



Legal Protection Against Violation of Song or Music Copyrights Based on Law Number 19 of 2002 Concerning Copyrights

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ABSTRACT

This research was conducted to find out the legal protection against copyright infringement of songs or music based on Law No. 19 of 2002 on copyright. The approach used in this study is a normative juridical approach, meaning that it examines statutory provisions while still addressing existing problems while examining their implementation in practice in the field. The results of this study a. Copyright protection is divided into two, namely preventive (by going through registration procedures) and repressive protection, namely protection provided in the event of a violation. These two aspects should not only be known in the form of a law, but also their contents and content must be understood; Copyright registration is intended as evidence in the event of a dispute and also as documentation to prevent abuse of rights; Completion of the law against works of copyright infringement of music can be done in 3 ways, namely: Criminal prosecution; Civilly, the copyright holder can file a claim for compensation to the Commercial Court; Settlement through arbitration or alternative dispute resolution through negotiation, conciliation mediation or other methods chosen by the parties in accordance with applicable laws.

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1. INTRODUCTION

The definition of intellectual property rights (IPR) can be substantively described as "property rights that arise or are born due to human intellectual abilities". The description above basically provides clarity that Intellectual Property Rights indeed make works that arise or are born due to human intellectual abilities as the core and object of its regulation. Likewise in terms of copyright, the understanding of the right to property that arises or is born because of this intellectual ability, has taken the form of a copyrighted work.

Humans were created by God with advantages that other living things do not have. Humans have creativity, taste and intention. These advantages are used to carry out various activities, one of which is intellectual activity. The resulting intellectual activity can be creation and creativity. Creative forms include artistic creations. There are various types of art. One example is the art of music or song.

The elements contained in music such as harmony, melody, rhythm are a unified whole. As Jamalus said, music is a work of sound art in the form of a song that expresses the thoughts and

feelings of its creator through rhythm, melody, harmony, song form/structure and expression as a whole. Thus understanding of music must be comprehensive.

The development of world music is developing very rapidly, almost every day new works of music appear, even new genres of music are increasingly diverse, thus adding to the diversity of world music. Likewise with music or songs. Not all music or songs can be successful in the market, so creators compete to create the best songs or music so that these creations can become famous. With the fame of his creations, in this case in the form of musical creations or songs, many benefits have been achieved, namely from an economic and moral perspective. The advantages from an economic perspective, of course, with the popularity of a song or music affects album sales so that it gives more profit, while from a moral perspective, with the popularity of a song or music, it indirectly popularizes the creator. Making a song famous is not easy, brilliant ideas and high creativity are needed so that the music or song can be accepted by the public and become famous. This is what encourages someone to imitate the song or music. The desire to get more profits in an easy and fast way is the main factor.

Music or song copyright infringement basically occurs when the copyrighted material is used without permission and there must be similarities between the two existing works. Music or song copyrights are also infringed if all or a substantial part of a work that has been protected by copyright has been copied.

These various practices of violating music or songs have been going on for a long time and are still happening now even with higher intensity. Moreover, technological advances have facilitated violations of intellectual property rights in the field of music in various ways, which are in fact very difficult to monitor. It is these loopholes for violations that are often exploited by parties who wish to reap large profits in an easy and minimally costly way, without thinking about the losses of other parties, such as creators and the state, of course.

Piracy of a piece of music or song can be divided into three categories. First, simple piracy, in which an original recording is duplicated to be traded without the right producer or copyright holder. Pirated recordings are packaged in such a way that they are different from the original packaging. Second, the recordings are duplicated, then packaged as closely as possible to the original, without permission from the copyright holder. Logos and brands are imitated to trick people into believing that what they are buying is the original product. Third, duplicating the recording of performances by certain artists without the permission of the artist or the composer or without the consent of the record producer which binds the artist in a contractual agreement.

It was the need to recognize, protect and appreciate someone's copyrighted work that prompted the creation of the Copyright Law (UUHC) No. 19 of 2002. This law was considered necessary because if there was no recognition, there might not be copyrighted works. again. Copyright law is made in such a way with several amendments to protect the interests of copyright holders. The purpose of the changes to the UUHC is to further enhance the growth and development of copyright, especially in Indonesia and to encourage creators to be even more active in creating their works. UUHC is also limited according to legislation so as to create the impression that in fact individual rights are respected but their use is based on the public interest.

Article 12 of the Copyright Law states what things are protected by law, one of which includes songs or music with or without text. Even though the UUHC has regulated in such a way regarding protected matters, restrictions on protection, registration procedures and others related to copyright, copyright infringements still occur which cause harm to the parties involved in it.

The protection provided by law against copyright is to stimulate or stimulate the activities of creators so that they continue to create and be more creative. The birth of a new creation or creation that already existed must be supported and protected by law. This form of protection is confirmed in the law by placing criminal sanctions against people who violate copyright by breaking the law.

2. RESEARCH METHOD

2.1 Object of research

Legal Protection Against Violation of Song or Music Copyrights Based on Law Number 19 of 2002 Concerning Copyrights.

2.2 Data source

The data sources used are secondary data sources, namely data obtained by studying various literature related to the problem under study, consisting of:

- a. Primary legal materials, namely: 1) Law Number 19 of 2002 concerning Copyright 2) Decision of the Central Jakarta District Court 1977 No.59/1977 G.3. 3) South Jakarta District Court Decision No. 230./Pdt.G.1988/PN.JKT.SE 4) North Jakarta District Court Decision No.1332/K/Pid/S/1983/PN.JU
- b. Secondary legal materials, namely legal materials that provide clarification on primary legal materials consisting of books, scientific journals, and other writings related to the problem under study.
- c. Tertiary legal materials, namely legal materials that provide clarity on primary and secondary legal materials such as legal dictionaries and encyclopedias.

2.3 Data collection technique

Considering that the data in the research are secondary data in the form of legal materials, the data collection is used through library research and document studies.

2.4 Approach method

The approach used in this study is a normative juridical approach, meaning that it examines statutory provisions while still addressing existing problems while examining their implementation in practice in the field.

2.5 Data analysis

The data obtained was written descriptively and then analyzed qualitatively, namely collecting data related to the problem under study, then systematically explained so that it was easy to understand by analyzing it based on legal theories and applicable legal regulations.

3. RESULTS AND DISCUSSIONS

3.1 Legal Protection Against Violation of Song or Music Copyrights Based on Law Number 19 of 2002 Concerning Copyrights

Sound recordings are entered as works that are protected by copyright, this is in accordance with article 12 letter d which explains that songs or music with or without text are protected parts of the Copyright Act No. 19 of 2002, as previously discussed.

Copyright is automatically given to the creator because copyright is inherent from the time the copyrighted work is produced, but to get protection, of course, it requires certain procedures so that the work can be recognized as the work of the person who created it. In this case, the record producer wants protection for the copyrighted work of the sound recording produced which is the result of the recording work of the record producer which is unique and shows its authenticity. Sound recordings will be given protection if a recorded work has been realized and not only in the form of an idea, it must also meet original elements or authenticity and creativity, namely that the work is truly the work of the creator of the producer.

Copyright protection issued by UUHC. This is based on the fact that artistic and cultural wealth, as well as the development of the intellectual abilities of the Indonesian people, require adequate legal protection so that there is a climate of fair business competition required in carrying out national development. Copyright protection is not given to ideas or notions because a copyrighted work must have a distinctive form, be personal and show authenticity as a work that is born based on ability, creativity or expertise so that the work can be seen, read or heard.

Copyright protection, especially for music or song creations, is becoming serious in Indonesia. Even Indonesia has been criticized by the international community. Losses due to Intellectual Property Rights infringement in Indonesia, especially due to copyright infringement, are quite large.

There are two forms of copyright protection, namely, First, preventive protection by going through the applicable registration procedures, and Second, Repressive protection, namely protection given in the event of a violation of someone's copyright.

According to Prof. Kollwijn, as quoted by Soekardono, said that there are two types of registration methods or systems, namely constitutive systems and declarative systems.

Constitutive means that the right to a new creation is issued because the registration already has power, while declarative means that the registration does not issue the right, but only gives an

assumption or presumption according to law that the person whose copyright is registered is the party who is actually entitled to be the creator. of the registered rights.

The constitutive system places its emphasis on whether there is copyright depending on the registration. If registered (with a constitutive system) the copyright is recognized *de jure* and *de facto*, whereas in a declarative system the emphasis is placed on the presumption as the creator of the rights registered, until someone else can prove otherwise. With another formulation, in the declarative system, even if the copyright is registered, the law only recognizes as if the person concerned is the owner, *de jure* must be proven again, if someone else denies the right. As long as the other person cannot legally prove that it is his right,

The copyright registration system according to Indonesian copyright law states that the registration of works is carried out passively, meaning that all applications for registration are accepted without conducting too much research on the applicant's rights, unless it is clear that there is a copyright infringement. This passive attitude proves that the Copyright Law adheres to a declarative registration system.

This is confirmed by article 36 of the Copyright Law which stipulates that the registration of a work in the public register of works does not mean validating the content, meaning, purpose or form of the work being registered.

The copyright registration function is intended to facilitate proof in the event of a copyright dispute. This registration is not absolutely required, because without registration the copyright is protected. Only regarding works that are not registered will be more difficult and more time consuming in proving them. Registration is not a requirement for a copyright to be valid (recognized), but rather to facilitate proof in the event of a dispute.

According to Mariam Darius, registration does not only mean providing strong evidence, but also creating property rights. Property rights over an object for the public occur at the time the registration is carried out. As long as registration has not taken place, the right only has meaning for private parties and the public is considered not aware of the change in legal status of the intended right. Recognition from the new community occurs when the right (property) is registered.

The requirements for an application for copyright registration are by filling out a duplicate creation registration form which can be picked up free of charge at the DJHAKI office, the first sheet of the form is signed on a Rp. 6,000 (six thousand rupiah) stamp.

An application for copyright registration is submitted to the Minister of Justice through the Directorate General of Intellectual Property Rights in duplicate, written in Indonesian on multiple polio paper. The application letter states: name, nationality and address of the creator; name, nationality and address of the copyright holder; name, nationality and address of attorney; type and title of creation; date and place of creation announced for the first time; Description of the work in triplicate.

An application for the registration of a work can only be submitted for one work, which means that multiple works cannot be submitted in one application. The application letter is signed by the applicants in the event that there is more than one creator or by a proxy specifically authorized to submit the application accompanied by a sample of the creation or a replacement thereof and written evidence explaining their nationality.

Applications for the registration of works that meet these requirements are checked by the Directorate General of Intellectual Property Rights to see if the applicant is really the creator or the right holder of the work being requested. Examination is only administrative in nature, for example only the author's statement. The results of the examination are then submitted to the Minister of Justice to obtain a decision. The Director General of IPR is notified to the Applicant by the Director General of Intellectual Property Rights.

An application letter for the registration of a work that has fulfilled the specified requirements, the work for which registration is requested is registered by the Directorate of Copyright, Patents and Marks in the general register of works. After being published in the general register of creation, the copyright that has been registered is announced in the Official Gazette of Creation of the Directorate General of Intellectual Property Rights which contains: a. Author's name, nationality and address; b. Name, nationality and address of the copyright holder; c. Type and title of creation; d. Date and place of creation announced for the first time; e. Description of creation; f. Registration number; g.

Registration date; h. Transfer of rights, change of name, change of address, cancellation of cancellation; i. Others deemed necessary.

In the event that the application for registration of a work is rejected by the Directorate General of Intellectual Property Rights, the applicant may submit a lawsuit to the Commercial Court signed by the applicant or his attorney so that the work being requested for registration is registered in the General Register of Works at the Directorate General of Intellectual Property Rights. The application to the Commercial Court must be submitted within 3 (three) months after receipt of the refusal of registration by the applicant or his attorney.

The registration of works can also be abolished, as stated in Article 44 UUHC, that the legal force of a registration is deleted because: a. deletion at the request of a person or legal entity whose name is recorded as the creator or copyright holder; b. past time as referred to in Articles 29, 30 and 31 bearing in mind Article 32; c. declared null and void by a court decision that has obtained permanent legal force.

The 1997 copyright law and the 2002 copyright law do not use the term "piracy", which comes from the translation of piracy, but this term is listed in the Preamble to the 1987 Copyright Act and the General Explanation of the Copyright Act. the.

Legal protection is an effort regulated by law to prevent infringement of intellectual property rights by unauthorized persons. If it is violated, then the violator must be legally processed, and if proven to have committed a violation, he will be sentenced according to the provisions of the law in the field of intellectual property rights that were violated. The law in the field of intellectual property rights regulates the types of violations and the penalties.

3.2 Legal Completion of Song or Music Copyright Violations Based on Law Number 19 of 2002 Concerning Copyright

Violations of Intellectual Property Rights are very broad and complex in scope according to complex issues of intellectual property rights, coupled with the rapid development of the national and international economy and trade. Violation of property rights is basically carried out as a human action caused by the relationship between the need to gain profits with shortcuts, easily.

Forms of violation of intellectual property rights are in the form of: falsification; tapping; and leaking of confidential information; unfair competition; participate in offering and trading counterfeit products; etc. The occurrence of these violations is now seen as not only detrimental to the owner of the rights, but can also be detrimental to the public interest, for example detrimental to the field of taxation, industry, consumers, and social, legal and economic order in general, even detrimental in international politics.

In the context of overcoming violations of intellectual property rights through legal means, then civil law; criminal law; as well as state administrative law can be used complementary, in addition to other non-judicial preventive measures. Furthermore, insofar as criminal law is to be used, it must always be remembered that the nature of criminal law has a subsidiary function, bearing in mind its harsh nature, that is, do not use criminal law if there are other adequate means.

a. Settlement through civil channels

Taking copyright without the permission of the owner or from the rightful person, can be sued under Article 1365 of the Civil Code concerning unlawful acts. Article 1365 of the Civil Code states "any unlawful act which causes harm to other people, obliges the person who because of his mistake caused the loss to compensate for the loss".

Article 56 paragraph (1) UUHC states that copyright holders can file a claim for compensation to the Commercial Court for infringement of their copyright and request for confiscation of the published object or the results of the reproduction of the creation. Paragraph (2) states that the copyright holder also has the right to apply to the Commercial Court to order the surrender of all or part of the income derived from holding lectures, scientific meetings, performances or exhibitions of works, which are the result of copyright infringement. Paragraph (3) states that before making a final decision and to prevent greater harm to the party whose rights have been infringed, the judge may order the violator to stop the publication and/or reproduction of works or goods resulting from copyright infringement.

Pursuant to Article 60 UUHC, it further stipulates that a lawsuit for copyright infringement that has been filed with the Chairman of the Commercial Court, if it has been registered, within a maximum

period of 3 (three) days after the lawsuit is registered, the Commercial Court studies the lawsuit and sets a trial date. The examination hearing on the lawsuit begins within a maximum period of 60 (sixty) days after the lawsuit is registered. Furthermore, the summons of the parties is carried out by the bailiff no later than 7 (seven) days after the lawsuit is registered. The lawsuit must then be decided by the Commercial Court within a period of 90 (ninety) days from the date the lawsuit is registered. However, an exception may be based on the consideration of the judge in examining the case with the approval of the Chief Justice of the Supreme Court.

b. Settlement through criminal channels

Legal settlement through criminal channels for violations of song or music copyrights is regulated in Article 72 paragraph (1) of the UUHC "anyone who intentionally and without right commits an act as referred to in Article 2 paragraph (1) 21 or Article 49 paragraph (1) and paragraph (2) shall be punished with imprisonment for a minimum of 1 (one) month each and/or a fine of at least Rp. 5,000,000,000.00 (five billion rupiah).

Paragraph (2) of the aforementioned Article states that anyone who deliberately broadcasts, exhibits, distributes or sells to the public works or goods resulting from copyright infringement or related rights as referred to in paragraph (1) shall be punished with imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

Investigations into criminal violations of song or music copyrights are carried out by Investigators from the Police of the Republic of Indonesia and/or Civil Service Officials within the Department whose scope of duties and responsibilities includes Intellectual Property Rights are given special authority as Investigators as referred to in Law Number 8 of 1981 regarding the Criminal Procedure Code to conduct investigations of criminal acts in the field of copyright (Article 71 paragraph (1) UUHC).

The investigators as mentioned above have the authority (Article 71 paragraph (2) UUHC): 1. to examine the truth of complaints or statements regarding criminal acts in the field of copyright; 2. conduct examinations of parties who commit criminal acts in the field of copyright; 3. request information and evidence from the parties in connection with criminal acts in the field of copyright; 4. carry out inspections or bookkeeping, records and other documents relating to criminal acts in the field of copyright; 5. carry out inspections at certain places where it is suspected that there is evidence of books, records and other documents; 6. confiscate materials and/or goods resulting from infringement which can be used as evidence in criminal cases in the field of copyright; and 7.

c. Settlement Through Alternative Pathways

Legal basis of Law no. 30 of 1999 concerning arbitration and alternative dispute resolution, provides legal certainty for the enforcement of alternative settlement institutions outside the court which are expected to be informal and efficient procedures. On the other hand, this makes it easy for the community to participate and develop their own conflict resolution mechanisms, especially regarding copyrights and to get options to resolve disputes that may arise. Thus arbitration or Alternative Dispute Resolution (ADR) by law means acting as an independent institution for the resolution of copyright disputes by the parties to the dispute.

Not infrequently copyright infringement or copyright disputes are resolved by the parties concerned outside the court. They do not want this violation to be reported to the police or brought to court. Entrepreneurs prefer to settle by deliberation and consensus. This way is more efficient and practical, bearing in mind that the process in Indonesian courts will take a long time, cost and energy.

One example of settlement through peaceful means at the time of the 1912 Auteurswet can be seen in the Mars Perjuangan song "Sharp Bamboo". The song Bambu Runcing is always sung by RRI Surakarta as the opening song, which is played by the Radio Orchestra Surakarta (ROS) led by Kamsidi. Likewise with the song "Harapan Bangsa" which is known as the 1st Mars PON song in Solo. P. Siagian published it in a collection of 82 songs of struggle entitled "Indonesia My Love", the name Kamsidi, as the Creator and arranger and Daldjono as the poet, was not listed in the book, but the writing was deliberately reversed, as if it was a typo, thus Siagian feel no need to pay honorarium.

4. CONCLUSION

From the discussion that has been described above, the conclusions that can be drawn by the author are as follows:

- a. Copyright protection is divided into two, namely preventive (by going through registration procedures) and repressive protection, namely protection provided in the event of a violation. These two aspects should not only be known in the form of a law but also must be understood in terms of their contents.
- b. Copyright registration is intended as evidence in the event of a dispute and also as documentation to prevent abuse of rights.
- c. Completion of the law against works of copyright infringement of music can be done in 3 ways, namely: Criminal prosecution; Civilly, the copyright holder can file a claim for compensation to the Commercial Court; Settlement through arbitration or alternative dispute resolution through negotiation, conciliation mediation or other methods chosen by the parties in accordance with applicable laws.

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