. 77.

⁸ *Kreatifitas Jadi Modal Kebangkitan UMKM*, Tangsel Pos, Kamis 21 Oktober 2021, p. 8.

expressed in a tangible form. Protection is specifically provided for work in form of the song⁹ because there is frequent infringement, for example by reproducing one or more copies, by piracy, or by changing without permission from the author.

The frequent infringements on intellectual property have made United States Trade Representative (USTR) include Indonesia in Priority Watch List (PWL) category¹⁰. This category refers to nations with highly bad infringements on intellectual property. This PWL status, however, affects Indonesia so much, both nationally where Indonesia deals with difficulty to attract investors, and globally where Indonesia become the circulation place for fake products.¹¹

If we observe reality, the problems of infringements on intellectual property are committed through many irresponsible acts. This includes singing an author's song without permission and doing it for commercial purposes. In the end, these acts contravene the concept of copyrights, which is to protect the products of intelligence, thought, and expression or reflection which are manifested in intellectual works. As one of the legal objects, the concept of copyrights is treated equally with concrete objects. If a piece of land can be rented, so can the copyrights. Tangible objects can only be sold once, meanwhile, copyrights can be licensed many times, which causes multiple economic values. Nowadays, there are many people, especially in Europe, America, and other developed countries developing copyrights. This is because it provides massive profits, such as books, computer programs, movies, etc. Concrete objects are limited, meanwhile, copyrights are inexhaustible as long as the people are willing to create works. This is because copyrights are products of men's thoughts.¹²

The numerous infringements have caused the copyrights unprotected. Moreover, when there is an infringement over laws. Thus, the exclusive right of the author or creator is massively ignored without nobody stopping it. The appreciation of exclusive rights from the author means that the only song author can gain economic benefits. The other parties cannot commercially utilize the exclusive right over song copyright without permission from the author. Commercial use refers to the utilization of copyrights and/or rights of products to obtain economic benefit from various or paid sources.¹³ According to OK Sadikin, economic right is the right that provides an economic benefit for the author.¹⁴ In Article 28 of Law No. 28 of 2014 on Copyrights, economic rights are the exclusive right of the Author or the Copyright Holder to gain economic benefits from the Works.

The economic benefit can increase the wealth of the authors.¹⁵ Meanwhile, Article 9 (3) of Law No. 28 of 2014 on Copyrights states that every person exercising the economic right as meant by paragraph 1 is mandated to obtain permission from the author or the copyright holder. Next, in paragraph 4 every person without permission from the author or the copyright holder is prohibited to reproduce and or using the works for commercial purposes.

⁹ From the aspect of economic potential, music or song can provide great contribution in increasing the economy and national income. This is shown by the increasing businesses on music or song, which are integrated within the music organization in Indonesia. See Sanusi Bintang, (1998), *Hukum Hak Cipta*, PT. Citra Aditya Bakti, Bandung, p. 95.

¹⁰ As the generation of the nation, we certainly expect Indonesia to get excluded from the Priority Watch List (PWL). The list periodically issued by US Commerce highlights the high level of infringement on Intellectual Properties (KI) Watch List (PWL) ini. The countries listed in this category show there are high level of piracy which causes United States to monitor them.

¹¹ Ade Miranti Karunia, *Masih Berstatus PWL, RI Dinilai Akan Kesulitan Gaet Investor Asing*, Kompas, 06/10/2021.

¹² Isran Idris, (2010), *Pemanfaatan Nilai Ekonomi Hak Cipta Oleh Masyarakat Lokal*, *Inovatif: Jurnal Ilmu Hukum*, Vol. 2 No. 4, p. 123.

¹³ Komang Ardika dan Marwanto, (2019), *Pemanfaatan Lagu Secara Komersial Pada Restoran Serta Keberadaan Pengunjung Yang Menyanyikan Lagu Secara Volunteer*, *Jurnal Kertha Semaya*, Volume 7 No, 6, p. 4.

¹⁴ OK Saidin, (2015), *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Cetakan ke-9, PT. Raja Grafindo Persada, Jakarta, p. 222.

¹⁵ Inda Nurdahniar, (2016), *Analisis Penerapan Prinsip Perlindungan Langsung Dalam Penyelenggaraan Pencatatan Ciptaan*, *Veritas et Justitia* Volume 2, (1), p. 235.

Infringement on copyrights related to economic rights has been committed by many irresponsible people for their profit. If we see what the law on copyrights says, this is certainly ironic. The law prohibits other parties besides the author to utilize others' works for economic benefit. However, in its practice, there are so many parties utilizing copyrights for commercial purposes. In truth, the economic rights are solely for the author or copyright holder. Thus, no other parties are taking the economic benefit without permission from the author or copyright holder. With its exclusive characteristic, the owner of the copyright reserves the right to permit other parties to utilize his or her work. Exclusive rights are the essence of possessing copyrights.

The main protection of copyright is an exclusive economic benefit¹⁶ over the exploitation of works by other parties. The ways to utilize the economic right over work is by reproducing (copying) and later by publishing, or making the works enjoyable (available) for the public.¹⁷ A composer will not go to enjoy the economic benefit of his creation if his creation is easily played by the public. Getting the song played can be by live or recorded performance. To be able to play the song in many places, the song certainly must be recorded and reproduced (copied). To be appropriately played and to have its quality or beauty, the song must be recorded in such a way by using adequate equipment and be sung by a singer or a musician with certain skills. This is where the right and process related to performing the song (to make it available) for the public emerge.¹⁸

Based on the background explained above, the researcher formulated the research questions as follows: First, how is the legal protection of copyrights in Indonesia? Second, what are the legal consequences for someone infringing copyrights, especially when the person commercially utilizes the economic benefit over a work?

2. Research Method

This research employed a normative legal method¹⁹ by using a library research approach. Research on law within the normative juridical approach, which is also called doctrinal research, concerns the purposes of the law, values of justice, validity of legal provisions, legal concepts, and legal norms.²⁰ Because this research employed a library study, the data presented in this research were secondary data, which were obtained from various sources. The sources were related and relevant to the formulated questions. Secondary data are the data gained from library materials²¹, which are books,

¹⁶ Because copyrights provide certain periods of time to exploit the economic benefit on the works for their author, economic rights are frequently considered as the synonyms of exploitation rights. The activities of exploitation concerning the performers, where the singers sing songs or music (creation or work) and get recorded into CDs or cassettes to be sold to the consumers. See Eddy Damian, (1999), *Hukum Hak Cipta menuiti Beberapa Konvensi Internasional, Undang-undang Hak Cipta 1997 dan Periindungannya terhadap Buku serta Perjanjian Penerbitannya*, Alumni, Bandung, p. 62-63.

¹⁷ One of many ways to exploit the economic rights over a song is that an author can announce or reproduce his works by himself in order to take the economic benefit, or he can delegate the copyrights for other parties under an agreement, and/or he can receive royalties from the parties who have good will in exploiting his works. See Hendra Tanu Atmadja, (2003), *Konsep Hak Ekonomi dan Hak Moral Pencipta Menurut Sistem Civil Law dan Common Law*, *Jurnal Hukum*, No. 23 Vol 10, Mei, p. 155.

¹⁸ Agus Sardjono, (2010), *Hak Cipta Bukan Hanya Copyright*, *Jurnal Hukum dan Pembangunan*, Tahun ke-40 No.2 April- Juni, p. 256-257.

¹⁹ Normative legal research is generally typical research conducted to develop legal science. The core problem in legal science is to determine what sentence should be rendered for certain concrete situations. See *Metode Penelitian Hukum Konstelasi dan Refleksi*, Yayasan Pustaka Obor Indonesia, Jakarta, 2013. Lebih jauh baca Bernard Arief Sidharta, (2013), *Penelitian Hukum Normatif: Analisis Penelitian Filosofikal dan Dogmatikal*, Yayasan Pustaka Obor Indonesia, Jakarta, p. 142-143.

²⁰ Peter Mahmud Marzuki, (2007), *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p. 22.

²¹ Soerjono Soekanto dan Sri Mamudji, (1985), *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, CV. Rajawali, Jakarta, p. 12.

journals, and other related-to-research sources. After the data had been collected, the formulated problems were identified, which led to problem-solving.²²

3. Legal Protection on Copyrights according to Indonesia Law

In Article 1 Law of the Republic of Indonesia No. 28 of 2014 on Copyrights, the protected works are explained as any scientific, artistic, and literary works resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form. Work refers to everything someone has in mind and then processed into concrete form, which can be felt by human's five senses. From the various mentioned works, the song is classified as artistic work.

According to *Kamus Besar Bahasa Indonesia* (Indonesia Official Dictionary), the song refers to 1) various rhythmic sounds (in talking, singing, reading, etc.; 2) chants; 3) various melodies (music, *gamelan*, authentic *keroncong*, etc.); 4). Behavior, way, and manner.

The song itself can be defined as an artistic work combining artistic elements, which are artistic sound and poetic language. The song is usually written in a shortened language and combined with rhythm and sound. It frequently uses metaphors or the recent language style. In a song, there is an important element, which must exist. The element is the song lyrics.²³

Copyright of a song has resulted from inspiration, ability, thought, imagination, dexterity, and skill, the legal protection on a work of song obtains a position in the laws, both in particular and general legal provisions. Protection of song copyrights is, of course, just the same as the protection of copyrights entirely. The system automatically protects. This means that the copyright of the song is automatically protected even though the song is not processed into recording.

The song author automatically receives legal certainty over his work when the work has been manifested or published into concrete work (expression work). This may just happen because, in nature, the law on copyrights is a system that follows automatic protection.²⁴ Thus, it is very clear for this current time that once copyright is concrete and can be felt and even enjoyed, the work automatically gains protection. In the Dutch time, the protection can be found in *Auteurs Wet* (S.1912.600). As Indonesia gained her independence, the Indonesia government changes the law on copyrights, which was based on the Dutch East Indies' legal system, into a legal system which was characterized Pancasila, Indonesia's ideology. Then, Law no 6 of 1982 on Copyright was established. As the international society develop and due to the need for legal protection on copyrights, this law has experienced some changes or modification. The last one is Law No. 28 of 2014 on Copyrights.²⁵

The changes in the law on copyrights have occurred because the legal system puts intellectual property into three categories. First, most of society acknowledges the right of personal possession of the personal property, which was known as intangible things; second, property in its real definitions, such as a piece of land and a building; third, the property known to belong to intellectual property, such as copyright. These concepts are attempted and applied as the grounding thinking to protect the rights of intellectual property.²⁶

The protection provided by law on copyrights is intended to stimulate the activities of authors, so they can keep creating and being more creative. The emergence of either new or existing creation must be

²² Bambang Waluyo, (2002), *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, p. 16.

²³ Ida Bagus Komang Hero Bhaskara, (2021), *Perlindungan Hukum Terhadap Hak Cipta Lagu Terkait Dengan Perubahan Lirik Dalam Kegiatan Cover Lagu*, *Jurnal Kertha Negara*, Vol. 9 No. 10, p. 804.

²⁴ Damayanti, Ni Putu Utami Indah, AA Sri Indrawati, dan AA Sagungwiratni Darmadi, (2018), "Karya Cipta Electronic Book (E-Book): Studi Normatif Perlindungan Hak Ekonomi Pencipta." *Kertha Semaya 3 Journal Ilmu Hukum*, No. 3, p. 4.

²⁵ Inda Nurdahniar, *Op cit*, p. 233.

²⁶ Khaerul H Tanjung, (2007), *Hak Kekayaan Intelektual*, Jakarta, p. 23.

supported and protected by the law. The embodiment of legal protection is reaffirmed in law by stipulating criminal sanctions for the people who contravene the law by violating the copyrights.²⁷

Protection of copyright has also been implemented at the international level. It began in the middle of the 19th century based on bilateral agreements. In these bilateral agreements, the nations acknowledged the rights of each other. However, the regulations are not of one kind. The need to establish one kind of regulation resulted from the agreement of the Berne Convention for The Protection of Literary and Artistic Works on 9 September 1886. Berne Convention is the oldest international treaty on copyrights. It was open for ratification for every nation. Indonesia itself, under Presidential Regulation No. 18 of 1997, ratified Berne Convention within the reservation of Article 33 Paragraph 1. As the oldest convention, Bern Convention is a series of a treaty regulating copyrights. Berne Convention was signed by ten initial members Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, and Tunisia). Seven nations became members by accession (Denmark, Japan, Luxemburg, Monaco, Montenegro, Norway, and Sweden).²⁸

The Indonesian government has been aware to protect copyrights for a long. This is asserted in Article 40 Paragraph 1 of Law No. 28 of 2014²⁹ on Copyrights. This law states that a song is of protected work in intellectual property rights. This policy follows the international standard on copyright protection. In the Law of Copyrights, there is no specific definition of works of song and/or music. The song is only just one of the works protected by the Law of Copyrights. It is protected just as other works mentioned in Article 40. To be precise, it is regulated in Article 40 Paragraph 1 Sub-Paragraph (d), works of song or music, with or without lyrics. Therefore, the general regulations apply for music and/or songs, just as for the other works unless it is declared null and void. The existence of copyrights is important to preserve. This is something we have to fight for. Due to its economic right, no one is allowed to commit piracy on song copyright. Moreover, based on Law No. 28 of 2014 on Copyrights, the government has established a National Collective Management Organization as the non-profit and legal institution where the creator, holder of the copyright, and the owner of rights gather to protect their interest in copyrights. This body manages the economic rights of copyrights. That is collect and distribute the royalties to a composer.

To have the copyrights, especially for songs, structured and protected, the government should now establish a special body handling the infringements and crimes on copyrights independently. This special body is going to monitor and watch the development of copyright infringement. This body protecting copyrights can later work to execute arrest and to proceed with the investigation when there is an allegation of infringement or allegation of crime on copyright. This body is very useful to eradicate cases of copyright piracy, especially for songs, which are utilized by other parties besides the authors for commercial purposes. The presence of this body is expected to reduce or even free Indonesia from the problems of copyright piracy. From this point, this body should be occupied by reputable academicians, legal practitioners, and other professionals in their scientific fields. They occupy the body through official provisions enacted by the state, so they have legal duties and functions, which later make it easy for them to coordinate with other institutions to eradicate the piracy of intellectual property. Therefore, the establishment of this protection body is more pointed out how to increase the efficiency and effectiveness in eradicating criminal acts on copyrights, especially for song copyrights.

²⁷ OK. Saidin, (2010), *Aspek Hukum Hak Kekayaan Intelektual (intellectual property rights)*, Rajawali Pers, Jakarta, p. 23.

²⁸ Oksidelfa Yanto, (2016), *Konvensi Bern Dan Perlindungan Hak Cipta*, *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, Vol. 6 No.1, Maret, p. 116.

²⁹ Law No. 28 of 2014 acknowledges two types of rights contained in a work, they are copyrights and neighboring rights. These both rights are part of exclusive rights, which are adhered to the authors, holders of copyrights, and owners of rights. See Ashibly, (2016), *Hukum Hak Cipta: Tinjauan Khusus Performing Right Lagu Indie Berbasis Nilai Keadilan*, Genta Publishing, Yogyakarta, p. 51.

4. Legal Consequences for the Violation of Work of Song

In the law of intellectual property, everyone producing a work deserves the economic right for the work he creates. As the holder of a work, thus a creator deserves to determine and decide whether his work is to be reproduced and to be announced. Thus, an author or a creator can utilize the economic benefits of the works he creates. Because of the creator's or author's important economic benefit for his works, the nation is mandated to provide legal protection on copyrights. Every nation provides legal protection on copyrights and neighboring rights. This is the manifestation of reward for the creator or author considering not everyone can create work in the fields of science, arts, or literature, which the copyrights cover. Principally, the protection of the economic right is every economic aspect related to a work created, especially when the work has been produced and traded as regulated in the Law of Copyrights. The economic value causes the copyrights to become important to protect, especially from irresponsible parties who decrease the economic value.³⁰

Economic rights can be defined as the rights that provide economic benefit (that can be valued by money) for the author. One of the elements of commercial use is to gain economic benefits. Economic benefits are the benefits gained that can be valued by money or the benefit that can influence the value of money.³¹ Article 9 of Law No. 28 of 2014 has mentioned which type of copyrights the economic benefit. If there are parties besides the author or the copyright holders who utilize the copyright for commercial purposes without permission from the owner of the work or the copyright holders, their acts are prohibited. The acts are prohibited because the economic rights in copyrights consider the results of thinking and the author's ideas. Thus, using them without permission for personal economic benefit is highly prohibited.³²

Therefore, Article 9 Paragraph 2 of Law No. 28 of 2014 regulates the provisions. This article clearly states that everyone willing to exercise the economic rights of work is obligated to gain permission from the author or copyright holder. If we see Article 1 Paragraph 20, license refers to written permission granted by the copyright holder or owner of rights. Then, the other unscrupulous parties are prohibited to reproduce a work with commercial purpose without permission from the author or copyright holder. Article 9 Paragraph 3 states and regulates this.³³ Article 17 of Law No. 28 of 2014 on Copyrights mentions: (1) Economic rights to Works remain with the Author or the Copyright Holder provided that the Author or the Copyright Holder does not transfer all economic rights from the Author or the Copyright Holder to the recipient of the transfer of rights of the Works. (2) The economic rights that have been transferred by the Author or the Copyright Holder in whole or in part cannot be transferred for the second time by the same Author or Copyright Holder. Economic rights are exclusive rights of the authors or copyright holders in gaining economic benefits over their works.

Violation of the copyrights of songs is specifically regulated in Article 113 of Law No. 28 of 2014 on Copyrights. This article enumerates the types of violations of economic rights and sanctions that may be rendered to those who violate them. The violation for example unlawful violation produces a copy of works without permission of the author. The sanctions that can be given are quite serious, imprisonment of up to two years and a fine of up to Rp. 4 billion.

From the Articles explained above, thus imprisonment sentence is a legal sanction. It is the consequence for someone who infringes the economic rights of a work for commercial purposes stated before, the perpetrator can be sentenced to up to 10 years imprisonment. To avoid this criminal imprisonment, everyone utilizing a work or a song must enter an agreement.

³⁰ Harry Randy Lalamantik, (2018), *Kajian Hukum Tentang Hak Terkait (Neighboring Right) Sebagai Hak Ekonomi Pencipta Berdasarkan Undang-undang Hak Cipta Nomor 28 Tahun 2014*, *Lex Privatum*, Vol. VI/No. 6/Ags/, p. 14-15.

³¹ Komang Ardika dan Marwanto, (2019), *Pemanfaatan Lagu Secara Komersial Pada Restoran Serta Keberadaan Pengunjung Yang Menyanyikan Lagu Secara Volunteer*, *Jurnal Kertha Semaya*, p.11.

³² Ida Bagus Komang Hero Bhaskara, *Op cit*, p. 807.

³³ *Ibid*, p. 808.

Based on the law on copyrights and to avoid the criminal sanction, which is imprisonment, thus it is important to have an agreement before playing someone's songs for commercial purposes or economic benefit. There must be remuneration (royalties) paid to the author or copyright holder in the agreement. The song owners or song authors deserve the royalties. The amount of royalties is agreed upon over a license agreement. There are recipient and giver parties in the agreement. According to the agreement, the licensed recipient can utilize the copyrights to sell the works by paying royalties to the licensed recipient.³⁴

The repudiated economic rights can diminish the authors' or copyright holders' motivation to create. Losing motivation can greatly affect the macro creativity of Indonesia. A nation should protect the works of its people so that work can provide wealth for them. The people gain wealth because copyrights can bring economic value to life.

Thus, the national principles and purposes stated in paragraph four of The Preamble of The 1945 Constitution "...shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order..."³⁵ should be sought to appreciate the national wealth. Furthermore, if we notice the developed countries, adequate protection of copyrights has successfully brought better growth for a creative economy. It significantly and concretely contributes to the economy and wealth of the people.

From the above explanations, we can find out that the existing laws on copyrights have been relatively appropriate to regulate the sanctions on criminal acts on copyrights, which are related to the utilization of songs for commercial purposes or economic benefit. Thus, the state³⁶, within all its instruments, must seriously enforce the law for copyrights, especially the rights for pirated songs that are used for commercial purposes. Moreover, nowadays there are laws specifically assessing and protecting the works.

Accountability of law cannot interfere.³⁷ Even though copyrights are protected based on the existing laws, the nation's decisive actions on the perpetrators who reproduce and pirate the copyrights are highly required. This aims to protect and maintain the economic rights of the author. The decisive actions on the perpetrators who commit crimes and infringement of copyrights are also aimed to achieve justice³⁸ for the author. Thus, there are no injured parties, especially the author and the related ones. Laws must play important roles to protect workers against unlawful actions.

The legal standing in Indonesia is an order that comes with various rules. These rules must be obeyed by all the national components without exception. This means that what the laws state must be based on the willingness of the laws themselves. This context indicates that commitment of the authorities (the institutions that run the state or government) is required.³⁹

As the authority to execute law enforcement, the state deserves to render criminal sanctions. The state itself is the only legal subject with the right to sentence (*ius puniendi*). The state's authorities to render criminal sanctions are delegated to law enforcement agencies. These agencies work in a system called Criminal Justice System. According to Mardjono Reksodiputro, the criminal justice system is a system

³⁴ Bayu Kusuma Permana Putra, I Nyoman Putu Budiarta, I Ketut Sukadana, (2020), Sanksi Hukum Terhadap Pelanggaran Hak Cipta Yang Dilakukan Oleh Perusahaan Karaoke, *Jurnal Konstruksi Hukum*, Vol. 1, No. 1, p. 69-70.

³⁵ Leri Patra, (2021), Pola Pengelolaan Kekayaan Nagari Dan Pemberdayaan Masyarakat Dalam Peningkatan Kesejahteraan, *Jurnal Nagari Law Review*, Volume 5 Nomor 1, Oktober, p. 67.

³⁶ Acts of the state must be aimed at public service by considering the interests of many people (public interests). See Sudikno Mertokusumo, (2011), *Kapita Selekta Ilmu Hukum*, Liberty, Jakarta, p. 74.

³⁷ Soerjono Soekanto, (2019), *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Rajawali Pers, Depok, p. 13.

³⁸ Even though justice is not the only purpose of law, the substantial purpose is still the justice itself. See Dosminikus Rato, (2020), *Filsafat Hukum Mencari dan Memahami Hukum*, PT. Presindo, Yogyakarta, p. 59.

³⁹ Amanda Lestari Putri Lubis, (2011), *Upaya dan Tindakan Hukum (Dalam Kasus Penyalahgunaan Kewenangan)*, Cintya Press, Jakarta, p. 44.

in the middle of society aimed to eradicate crime.⁴⁰ Besides law enforcement, intensive and continuous coordination with all related and competent parties is really important to maximize. This aims to minimize people's interests and desires to infringe the economic rights over any work through commercial purposes. In addition, it also aims to minimize the fake products that widely circulate in the middle of society. Still, a well-planned campaign with other parties must be prepared, developed, and continued systematically.

In the end, law enforcement is not only aimed at law enforcement of copyright law but it must be aimed to achieve the legal purposes themselves. They are the desire for the balance of interest, order, and justice, for every single individual involve in the creative work of copyrights. The provision in the law of copyrights is expected to provide legal protection to the author. It will result in a better condition for the development of creativity and the protection of copyrights. It is hoped that criminal sanction available in the law will bring a condition of deterrence effect for the people and at the time will encourage the creative spirit. At last, the protection of copyrights will create better work for better economic growth.

5. Conclusion

Protection of the work of song in Indonesia has been provided in law No. 28 of 2014 on Copyrights. The law has reaffirmed that the work of a song is one of the protected works in the rights of intellectual property. The protection of a work of song as copyright follows is an automatic protection system without the process of recording. The protection provided by the laws on copyrights is aimed to stimulate the authors to keep creating and being creative. The consequence for someone who infringes economic rights over work for commercial purposes is imprisonment for up to five years and or a fine of up to one billion rupiahs. To avoid this imprisonment sanction, there must be an agreement before the songs are played for commercial purposes or economic benefit. The agreement must mention the royalties paid to the author or copyright holder. The government should have established a special body to protect the works of the authors. This special body would be assigned to monitor and take further actions against the perpetrators of copyright infringement.

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