

**STATE'S RESPONSIBILITY FOR THE PROTECTION OF MORAL
RIGHTS IN MUSIC COPYRIGHT CASES IN INDONESIA**



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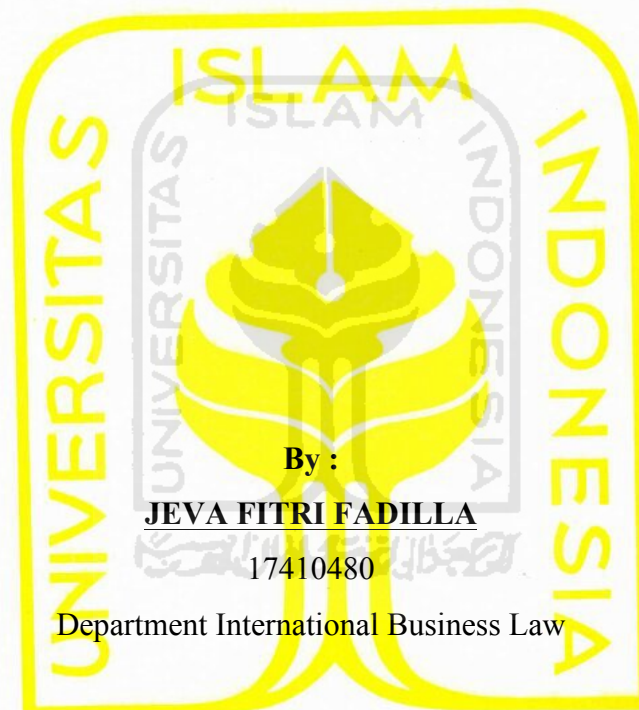
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**INTERNATIONAL PROGRAM
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UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA
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**STATE'S RESPONSIBILITY FOR THE PROTECTION OF MORAL
RIGHTS IN MUSIC COPYRIGHT CASES IN INDONESIA**

A BACHELOR DEGREE THESIS

**Presented as Partial Fulfillment of the Requirements to Obtain the Bachelor
Degree at the Faculty of Law, Universitas Islam Indonesia, Yogyakarta**



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**INTERNATIONAL PROGRAM
FACULTY OF LAW**

UNIVERSITAS ISLAM INDONESIA

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PAGE OF APPROVAL



A BACHELOR DEGREE THESIS

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This bachelor thesis has been proven and decreed acceptable by the Thesis Content Advisor to be examined by the Board of Examiners at the Thesis Examination

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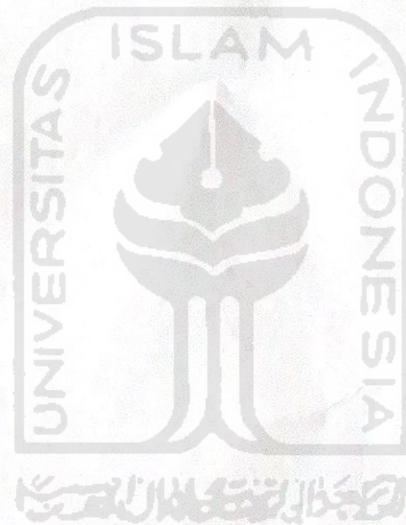
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MOTTO

*“So be patient. Indeed, the promise of Allah is truth”
(QS Ar-Rum 30:60)*

*“If you are grateful, I will surely increase you [in favor]”
(Surah Ibrahim 14:7)*

*“Do not lose hope, nor be sad. You will surely be victorious if you are true
believers.”
(QS. Ali Imran : 139)*

*“With every difficulty, there is relief”
(Surah Ash-Sharh (The Relief) : 6)*

*“Mistakes make you wiser, Pain makes you stronger”
(unknown)*

*“You are blessed everyday. So, as you continue to stride forward, may you
continue to notice the blessings that are unfolding all around you”
(unknown)*

*“This Too Shall Pass”
(unknown)*

*“Life is tough, but so are you”
(unknown)*

DEDICATIONS



This thesis is dedicated to:

My forever love, the best mom Dian Octiviandani

My soulmate, the best father Joko Purwanto

My beloved family

All of my lecturers of Faculty of Law, Universitas Islam Indonesia

All of my beloved friends

All artists in Indonesia who are fighting for their copyright

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Yogyakarta, 6 Februari 2021

The Writer,

Jeva Fitri Fadilla



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ABSTRACT

The development of digital technology has made the distribution and transactions of musical works on the internet increasingly day by day supported by the convenience of this technology, coupled with the role of music today which cannot be separated from music, yet this actually made the protection of copyright in cyberspace overwhelmed and not maximized. Especially in Indonesia, even though Indonesia already has regulations on copyright, namely Law Number 28 of 2014. The basic rights of copyright, namely moral rights and economic rights over a work protected by copyright, are not fulfilled yet, especially in moral rights. This publication manuscript will focus on moral rights attached to the creator. Moral rights are exclusive rights inherent in creators that are often underestimated by people who place more emphasis on economic rights which are more visible. It also endangers the position of the creator who is underestimated by the public.

The research method used in this research is normative legal research based on positive law namely regulation. The approach method used by the writer in this research is through statutory research approach, which the approach method is to analyze the problem based on the statute or the regulation of the copyright law, Law Number 28 of 2014 which examines aspects of the law of moral rights in music copyright in Indonesia. The source of data is from secondary data or mainly from the copyright law of Indonesia, some journals or other literature related to this research which is collected through library literature study.

The government holds accountable to protect the moral rights that become an exclusive rights of the creator in any copyrighted musical work as regulated under Indonesian Copyright Law Number 28 of 2014 equivalent to economic rights, therefore if there is a dispute over the work it can be resolved through litigation or outside litigation.

Furthermore, the sense of respect and appreciation of the creator is needed as a form of protection of moral rights of the creator, because moral rights are rights that are related to the integrity and reputation of the creator. Moral rights need to be protected to encourage the creator to create more works. Therefore, the government should introduce deeply about the rights of the creator to the society by providing some socialization or educating children about moral rights, also the state should have specific regulation about moral rights infringement so that society more considers about moral rights of the creator.

Keywords: Moral Rights, Creator, Music Copyright, Musical

CHAPTER I

INTRODUCTION

A. Context of Study

In this digital era, people depends more on the use of the internet. This era is indicated by the various features available on the internet that can help them stay connected even easier. This also causes many problems in cyberspace that can be accessed through the internet, such as piracy of music, literature, and films from someone who made them. Therefore, those problems are often underestimated by most people. It happens because of a lack of respect to the creator's work or copyright. Beforehand, copyright is one of the branches of intellectual property rights since those are the assets owned by the creator and not by other people or intangible. Intellectual Property is a term that was coined in the nineteenth century¹. Intellectual property rights can be defined as objects in property law that refer to the ownership of intangible objects². Objects that do not materialize here can be stated as ownership rights in intellectual property rights. Even though this right has no form, it can be valued in money and can be a valuable asset for its creator. Intellectual property itself consists of Copyrights, Patents, Trademarks, Industrial Designs, Layout Designs of Integrated Circuits, Geographical Indications, Plant Variety Protection and

¹Michael Spence, *Intellectual Property*, Oxford University Press, London, 2007, p.1.

²Budi agus Riswandi, *Wakaf Hak Kekayaan Intelektual*, UII Press, Yogyakarta, 2016, p.6.

Trade Secrets. In this research the writer wants to focus on one of the rights in copyright.

Intellectual property is a property that really needs to be appreciated because it is the result of the creativity of human intellectual work which requires the sacrifice of time, energy and a lot of costs. Intellectual property rights have benefits for creators with their intellectual rights in creating protected works, for example in the field of Copyright³. There are mistakes in intellectual property rights that often occur, for example, when a person wants to protect an intellectual property in the form of a song, so it will include patenting the song, protecting the brand and also the design. The word patent should only be used when she or he want to register her or his invention. In other words, the word patenting here must be replaced by the word register, because the patent has another meaning that is widely misused by people in Indonesia. The invention itself must be in new finding or creation, the invention may be a product, device or composition. It can also be a process or method for the manufacture or use of a product⁴.

Beforehand, copyright is a term that is often used by the creator of authority over the results of his work. Copyright is a special or exclusive right owned by the creator of a work in the fields of science, art and

³M. R. A. Pawitram, N. K. S. Dharmawan, dan A. K. S. Indrawati, 'Pengaturan Lembaga Manajemen Kolektif Berkaitan Dengan Penarikan Royalti Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta', *Jurnal Ilmiah Ilmu Hukum Kertha Semaya*, Vol. 5, No. 1, Fakultas Hukum Universitas Udayana, Bali, 2017, h. 2.

⁴Mashoedah, MT, 'Pengenalan HKI (Hak Kekayaan Intelektual)', *Jurnal HKI*, No. 1, Lembaga Penelitian dan Pengabdian pada Masyarakat, Universitas Negeri Yogyakarta, 2015, p.2.

literature that can be defended against anyone who violates that right in accordance with the provisions of the law⁵. Based on the explanation of the copyright, a person can be said to have exclusive rights to what they made. Indonesia is a member of the Agreement Establishing the World Trade Organization (WTO) which includes the Agreement on Trade Related Aspects of Intellectual Property Rights, hereinafter referred to as the TRIPs Agreement. Indonesia must adapt the international standard TRIPs Agreement to the Copyright Law in Indonesia because Indonesia has become a member of the World Trade Organization (WTO)⁶. After experiencing several changes to the previous copyright law, a new provision was enacted which replaced the old one, namely Law Number 28 of 2014 concerning copyright. Copyright in Indonesia is regulated in Law Number 28 of 2014 which consists of 19 Chapters and 126 Articles. One of the things regulated in the law is the right for copyright holders to receive moral protection for their copyright. By the establishment of Law Number 28 of 2014, it is aimed that in the future art actors will get legal certainty for their works⁷. Moreover, the intellectual property rights system will always provide security on works that are produced because of the personal wealth owned by a person (the creator). Copyright protects works of creation in the scientific, artistic, cultural and literary that have

⁵Sopnar M. Hutagalung, *Hak Cipta: kedudukan & Perannya dalam pembangunan*, Sinar Grafika, Jakarta, 2012, p. 16.

⁶Ni Ketut Supasti Dharmawan, 2017, 'Protecting Traditional Balinese Weaving through Copyright Law : Is It Appropriate?', *Jurnal Diponegoro Law Review*, Vol.2, No.1, Universitas Diponegoro, p.17.

⁷Faghlaifi Naim, 'Kriteria Pembatasan Hak Cipta Lagu Dalam Praktik *Covering* Melalui *Youtube*', *Jurnal Hukum*, Alumni Fakultas Hukum Universitas Islam Indonesia, 2019, p.23.

been recorded in a tangible form. Copyright plays a role in protecting the creations of creators or rights recipients to exercise their rights, namely moral rights and economic rights which are emphasized in Article 4 of Law Number 28 of 2014 concerning copyright⁸.

The tangible form of a work that is protected by copyright can be stated in several works. In this increasingly advanced era, there are many creative people who create new ideas, including in the art fields, one of the example is song. The creation of the idea of a person or group of creative and brilliant people can have a positive impact on others, can express feelings, for example, can provide feelings of pleasure, provide inspiration, eliminate feelings of depression or tension, can make our emotional feelings better, and so on. This is to respect and protect the creation or the work that is not easily copied or imitated and recognized by other parties. The form of protection for their creation is provided in the form of rights, namely copyright⁹. The emergence and advancement of copyright in the scope of the law of issue has a long sequence of movement and has encountered bleak occasions in its set of experiences. It is a huge idea that has the historical background of the introduction of copyright started in England in the mid seventeenth century and in France in the late seventeenth century. The explanation the historical background of the introduction of copyright started in England and France is on the

⁸ Sujana Donandi, 'Perubahan-Perubahan Penting Terkait Hak Cipta Pasca Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta', *Jurnal Hukum*, Jurnal Fakultas Hukum Universitas Presiden, 2016, p.7.

⁹Retno purbawati, 'Perlindungan Hak Cipta Atas Streaming Lagu Dalam Joox', *Jurist-Diction*, Vol. 2, No.2, Universitas Airlangga, 2019, p. 618.

grounds that Britain and France are considered to speak to the two lawful system that win on the world today¹⁰. The two distinctive general sets of laws have likewise brought forth the idea of economic right and moral right in copyright. From the historical background of the introduction of the copyright of the two nations, we can comprehend why custom-based law nations for the most part organize the financial privileges of a creation instead of the personal privileges or known by moral rights of the makers as drilled in common law nations that have made rights¹¹.

However, its intangible intellectual property rights often cause problems for people who do not appreciate the copyright of the creator. Copyright problems occur because the lack of knowledge from the public about the rights of the creators of their works. The attitude of respecting the work of the creator to create his work needs to be more appreciated by the community, not solely because these rights are intangible so that they can be overlooked. In copyright there are several rights that need to be protected based on the law governing copyright in Indonesia, namely Law Number 28 of 2014, the law says that there are two rights that are most often heard by the public, namely, economic rights and moral rights which must be protected for their work. The economic right is the right that is owned by someone to benefit from his creation¹², which generally contains commercial elements of his work. Economic rights include reproduction

¹⁰Elyta Ras Ginting. *Hukum Hak Cipta Indonesia*, Citra Adhya Bakti, Bandung, 2012, h. 37.

¹¹Ibid.

¹²Sophar M. Hutagalung, *Hak Cipta: kedudukan & Perannya dalam pembangunan*, Sinar Grafika, Jakarta, 2012, p.336

right, adaptation right, distribution right, public performance right, broadcasting right, cablecasting right, *Droit de suite* and community borrowing rights¹³.

While the moral rights are rights that protect the creator's personal interests concerning protection of the creator's reputation. Moral rights in copyright are called human rights as natural rights owned by humans. The legal system that adheres to moral rights is Continental Legal System, which regulates paternity right, privacy right, and integrity right¹⁴. Moral rights include some important points. The first one is the right to integrity, which is a right that involves all forms of attitudes and treatment related to the integrity or dignity of the creator. In practice, these rights are expressed in the form of prohibitions to modify, reduce, or destroy works that can destroy the integrity of the creator. The principle is that the creation must remain intact in accordance with the original creation. For example, violating the Right to Integrity is replacing song lyrics with ridiculous expressions and jokes that change the meaning of the original lyrics¹⁵. The second right which is the main thing in Moral Rights is the right of attribution (right of paternity). In this case, Moral Rights requires to give the credit of the creator's identity be printed on the work, either with a personal name or a pseudonym. In certain cases and based on the

¹³Ibid

¹⁴Sopnar M. Hutagalung, *Op. Cit*, p.333

¹⁵Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*, RajaGrafindo Persada, Jakarta, 2011, p.

consideration of the creator, the creator can negate his identity and leave the copyright anonymous¹⁶.

The existence of both of these rights must not be underestimated. In this modern era which is dominantly facilitated by the internet, people are free to access anything via internet. This leads to the condition of disrespectful attitude toward someone's work. For example, when downloading or uploading songs, covering songs belonging to other people we often underestimate to give credit to the creator for the work. Both of these rights must have a balanced or equal existence between moral rights and economic rights. The differences between the two rights have been given above. The absence of real forms of moral rights makes people often forget that there are moral rights compared to economic rights. Someone creating work is not easy, it takes a lot of energy, cost and time. It is strongly urged to always provide information on behalf of the creator as a sense of appreciation for the work.

Moral rights are one of the most important rights that must be protected by the state to the creator because they seem to be a form of prevention in violations that show injustice to the creator. With the increasingly sophisticated world of the internet, people can do anything from the internet. The government must keep up with the times to always provide justice for its citizens even though it is very difficult to cover a very large internet. Firm action must be given by the government to

¹⁶*Ibid.*

simply discipline its citizens for the value of a creator's work which includes intellectual property rights. There is nothing that the government can do to protect a work by an author from violating the copyright. The creator only needs to be recognized for their existence. If society is already concerned about the existence of moral rights, other rights and even other laws are guaranteed to be obeyed. Thus, from there the government can be said to have succeeded in making regulations to always be obeyed.

The internet here has a big role, the internet makes it easy for us to disseminate a work, the community is also made easy to get a work on the internet. For example, a piece of music or a song. Everyone can access the internet to use the song, especially on social media. A musical work has written protection under copyright law. Copyright protection, especially for music or song creation, is a serious problem in Indonesia. In fact, Indonesia has been criticized by the international community for its weak protection for music or song copyright. In view of the enactment of copyright law on a musical work is valid for the life of the creator and continues for 70 years after the author's death, starting from January 1 of the following year. The period of protection for individual creators differs from that for legal entities. If the legal entity the protection period is 50 years from the time the work was first announced¹⁷.

In the past two decades, piracy of recorded music has become a very profitable business not only in Indonesia but also in the United States

¹⁷Faghlaifi Naim, *Op. Cit*, p. 25.

in a *House Report* in 1981, it is said that the volume of world trade carried out by pirates in the United States, at that time, had exceeded US \$ 100 million¹⁸. Based on the IIPA (International Intellectual Property Alliance) report, it was stated that a number of countries that had committed copyright infringement were quite serious, including China, Taiwan, India, Korea, Malaysia and Indonesia¹⁹. What is meant by violation of moral rights is a violation of two main elements of moral rights, namely integrity rights and attribution rights. One example of a violation of the right to integrity is replacing song lyrics with ridiculous expressions and jokes that change the meaning of the original lyrics. Meanwhile, one example of violation of attribution rights is not including the name of the author of a song or musical work²⁰.

In ancient times it was not easy for people to enjoy a piece of music, yet, they had to go through several efforts such as going to a store that sold cassettes, even the price of cassettes which was not cheap. They only listen to the radio, and for the rich, they will buy a music cassette to enjoy the songs they like. It is very different from the present era, everything can be reached via the internet. Yet why are there still so many

¹⁸ H.R. Report No. 487. 92nd Cong.. 15th Sept. 2 (1971). Frank L. Fine, 'Record Piracy And Modern Problems of Innocent Infringement: A Comparative Analysis of United States And British Copyright Law', *Santa Clara Law Review*, Vol. 21, 1981, p. 361.

¹⁹ Hendra Tanu Atmadja, 'Perlindungan Hak Cipta Musik atau Lagu di Indonesia', *Jurnal Hukum dan Pembangunan*, 2003, p. 285.

²⁰ I Gusti Putu Andre Pratista, Ida Ayu Sukihana, 'Pelanggaran Hak Moral Karya Lagu/Musik dan Rekaman Suara Dalam Praktik Penggunaan Hak Cipta', *Jurnal Hukum Bisnis*, Vol.1, Fakultas Hukum Universitas Udayana, p. 2.

violations of copyright around us? It can even be said that in the current era it is unfair to creators, technological advances also make human piracy at will. Society does not care about the existence of moral rights attached to the creator.

Violations of economic rights that are more often in the spotlight among Indonesian music works, for example, someone communicating someone else's work, posting it on social media that carries a commercial element without giving royalties to the creator. Although Indonesia already has a copyright law, the issue of royalties is not well understood. Royalty is a form of payment made to copyright owners or perpetrators (performers), because they do not use their ownership. Royalties paid are based on an agreed percentage of income arising from the use of property or otherwise²¹. In fact, there are also cases of violation of existing moral rights, but due to the lack of clarity about the form of moral rights, people do not concern themselves with cases of moral rights. Things like this cannot be tolerated because after all moral rights have a place equal to the economic rights that must be protected under the law.

In this study, the writer is going to examine further about the protection of moral rights which are the fundamental rights in music copyright in Indonesia. As we know that copyright protects several types of works, namely works in the fields of science, art and literature. What is meant by art here is a work that has aesthetic value or beauty created by

²¹Hendra Tanu Admaja, *Log. Cit.*

humans to describe an expression or creativity²². The writer here focuses on musical works, specifically about the moral rights of the creator, about how the form of protection from the state against the moral rights of the creators of musical works in Indonesia. The problem of music is the problem most often encountered by people in Indonesia, such as the case of music piracy. Most people still underestimate this case which is actually very unfair for the creator. People prefer to hijack the music to be able to listen to music for free without having to pay for it, this right is called economic rights in copyright. The examples of cases of music copyright infringement that are most often found are when someone sings a song belonging to another person (the creator) or commonly referred to as "covering" another person's song without the author's permission. Such cases like this, can lead to both violations of the violation of moral rights and economic rights of the creator. Economic rights are kinds of violation that are frequently found, this right occurs when someone sings a song of someone else without permission of the song owner and redistribute the song with the aim to benefit from the song without giving royalties or rewards to the creator of the song. Regarding the case of violation of moral rights, this case emphasizes the existence of the creator of the work. The case of music copyright about the protection of moral rights is more often ignored by most people, because it does not contain the slightest material, but rather about respecting the value of the creator in the work. An

²²Yusron, 'Pengertian Seni', *Belajargiat*, Januari 2020, quoted from <https://belajargiat.id/seni/> (Accessed in 30 March 2020).

example of a recent violation of moral rights to music copyright is the Gen Halilintar case that did not ask permission to cover Nagaswara's song. This sounds very trivial but actually has very valuable value for the creator. In this case, the creator felt a lot of effort to make the work not appreciated. So how do you respect moral rights that are not very manifested in musical art? This research will discuss more deeply about moral rights in a work within the scope of Indonesia.

B. Problem Formulation

From the background description of the problem above, this research can be formulated into the problem formulation as follows:

1. How is the creator's protection regarding the moral rights of their musical works?
2. How is the state's responsibility towards the creator's protection regarding the moral rights of their musical works?

C. Research Objectives

Based on the formulation of the problem above, there are several purposes of this research, which consists of:

1. To analyze the forms of protection on moral rights in the musical works of the creator.
2. To analyze the state's responsibility towards the protection on moral rights in the musical works of the creator.

D. Definition of Term

1. Accountability

Basically, the accountability that referred to this study is the responsibility of the state which is obliged to bear everything, so that it bears everything or provides responsibility and bears the consequences in dealing with music copyright cases in Indonesia. According to the Indonesian Dictionary (KBBI), the meaning of protection is a place of refuge. Another meaning of protection is things or actions or anything related to protect²³.

The writer uses accountability in this thesis, accountability is a term that is closely related to accounting and management science. In the Indonesian Dictionary (KBBI), the meaning of accountability is responsibility or a situation that can be held accountable. This principle must also be held closely by the company so that every employee can carry out their duties properly so that business goals are easily achieved²⁴. Accountability is an ethical concept related to the ability to explain the decisions taken and the activities carried out. In essence, accountability in this study is a form of state responsibility for the moral rights that are attached to the creator in music copyright cases that often occur in Indonesia.

²³Kamus Besar Bahasa Indonesia, quoted from <https://kbbi.web.id/perlindungan>, accessed on 12 October 2020.

²⁴Desra, '10 Cara Jitu untuk Melakukan Promosi Usaha', quoted from <https://www.jurnal.id/id/blog/cara-jitu-promosi-usaha/>, 2020, accessed in 13 October 2020.

2. Protection

The protection in this study refers to a form of place to get a sense of security, which means that the state is expected to protect or provide a sense of security for the creator of his work. Some scholars also defines the meaning of the protection in term of law, as follows:

Satjipto Rahardjo defines legal protection as an effort to protect someone's interest by allocating a human rights power to him to act in his interests²⁵.

Then according to Setiono, legal protection is an act or effort to protect society from arbitrary actions by a ruler who is not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as humans²⁶.

While according to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that are manifested in attitudes and actions in creating order in the social life between fellow humans²⁷.

²⁵ Satjipto Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia*, Jakarta: Kompas, Jakarta, 2003, p.121.

²⁶ Setiono, 'Rule of Law', *Thesis Master Degree on Law*, Universitas Sebelas Maret, Surakarta, 2004, p.3

²⁷ Muchsin, 'Perlindungan dan Kepastian Hukum bagi Investor di Indonesia', *Thesis Master Degree on Law*, Universitas Sebelas Maret, Surakarta, 2003, p. 14.

Legal protection according to Hetty Hasanah is all efforts that can guarantee legal certainty, so it can provide legal protection to the parties concerned or who take legal action²⁸.

On this occasion, what is meant by protection is a form of protection in the realm of law, which means providing a sense of security that is given by the government to its people as stated in written regulations towards the creator's moral rights in music copyright cases in Indonesia.

3. Moral Rights

The moral rights referred to in this study are the rights that protect the creator by their recognition provide a sense of security for the creator because he remains a part of his work or creation. Moral rights are regulated in Article 24 till Article 26 of Law Number 19 of 2002 regarding copyright, also amended to Article 5 on Law Number 28 of 2014. Moral right is an exclusive right given to the creator because of its authenticity that reflects to the creator, according to Article 5 on Law Number 28 of 2014 moral rights cannot be transferred to another person unless the creator already passed away. This provision also applies in prohibition of change or modify the title and subtitle of works, inclusion and changes in the creator's name or pseudonym. In addition, the creator has the right to make changes to his creation according to the

²⁸ Hetty Hasanah, 'Perlindungan Konsumen dalam Perjanjian Pembiayaan Konsumen atas Kendaraan Bermotor dengan Fidusia', *Jurnal Unikom*, quoted from <http://jurnal.unikom.ac.id/vol3/perlindungan.html>, accessed on 16 October 2020.

appropriateness of society²⁹. Moral rights in this study is closely related to the reputation of the creator in any musical works.

4. Music Copyright Cases in Indonesia

The case of music copyright in Indonesia referred to in this study is about the problems that occur in music copyright in Indonesia. Music itself has the meaning of the strains of songs or tones which entertain also creates calm to the atmosphere whenever listening to any musical works. While cases are problems that arise in the form of violations or infringements against music copyright. Thus the case of music copyright means the problems that arise when someone is infringing the rights of the creator in the music field in Indonesia.

Thus what is meant by accountability for the protection of moral rights in music copyright cases in Indonesia that referred to in this study is to analyze the forms of the state responsibility to protect or provide the sense of security for creators and or copyright holders, especially towards the moral rights in dealing with the problems that exist in music copyright in Indonesia.

²⁹Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*, RajaGrafindo Persada, Jakarta, 2011, p. 2.

E. Theoretical Framework

Literature review or theoretical framework in this research of study explains systematically and logically the relationship of research to be conducted with previous research, or with books on topics to be studied. This research covers various literature reviews as a basis of research that is published in a normative way, including:

1. Protection of Moral Rights of the Creator or Copyright Holder

The creator has exclusive authority or right to protect his work that is regulated under Indonesian copyright law, namely Law Number 28 of 2014. The concept of moral rights comes from the continental legal system, especially from France, which commonly called as the author's rights (*droit d'auteur*) which are divided into economic right that means economic value to get profit or any kind of financial reward towards the works of the creator, and moral right which concerns the protection of the creator's reputation³⁰.

In general, moral rights are related to the dignity of a creator for his work which is a valuable asset for him. The moral rights possessed by the creator include the prohibition of changing the substance of creation, the prohibition of changing the title, or

³⁰Sopnar M. Hutagalung, *Hak Cipta: kedudukan & Perannya dalam pembangunan*, Sinar Grafika, Jakarta, 2012, p.333

any action that can harm the reputation of the creator³¹, and also regulated in Article 5 on Law Number 28 of 2014. Acknowledging about the role or the existence of the creator is very important although the form is not tangible, but can be worth the money which the price cannot be predicted.

The intangibility of the moral rights makes the opportunity to underestimate the moral rights over a work is very large, as we know that intellectual property rights themselves regulate briefly that the form is intangible but has an element of wealth for a creator. In contrast, the creator's economic rights are more visible which the form is tangible rather than moral rights. The economic right is about everything that is related to commercializing a work, such as someone who re-communicates the works that makes money from the works which is called royalty. Moral rights are basically more valuable than economic rights even though their form is implied. However, moral rights provide the basis of the function towards economic rights of the creator³².

The writer here focuses more on moral rights over the musical work because moral rights are very often overlooked by the public. People innocently hijack other people's work without

³¹*Ibid*

³²Javier A. M. Chavez, 'COCopyright and the Value of Moral Rights', quoted from WIPO Magazine, https://www.wipo.int/wipo_magazine/en/2018/04/article_0003.html#:~:text=In%20many%20legal%20systems%2C%20moral,life%20and%20after%20their%20death.&text=But%20for%20a%20creator%2C%20moral,embodiment%20of%20their%20creative%20talent, August 2018, Accessed on 27 January 2021.

feeling guilty not respecting the creator of the work, reluctantly paying taxes on the work they enjoy. Those actions become normal and do not cause feeling guilt and make those actions become a habit of them. The topic of moral rights are about on how to apply moral rights protection if there is a change in the content of a musical work³³. Therefore, the writer prioritizes researching the protection of moral rights more precisely to musical works in Indonesia.

2. The Legal Aspect of Copyright in A Musical Work

A musical work is one of the creations that is protected under copyright law. The aspects that are protected by the copyright law in a musical work are the substance of the song or also called as the lyrics of the song, and protection on the melody, rhythm, tone, of the song³⁴. Anyone is permitted to cover someone else's song yet still under the permission of the creator, but not allowed to rearrange the song without permission. Copyright in musical work protects published and unpublished works. This research focuses more on the protection of moral rights in musical works in Indonesia because music become part of our life today where people needs to know about the limitations of copyright in

³³Akhmad Fahmi Budiman, 'Penerapan Hak Moral Atas Perubahan Isi Musik Dan Lagu "Di Dadaku Ada Kamu" karya cipta Dodo Zakaria', dspace UII, Yogyakarta, 2008, p.14.

³⁴P. Fishman, 'Music as a Matter of Law', *Harvard Law Review*, vol. 131, no. 7, p. 1861-1923, Harvard Law University, 2018, p. 20-23.

music and songs of the creator³⁵. The writer here chose the protection of moral rights because it is still often underestimated by people who do not appreciate the creator of the musical work. Yet moral rights are critically important for them, which become a safeguard towards the embodiment of their creativity³⁶.

F. Method of Legal Research

This legal research is categorized the normative legal research method means that this research is categorized into using the normative legal research based on positive law, namely regulation. Specifically, this research is analyzing the Indonesian copyright law, Law Number 28 of 2014.

1. Method of Legal Approach

The approach method used by the writer in this research is based on normative method based on statutory research approach in which the approach method is to analyze the problem based on the statute or the regulation of the copyright law which examines aspects of the law of moral rights in the copyright of musical works in Indonesia.

³⁵Anshar Aziz Machmuda, 'pembatasan dan pengecualian hak cipta musik dan lagu', dspace UII, Yogyakarta, 2016.

³⁶Javier A. M. Chavez, *Log. Cit.*

2. Source of Data

The writer obtained the data source in writing this research in the following way:

- a. Secondary Data; whereas the data obtained by researchers indirectly through library research, the legal materials consist of:

- 1) Primary Legal Material, which is binding material related to this research object, consists of:

- a) TRIPs Agreement
- b) Berne Convention
- c) World Intellectual Property Right Handbook
- d) Law Number 19 of 2002 concerning Copyright
- e) Law Number 28 of 2004 concerning Copyright
- f) The other law and regulation related to this research.

- 2) Secondary Legal Material, namely legal material which explains primary legal materials such as doctrine or expert opinions, books, Legal Journals, and scientific electronic data related to the object of this research.

- 3) Tertiary legal materials, i.e. legal materials obtained which explains primary legal materials and

secondary legal materials consisting of Black's Law Dictionary, Oxford Dictionary and encyclopedia.

3. Data Collecting

The method of the data collection in this research is the literature study in the following way :

- a. Literature study, namely by reviewing various laws and regulations or literature relating to the problem under study as the main data to get information which consists of scientific books, dictionary, research report, scientific journals and several regulations in Indonesia and other countries related to this research.
- b. Document study, which means the data are collected by learning from the document in taking the data or information, which is related to this research

4. Data Analysis

Data Analysis Method uses in this research uses qualitative analysis. This research uses descriptive, evaluative and perspective analysis. This qualitative analysis method to collect and elaborate data following the expert opinion, legal theories, relevant legal studies, article of the statute, and the argumentation of the researcher itself.

G. Originality of Research

The writer originally conducted this research, which is discuss about the moral rights possessed by the creator. Indeed there are many similar studies with this research, for example a researcher from the University of Syiah Kuala in Aceh, with the title '*Perlindungan Hak moral dan Hak Ekonomi Ciptaan Lagu dan/atau Musik Asing dalam Undang-Undang Hak Cipta tahun 2014*'. What distinguishes this research from the previous research mentioned is that this research focuses more on the moral rights inherent in the creator which encountered in Indonesian musical works. There are also several other studies which explain infringements of moral rights, yet this research is talking about how this country (Indonesia) holds accountable for the copyright protection on facing cases regarding moral rights of the creator and also talking about which legal system Indonesia used between Anglo Saxon System and Continental System regarding copyright protection.

H. Structure of Writing

This research is compiled systematically into 4 (four) chapters with the following details:

Chapter I is Introduction which consists of these following parts: Context of Study, Problem Formulation, Research Objectives, Definition of Term, Theoretical Framework, Method of Legal Research, Originality of Research and Structure of Writing.

Chapter II is Theoretical Review. This chapter elaborates general overview on theory of copyrights especially on the concept regarding moral right, protection of moral rights based on Law Number 28 of 2014 concerns about copyright, the importance of paying attention to moral rights, moral rights infringements, the relationship between moral rights and creators, and providing the related cases in Indonesia.

Chapter III is Finding and Discussion. In this chapter the writer answers all the questions that stated in the problem formulation. Giving the specific overview about moral rights that stated in Law number 28 of 2014 concerns about copyright, and giving the detailed information about the accountability for the protection of moral rights that is attached to the creator.

Chapter IV consists of conclusion and suggestion. The writer gives the conclusion based on the previous analysis done previously. Also include some suggestions for the development of further research.

CHAPTER II

THEORETICAL REVIEW TOWARDS THE MORAL RIGHTS IN MUSIC COPYRIGHT CASES IN INDONESIA

A. The Concept of Copyrights

1. Definition of Copyrights

The word copyright has the meaning of the creator's right. Basically, copyright is a branch of intellectual property rights. The term copyright has been known since the 80s. After the revolutionary period until 1982, Indonesia still used the Dutch colonial government Law *Auteurswet 1912* until the first Copyright Law was drawn up finally in 1982³⁷. Continental European countries issued an idea to provide protection to creators in the form of *droit de auteur* (France) or *auteursrecht* (Netherlands). The idea then explains about economic rights in the form of rights to reproduce (copy) and publish, a creator also has moral rights to obtain protection in the form of a right of attribution between himself and his creation. A copyright work cannot be separated from the creator. Therefore, the creator's name must always be attached to his creation (doctrine of paternity). Also a creation also

³⁷ Khoirul Hidayah, 'Tingkat Pemahaman Mahasiswa Tentang Perlindungan Hak Cipta Atas Karya Tulis', *de jure Jurnal Syariah dan Hukum*, Vol. 5, No. 1, Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2013, p.52.

cannot be changed without the author's approval (doctrine of integrity)³⁸.

Indonesia has several laws, namely Law number 6 of 1982, Law number 7 of 1987, Law number 12 of 1997, Law number 19 of 2002 and the latest Law number 28 of 2014. The TRIPs (Trade Related Aspects of Intellectual Property Organization) agreement has made it mandatory for all members of the WTO (World Trade Organization) to comply with all the contents of the agreement, including Indonesia, which has signed its membership through Law number 7 of 1994 concerning The Agreement Establishing The World Trade Organization³⁹.

Basically, copyright was created to provide justice for the creator. Humans have an infinite ability to create. All ideas that were born from humans have encouraged humans to find a way of life that is better than before. This way of life is then supported by technology, architecture, law, and various other tools that are encouraged to protect creators from continuing to create a work. The creation of this technology is always intended to help humans find a way to live better than before. However, the presence of this technology is frequent and brings significant social impact to many aspects, including things that become negative things that are undesirable.

³⁸ Agus Sardjono, 'Hak Cipta Bukan Hanya Copyright', Jurnal Hukum dan Pembangunan Tahun ke-40, No. 2, Fakultas Hukum Universitas Indonesia, 2010, p. 254.

³⁹ Khoirul Hidayah, *Op. Cit*, p.52

Copyright is the exclusive right of an author that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Another definition of copyright is an exclusive right or a right that belongs only to the creator or copyright holder to regulate the use of the work or the processing of certain ideas or information, actually, copyright can be called as the right to copy a work, or the right to enjoy a work legally. Copyright also allows the right holder to limit and prevent illegal use of a work. Given that exclusive rights contain economic value that not everyone can pay for, exclusive rights in copyright have a certain limited validity period for fairness⁴⁰. Then what is meant by exclusive right? an exclusive right that is reserved solely for the holder so that no other party may take advantage of the right without the permission of the right holder.

Beside the exclusive right of the creator, there is also another right in copyright. According to Article 2 paragraph (1) of the Copyright Law Number 19 of 2002 contains three special rights, namely:

- a. The right to publish work. This right means right to announce means to read, announce, broadcast or

⁴⁰ Haris Munandar & Sally Sitanggang, *Mengenal HAKI (Hak Kekayaan Intelektual); Hak Cipta, Paten, Merek dan Seluk Beluknya*, Erlangga, Jakarta, 2008, p.14.

disseminate the work in such a way that the work can be read, heard or seen by others;

b. The right to reproduce works. This right referred to as reproducing is adding to a work by making the same, almost the same, or similar creation by using the same or different materials, including transforming something of a creation;

c. The right to give permission. This right also means giving a license to another party based on a license agreement to carry out the act of announcing and / or reproducing works. This action must be carried out by the will of a written agreement in the form of an authentic or inauthentic deed. Actions that are permitted to be carried out are those that are expressly stated in the deed⁴¹.

Copyright can also be said as a form of protection for an object that does not exist or intangible things, then these intangible objects are valuable treasure for the creator. Copyright contains the meaning of the idea and the conception of property rights, which means that rights can be defended against anyone who disturbs and in other countries copyright is seen as property rights⁴². The

⁴¹ Ermansyah Djaja, *Hukum Hak Kekayaan Intelektual*, Sinar Grafika, Jakarta, 2009, p.8.

⁴² Shopar Maru Hutagalung, *Hak Cipta Kedudukan dan Peranannya di Dalam Pembangunan*, Akademika Pressindo, Jakarta, 1994, p.17

concept of assets according to Indonesian law, includes objects and legal relationships to obtain these objects. In other words, it includes objects (*zaak*) and bonds (*verbinten*). Wealth is an object belonging to a person that has economic value. Furthermore, according to Article 499 *Burgerlijke Wetboek* (BW) the meaning of objects (*zaak*) includes goods and rights (*recht*). Both assets and the rights attached to them are recognized and protected based on valid evidence⁴³.

There are several main characteristics that distinguish these material rights from relative or individual rights, namely⁴⁴:

- a. It is an absolute right, can be defended against anyone.
- b. To have *Zaaksgevolg* or *droit de suite*, it means that the right continues to follow the person who owns it.
- c. The system adopted material rights, where the former has a higher position and level than what happened later.
- d. It has the nature of the *Droit de preference* or right that takes precedence.

⁴³ Rahmi Jened, *Hukum Hak Cipta (Copyrights Law)*, Citra Aditya Bakti, Bandung, 2014, p.10

⁴⁴OK, Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, RajaGrafindo Persada, Jakarta, 2007, p.49.

- e. There is what is called a material lawsuit.
- f. The possibility to transfer the property rights can be fully implemented.

Copyright does not work on the ideas that underlie the form of the copyrighted work. However, this protection is given to the form of ideas, knowledge, and information that are usually associated with literary and artistic works. Copyright includes all forms of literary works, musical works, works of art, photos, audio visuals, books, and so on. Copyright only governs the copied work, not regulates the original work⁴⁵. In essence, copyright is a right attached to the creator. Those rights in copyright can be divided into two, namely rights that can be transferred or and rights that cannot be transferred. Rights that can be submitted or and transferred are such as reproducing a work, announcing the origin of a creation, translating a creation, acting on radio or television and so on. Meanwhile, rights that cannot be handed over or can be said to be rights that remain and are attached to the creator, such as demanding a violation of a creation, as well as permission to make changes of the work, and so on. some of these rights are better known as transferable and non-transferable rights which are now often referred to as moral rights⁴⁶.

⁴⁵Abdul wahid, 'Dampak Sosial Teknologi Komunikasi Baru: Memikirkan Ulang Konsep Copyright di Internet', *Jurnal Ilmu Komunikasi*, Vol. 6, No.1, Fakultas Ilmu Komunikasi Universitas Brawijaya, 2020, p. 122

⁴⁶Shopar Maru Hutagalung, *Op. Cit*, p. 18

2. Legal Basis of copyrights

The concept of copyright first originated in Europe, which has an individualistic and capitalist culture. Indonesia has complied with TRIPs through its WTO membership, so that Indonesia is legally bound by copyright protection as regulated in TRIPs. Law enforcement as regulated in TRIPs and in the copyright law is not necessarily easy to apply in Indonesia. Indonesian society with a communal culture certainly does not easily change their habits and culture of togetherness into an individualistic culture as regulated in law⁴⁷. Through Law number 7 of 1994 concerning the Ratification of the WTO Agreement, Indonesia has become a member of the Agreement Establishing the World Trade Organization (WTO) which includes the Agreement on Trade Related Aspects of Intellectual Property Rights, hereinafter referred to as the TRIPs Agreement. As a member, Indonesia must comply with the TRIPs Agreement including adjusting the international standard TRIPs Agreement into the Copyright Law in Indonesia⁴⁸.

According to Law number 19 of 2002, the explanation of copyright is an exclusive right for an author or copyright holder to

⁴⁷ Khoirul Hidayah, *Op. Cit.*, p. 53.

⁴⁸ Ni Ketut Supasti Dharmawan, 'Protecting Traditional Balinese Weaving through Copyright Law : Is It Appropriate?', *Jurnal Diponegoro Law Review*, Vol. 2, No.1, Faculty of Law Universitas Diponegoro, 2017, p.17.

publish or reproduce his work, which arises automatically after a work is born without reducing restrictions according to applicable laws and regulations. TRIPs acknowledge that a work deserves legal protection when the work is an expression or embodiment of an idea in Article 9 Paragraph 2 of TRIPs Agreement. Apart from that, the requirement of authenticity or originality means that the creation has a distinctive shape and shows authenticity based on the ability and personal nature of the creator because creation is the creator's alter ego⁴⁹.

The definition explained by Law Number 28 of 2014 concerning copyright, which provides the meaning of copyright:

"Copyright is an exclusive right of an author where this right arises in a declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations"⁵⁰.

This Law Number 28 of 2014 is a substitute for Law Number 19 of 2002 which was revoked and declared invalid when Law Number 28 of 2014 was enacted. Thus the problems of copyright in Indonesia just do not stop even though the Law in Indonesia has been updated several times. Indonesian still lacks their knowledge to pay more attention to how valuable copyright is.

⁴⁹Eddy Damian, *Hukum Hak Cipta*, Alumni, Bandung, 2003, p. 132.

⁵⁰Article 1 Paragraph 1 Law Number 28 Year 2014 concerning Copyright

3. Creator in Copyright

Copyright protection follows an automatic protection system. In other words, without the recording process, the creator automatically gets legal certainty for his creation when the work is in the form of a real work, also called expression work⁵¹. Basically, an author is a person who creates a work that is protected under copyright law. Article 1 Paragraph 2 of the Law Number 28 of 2014 concerns copyright stated that the author is described as a person or several people who individually or collectively produce a work that is unique and personal⁵². According to the Civil Law System tradition, the author right system is actually the first and foremost author (*prima facie*) must be a natural person in accordance with Hegel's philosophical basis that copyright is the personality for which a human exists⁵³. Article 9 of the Copyright Law also states:

"If a legal entity announces that a work originates from it without mentioning someone as the creator, that legal entity is deemed to be the creator, unless proven otherwise."

The Law above explains that the creator is not only an individual, but also a legal entity that can be granted copyright

⁵¹Desak Komang Lina Maharani, I Gusti Ngurah Parwata, 'Perlindungan Hak Cipta Terhadap Penggunaan Lagu Sebagai Suara Latar Video di Situs Youtube', *Jurnal Hukum Bisnis*, No. 1, Fakultas Hukum Universitas Udayana, 2019, p. 8.

⁵²Article 1 paragraph 2 Law Number 28 Year 2014 concerning Copyright.

⁵³Rahmi Jened, *Op. Cit*, p. 119.

protection. If a work is created by several people or can be called as joint works, according to Article 6 of Copyright Law, the recognized creator is the team leader or person who leads or supervises the work or the person who compiles the work. Meanwhile, according to the World Intellectual Property Organization (WIPO), the results of creation through joint works are recognized by all parties who contributed their work or joint owners of the entire work. In addition, it is possible for a copyright work to be owned by a business entity. The work produced by individuals, but if it is bound by an agreement with a company, of course the copyright work will become the property of the company. The owner's right to a copyright work does not necessarily make a person doing monopoly and enrich himself with the economic rights he has obtained⁵⁴. To balance the rights of owners with the interests of society, the Copyrights Law allows the use of certain works without the need for the author's permission, this regulation is contained in Article 15 of the Copyrights Law⁵⁵:

- a. *Use of other parties work for the purposes of education, research, writing scientific papers, preparing reports, writing criticism or review of a problem without prejudice to the reasonable interests of the Creator;*
- b. *taking the creation of another party, either in whole or in part, for the purpose of defense inside or outside the court;*
- c. *Adoption of another party, whether in whole or in part, for the purposes of: (i) lectures solely for educational and scientific purposes; or (ii) performances or*

⁵⁴Khoirul Hidayah. *Op. Cit*, p. 55.

⁵⁵Article 15 Law number 28 of 2014 concerning Copyright.

- performances that are free of charge provided that they do not harm the reasonable interests of the creators;*
- d. reproduction of a scientific, artistic and literary work in braille for the purposes of the blind, unless the reproduction is of a commercial nature;*
 - e. Limited reproduction of a work other than a computer program by means of any means whatsoever or a similar process by public libraries, scientific or educational institutions and non-commercial documentation centers solely for the purpose of their activities;*
 - f. Changes made based on considerations of technical implementation of architectural works, such as building works;*
 - g. The owner of a Computer Program may make a backup copy of a computer program solely for his own use.*

Goldstein said in his book that copyright concerns the right to reproduce a particular copyright work and to prevent others from making copies of copyrighted works without the permission of the copyright owner⁵⁶. According to Patry, he also stated in the context of British society when the first copyright was promulgated, ownership of the reproduction right was directly related to the right to prohibit other parties from reproducing the work⁵⁷. Beforehand, creators were only positioned as designers of work for publishers, and only a few were positioned as policy objects. The creator only has full rights to the copyrighted work when selling it to book publishers. This condition makes competition only at the publisher level⁵⁸. Some international conventions, such as Berne Convention, Trade Related Aspects of

⁵⁶ Abdul wahid, *Op. Cit*, p.122.

⁵⁷ Patry, *How to Fix Copyright*, Oxford University Press, USA, 2011, p.41.

⁵⁸ Patry, *Op. Cit*, p. 38.

Intellectual Property Rights (TRIPS), and The Universal Copyright Convention (UCC) still do not place authors as the priority. Agostino considers that the direction of the internationally agreed policy only give benefits in large industries, thus the process of making laws against the convention is considered not natural, which only focuses on the interests of the producer⁵⁹.

4. Copyrights protection system

The copyright protection system has been protected by the state in written form in copyright law Number 28 of 2014. Every work cannot be separated by the creator, as well as no work that is not known who the creator is. Yet actually, The protection of the copyright itself is not always given to the creator, but it could be given to the publisher. People sometimes often misunderstand about this, a copyright holder can be given to someone else but still on agreement between both sides. The transfer of copyright is merely about the transfer of economic rights. To regulate the distribution of economic benefits arising from the expressive aesthetics of a creation. The creator has exclusive rights and other rights over his or her work and other people are obliged to respect them, thus that other people cannot arbitrarily act on behalf of a work that is not their creation, if other people who are not entitled to the intended work deliberately commercialize it with the

⁵⁹ Abdul Wahid, *Op. Cit*, p. 125.

intention of benefiting themselves himself, then the person is breaking the law and can be prosecuted both civil and criminal, with the intention that there is a deterrent effect for those who violate the Copyrights Law⁶⁰. In Article 58 of the Copyright Law Number 28 of 2014, the period of protection for copyright works in Indonesia;

1. *Copyright Protection for Works:*
 - a. *books, pamphlets, and all other written works;*
 - b. *lectures, speeches, and other similar works;*
 - c. *teaching aids made for the benefit of education and science;*
 - d. *songs or music with or without subtitles;*
 - e. *drama, musical drama, dance, choreography, puppetry, and pantomime;*
 - f. *work of arts in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collage;*
 - g. *architectural works;*
 - h. *map; and*
 - i. *batik artwork or other motif art,*
valid for the life of the Creator and continues for 70 (seventy) years after the Creator dies, starting from January 1 of the following year.
2. *In the event that the Work as referred to in paragraph (1) is owned by 2 (two) or more people, Copyright protection is valid for the life of the Creator who dies at the latest and lasts 70 (seventy) years thereafter, starting from January 1 of the following year.*
3. *Copyright protection of works as referred to in paragraph (1) and paragraph (2) that are owned or held by a legal entity is valid for 50 (fifty) years from the first time the Announcement is made.*

⁶⁰Rezky Lendi Maramis, 'Perlindungan Hukum Hak Cipta Atas Karya Musik dan Lagu Dalam Hubungan Dengan Pembayaran Royalti', *Lex Privatum*, Vol. II, No. 2, Fakultas Hukum Universitas Sam Ratulangi Manado, 2014, p. 116.

The times are very much influenced by technology and the internet. The internet does not only help people to spread their works but also to give the creator an advantage to make it easier for them to popularize their work. Yet the negative things also arise because of technological developments, people easily hijack to get a work for free. The form of protection must be given to a work that is free to download via the internet, the most important is the role of the government through preventive measures. Here, the government through the Ministry of Communication and Information Technology (*Kemenkominfo*) curates sites or websites that provide song download features by blocking them. Thus the internet users cannot freely access these sites⁶¹.

5. Copyrights dispute settlement

There are many cases of copyright infringement in Indonesia, this is due to the low awareness of the Indonesian society on the importance of respecting copyright, not even everyone understands what copyright is. That little thing would be a big problem in the eyes of the law. Copyright is created to protect the creator of his or her work, this form of protection must be protected by both the state and the society. Copyright law provides options for legal settlement for creators or copyright holders whose rights are violated by other parties. This protection is given to

⁶¹Habi Kusno, 'Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet', *Fiat Justitia*, Vol. 10, No. 3, Faculty of Law Lampung University, 2016, p.496.

defend the rights of the creator, it is written in the Copyright Law Number 28 of 2014. The consequences of infringement of copyright are very detrimental to creators and copyright holders, as we know that copyright is an exclusive right consisting of moral and economic rights. If this is allowed and not protected, creators and copyright holders will lose their motivation to be more creative in making new creative works, in addition that the creations can support economic growth and contribute to the improvement of people's welfare.

A dispute has another meaning as a clash, battle, dispute and or injury, while in the Indonesian dictionary dispute also means conflict⁶². Article 95 of the Law of the Republic of Indonesia Number 28 of 2014 concerning copyright, regulates dispute resolution such as:

- 1) *Copyright dispute resolution can be done through alternative dispute resolution, arbitration, or court;*
- 2) *The authorized court as referred to in paragraph (1) is the Commercial Court;*
- 3) *Other courts besides the Commercial Court as referred to in paragraph (2) are not authorized to handle Copyright dispute resolution;*
- 4) *Apart from violations of Copyright and / or Related Rights in the form of Piracy, as long as the parties to the dispute are known to exist and / or are in the territory of the Unitary State of the Republic of Indonesia, they must first seek dispute resolution through mediation before making criminal charges.*

⁶²Adi, As, Edi, *Hukum Acara Perdata Dalam Perspektif Mediasi (ADR) di Indonesia*, Graha Ilmu, Yogyakarta, 2012, p. 5.

This dispute resolution itself aims to provide justice for the creator in the eyes of the law. Basically, dispute resolution on copyright can be resolved either through court or outside of court. Settlement of copyright disputes through courts is resolved at a Commercial Court. The dispute that cannot be resolved properly, can be resolved with criminal charges in accordance with the law Number 28 of 2014 concerning copyright, there is mediation before proceeding the case to criminal charges. In addition, Article 96 also continues the dispute settlement system for copyright, among others are:

- 1) *Creators, Copyright holders and / or Related Rights holders or their heirs who experience a loss of economic rights are entitled to compensation.*
- 2) *Compensation as referred to in paragraph (1) shall be granted and included at once in the court's decision regarding criminal cases of Copyright and / or Related Rights.*
- 3) *Compensation payments to creators, copyright holders and / or related rights owners are paid no later than 6 (six) months after the court decision is legally binding.*

There are two reasons for compensation, namely compensation for breach of contract and compensation for acts against the law or tort. Compensation for breach of contract and compensation for acts against the law are both regulated in the Civil Code. Compensation that is charged to the person who has caused the wrongdoing to the aggrieved party. The compensation

arises because of an error, not because of an agreement⁶³. According to the dictionary of law, an act of breaking the law means that an act is not only contrary to the contents of the law, but also includes acts that are against the morals and appropriateness of society. An act against the law also means any act that violates the law which brings harm to others⁶⁴.

B. The Concept of Moral Rights

1. Definition of Moral Rights

Ethics in appreciating something must be implanted as early as possible, since humans as social beings basically need to stay connected to another. Needing other people means we cannot live as individualistic people, because of that we need to be taught about the importance of respect. According to the Indonesian Dictionary (KBBI), the meaning of the word 'appreciate' is to give (determine, affix) a value. Another meaning of appreciating is seeing importance (useful, useful and so on). Basically, respect means a sense of value to something, or respect for something. The form of respecting itself can be in all aspects, in this copyright context it is very important to respect a work that belongs to the creator. Talking about copyright, copyright cannot be separated

⁶³ Salim HS., *Pengantar Hukum Perdata Tertulis (BW) Cetakan Keenam*. Sinar Grafika, Jakarta, 2009, p. 181.

⁶⁴ Richard G. E. Rumbekwan, 'Penyelesaian Sengketa Akibat Terjadinya Pelanggaran Hak Cipta di Pengadilan Niaga', *Lex Crimen*, Vol. 5, No. 3, Universitas Sam Ratulangi, 2016, p. 136.

from moral problems because copyright itself is inherent in moral rights as long as copyright protection still exists. Then from those things moral problems arise. Basically, everyone has an obligation to respect or appreciate the creations of others. Other people cannot arbitrarily at will to take or change someone's work into his name⁶⁵.

Copyright protection for a work can be provided if the copyright work has a real form. In other words, it means that the work is manifested in a certain form that can be heard, read, or seen, which means the idea of sculpting, the idea of writing, the idea of singing, the idea of drawing if it is not written in a certain form, for example in the form of sculpture, paper, compact disk, sketches, etc. Those ideas are not protected by the Copyright Law, but in this current era, technological advances have brought about major changes in the way a copyright work is announced. It doesn't take a lot of capital for someone to spread their work in cyberspace. This is the era where the internet is a daily necessity. As we know that cyberspace has no limits, we can find various kinds of works via the internet. In overcoming this problem, Indonesia has the Copyright Law which also regulates certain limits that free a person from copyright infringement. Article 44 of Law Number 28 of 2014, hereinafter referred to as the Copyright

⁶⁵Gatot Supramono, *Hak Cipta dan Aspek-aspek Hukumnya*, Rineka Cipta, Jakarta, 2010, p. 46.

Law, allows other parties to take someone's copyrighted work, but even then it has certain conditions. If it is used only for the purposes of a very limited reference material, by still mentioning the source and not for commercial purposes, there is no problem. It means that when used for educational activities, research, writing scientific papers, writing a critical review report on a problem, and so on. This applies as long as the author's permission has not been obtained, then the copyrighted work still belongs to the creator⁶⁶.

What is meant by right is the authority given to a legal subject. In the other word, the authority given to legal subjects is the authority to have moral rights over the copyrighted work of the creator. The creator can do anything about the moral rights of his/her copyrighted work, for example to keep his name on the copy of his work, to defend the right in the right of a distortion of the work, as long as it does not contradict the prevailing laws and regulations, public order, morality and propriety prevail in society⁶⁷. A copyright may not be changed even though the copyright has been transferred to another party, except with the consent of the creator or with the consent of the heirs in the event that the creator has passed away. This provision also applies to changes in the title and subtitle of works, inclusion and changes in the creator's name or pseudonym.

⁶⁶Theresia N. A. Narwadan, 'Hak Moral Pencipta Atas Karya Cipta Yang Diunduh Dari Internet', *Jurnal sasi*, Vol. 20, no. 2, 2014, p. 72.

⁶⁷Theresia N. A. Narwadan, *Op. Cit*, p. 73.

In a work, the creator and his work cannot be separated. This relationship includes the meaning of moral rights to the creator. In the other word that the importance of a work having moral rights, the creator has the right to include his name or pseudonym in his work or a copy thereof in connection with general usage. The creator also has the right to prevent forms of distortion, mutilation or other forms of alteration which include distorting, cutting, destroying, replacing related works which in turn will damage the creator's appreciation and reputation⁶⁸.

The concept of moral rights is a provision contained in the Berne convention, this provision is included in the Berne Convention namely in the 1929 revision of Rome, then it continues to be refined in the revision in Brussels by adding the necessity of originality, and the Stockholm revision by adding provisions on the duration of the moral rights. According to Article *6bis* Paragraph (2) states that the moral right of protection is the same as the length of copyright protection. Apart from being stated in the Berne Convention, moral rights are also recognized in the International Declaration on Human Rights which states that the author has the right to the protection including the moral and material interest⁶⁹.

⁶⁸Iswi Hariyani, *Prosedur Mengurus HAKI (Hak Atas Kekayaan Intelektual) yang benar*, Tim Pustaka Yustisia Yogyakarta, 2010, p.61.

⁶⁹Muhammad Djumhana & R.Djubaedillah, *Hak Milik Intelektual; Sejarah, Teori dan Prakteknya*, Citra Aditya Bakti, Jakarta, 2001, p. 58-59.

The principle of moral is one of the characteristics of the material rights inherent in copyright in various countries. Indonesia as one of the countries adhering to the Continental European legal system, of course has to regulate this moral matter. Considering the importance of principles of moral as a manifestation of material rights, there is an international consensus on this matter regarding copyright, namely: Bern Convention, Geneva Convention, Paris Convention, TRIPS and so on as stated as before. Those international conventions affect the rule of law on copyright. Thus Indonesia has to follow the regulation of those convention on regulating Indonesian copyright law⁷⁰. The concept of moral rights is basically to reward the creator because a copyrighted work is like a personal reflection of the creator so that it cannot be divided and changes or modifications cannot be made to other people easily. Moral rights are the rights to claim which are owned by the creator of his work.

It needs to be reiterated that the purpose of copyright itself is to give justice to the creator in the eyes of the law. which means that the purpose of the law itself is that the law can be used as an object of respect, then in fact that respect will arise when a person receives a warning for violating a regulation and then is fined. Then someone who has been fined, will think further that the

⁷⁰Bambang Pratama, 'Prinsip Moral Sebagai Klaim Pada Hak Cipta dan Hak Untuk Dilupakan (*Right to be forgotten*)', *Jurnal Hukum*, Vol. 3, Universitas Parahyangan, 2016, p. 328.

regulation is really necessary, so that life together is well regulated. From the existing regulations, it can be ascertained that all people will enjoy peace and justice. Thus, it is clear that the distance between law and justice is not wide, it is likely that people who understand the true meaning of law, will surely be willing to obey these regulations, and then if the definition of law is combined with justice, it is likely that people will no longer equate between law with a number of prohibitions, but will make it part of the ideal of life. Do not deny the possibility that some of the creators are still reluctant to register their copyrighted works, because according to them the registration of works does not guarantee that their works will not be pirated again. The function of registering a work in a declarative system focuses on the assumption that the author is the right to be registered, until others can prove otherwise. In other words, in the declarative system, even if the copyright is registered, the law only recognizes as if the person concerned is the owner, legally it must be proven again, if someone else denies this right. As long as other people cannot prove juridically that it is their right, then the registrant is considered as the only person entitled to the creation⁷¹.

Acknowledging moral rights protection, which emphasized on the relation between the creator and the creation that needs to be

⁷¹Theresia N. A. Narwadan, *Op. Cit*, p. 77.

appreciated, according to Rights Management Specialists at the Copyright Resources Center, The Ohio State University Libraries argues about the theories of copyright, one of them is “personality theory” that is closely related to the moral rights protection that regulates about the creator’s personality towards their artwork. Personality theory can be described as the personal high valued property of the creator⁷². This personality theory also focuses on the protection of the bond between creator and his or her artwork, this theory emphasizes on the creator’s right to be credited on every artwork that the creators has established⁷³. Personality theory is about the integrity of the creator that has rights to control their creation which are more prevalent in civil law countries.

2. Moral rights based on law

Moral rights are less visible than economic rights. This makes moral rights underestimated by many people, even though both of these rights have an equal position, as well as the importance of both rights. In the copyright law that is regulated in Indonesia, the law regulates both of these rights, namely moral

⁷² Brian Lee, ‘Making Sense of “Moral Rights”’, *Law Journal*, University of California Berkeley, Berkeley, 2010, p.28.

⁷³ Jessica Meindertma, ‘Theories of Copyright’, *University Libraries The Ohio State University*, quoted from <https://library.osu.edu/site/copyright/2014/05/09/theories-of-copyright/>, 2014.

rights and economic rights. In Law Number 28 of 2014 concerning Copyright, precisely in article 5 paragraph (1), moral rights are eternally attached to the creator to:

- 1) *Whether or not his name remains on the copy in connection with the use of his work for the public;*
- 2) *Using his alias or pseudonym;*
- 3) *Change his creation in accordance with the appropriateness of society;*
- 4) *Change the title and subtitle of the work and;*
- 5) *Defend their rights in the event of work distortion, work mutilation, creation modification, or things that are detrimental to one's self-respect or reputation*⁷⁴.

Then it is clear that where a work is located, there are also names of creators that are closely related to one another. A person cannot conveniently use a work without attaching the name of the creator. However, if only using it is not allowed, then changing an element of the work is strictly prohibited. In countries with a Civil Law System tradition, it is explicitly stated that copyright has the dimension of a moral right besides the economic rights. However, Article 9 Paragraph (2) of TRIPs Agreement determines that the regulation of moral rights is optional, with the provisions that members comply with Article 1 till 21 of the Berne Convention and the *Appendix Thereto*⁷⁵. This means that member states are not obliged to regulate and implement moral rights and if they intend to regulate and exercise moral rights then it is still permissible. Moral rights are the acknowledgment that a work is a development

⁷⁴ Article 5 paragraph (1) on Law Number 28 of 2014 concerning Copyright.

⁷⁵ Article 9 paragraph (2) on TRIPs Agreement.

of the personality of the creator and that the relationship between creator and creation must be respected⁷⁶.

In the exercise of moral rights, creators need to be careful when an author exploits their rights, for example, when entering into a license agreement or transferring rights with industry. The creator must carefully understand the articulation of a signed contract as a form of agreement, because otherwise this is very detrimental to the creator. In the other words, moral rights are the personal rights of the creator and the creator is given freedom by law to do anything to his creation. If there is a violation of the creator's moral rights which is deemed to have harmed the interests of the creator, then either the creator or his heirs can challenge the violation to the commercial court.

For the protection of the creator's moral rights, the Copyright Law differentiates the period of protection based on the types of rights that the creator has. With regard to the moral right of a creator to keep or not include his name on the copy in connection with the use of his work for the public as previously explained, namely by using his pseudonym and defending his rights in matters that are detrimental to his honor or reputation, the Copyright Law provides protection with the limitless time. As for the moral rights of creators to change their works according to the

⁷⁶ Rahmi Jened, *Op. Cit*, p. 141.

appropriateness of society also changing the title and subtitle of the work, the Copyright Law provides protection for the duration of the copyright term of the work concerned⁷⁷.

3. Moral Rights Infringements

The meaning of the word of infringement itself according to the Indonesian Dictionary (KBBI) means an act or case that violates or can be called a violation that is lighter than a crime. The meaning of the word violation or infringement is also defined by experts, Moeljatno defines violation is an act that is against the law which can only be determined after there is a law or statute that regulates it⁷⁸. In addition, Prodjudikoron also defines violation as an act of violating something and being related to the law means other than an act of breaking the law⁷⁹.

It can be concluded that a violation is an act against the law. It can be called a violation if there is a previous regulation, when someone commits an act that is against the law it can be called a violation. Indonesia in this case is known as a country that has committed quite high copyright violations even though Indonesia already has regulations or laws that regulate copyright. Basically, violations occur because of increasingly advanced

⁷⁷Septiani Ayu, 'Perjanjian Lisensi Dalam Penggunaan Musik Sampling', *Notaire*, Vol. 1, No. 1, Universitas Airlangga, 2018, p. 160.

⁷⁸Moeljanto, 'Pemanfaatan Limbah Perikanan Balai', *Penelitian Teknologi Perikanan*, Jakarta, 1979, p. 71.

⁷⁹Prodjudikoro, *Azas-azas Hukum Pidana Indonesia*, Eresco, Jakarta, 1981, p.28.

technological developments that make people complacent about the easy access to technology today. For example, through trends and the climate of creating a work such as music or song, the measure of the originality of a work is neglected. In fact, that is the normative measure that determines the existence of copyright, along with the recognition of its moral rights. Imitation, plagiarism and adaptation of song creation due to the demands of popular pop tastes can become commonplace and no one can question it. This is understandable because the rules of copyright law and recognition of their moral rights are still weak and not optimally enforced⁸⁰.

Beforehand, the word of infringement has a very broad meaning in various aspects, but this time it concerns an infringement of moral rights in copyright. There are forms of infringements in moral rights which have two major things. The first is the right of integrity, which is the right that concerns all forms of attitude and treatment related to the integrity or dignity of the creator. In practice, these rights are expressed in the form of prohibitions to modify, reduce, or destroy works that can destroy the integrity of the creator. The principle is that a creation must remain intact in accordance with the original creation or it cannot be changed easily. While the second right is attribution right or right of paternity. In this case, moral rights require that the identity

⁸⁰I Gusti Putu Andre Pratista, Ida Ayu Sukihana, 'Pelanggaran Hak Moral Karya Lagu/Musik dan Rekaman Suara Dalam Praktik Penggunaan Hak Cipta', Jurnal Hukum Bisnis, Vol.1, Fakultas Hukum Universitas Udayana, p. 2.

of the creator be printed on the creation, either under personal or pseudonyms. In certain cases and based on the consideration of the author, the creator can negate his identity and leave the copyright anonymous. This particular thing, for example, was motivated by the complexity of the collective creation process and the consideration of simply making it easier to write the identity of the songwriter by only including one name and eliminating the others⁸¹.

On facing the existing infringement that happens in Indonesia, of course there must be regulations to deal with these violations. The regulation also aims to provide lessons for past violations. Therefore, the government has efforts and law enforcement that can be carried out against violations of moral rights to a work, namely by strengthening copyright institutions, socializing and increasing public legal awareness, and taking legal action against violations of moral rights⁸².

C. Music Copyrights

1. Definition of Music Copyrights

Basically humans are given a gift by God a creativity to work according to their abilities, each human being has a portion of the advantages and disadvantages of working, for example, there

16. ⁸¹ Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*, RajaGrafindo Persada, Jakarta, 2011, p.

⁸²I Gusti Putu Andre Pratista, Ida Ayu Sukihana, *Op.Cit*, p.5.

are people who are skilled and have high creativity on creating art works, but there are also people who do not have those skills. What is meant by the artwork can be in the form of music, poetry, books, rhymes, and or others. The artwork itself has the meaning described by some experts. According to the opinion expressed by Aristotle, art is an activity imitating nature with a form or way of expression and its appearance that never deviates from existing reality. Another opinion from Ki Hajar Dewantara who argues that art is the result of beauty that is able to move the beautiful feelings of anyone who sees it, so that whatever human action can influence and create beautiful feelings is called art. Meanwhile, according to the Indonesian encyclopedia that defines art, which is a creative work of everything that contains an element of beauty, so as to make people who see or hear it become happy⁸³.

A work of art emerges as a form of creative idea from someone who can be called a creator. As mentioned above, a work of art has various kinds of work, one of the examples of a work of art is a musical work. A musical work or song is one of the most popular works of people, especially nowadays, a piece of music or song is believed to be able to elevate one's mood and give a sense of calm when hearing it. In addition, with the development of the times, everyone can easily enjoy musical works via the internet

⁸³ Danar, 'Pengertian Seni', Contained in <https://www.cryptowi.com/pengertian-seni/>, accessed in 10 December 2020.

without putting much effort. Beforehand, the definition of musical work also explained by Scholars, Suhastjarja, who is a senior lecturer at the Yogyakarta Indonesian Institute of the Arts, defines the art of music as an expression of feelings that are made in the form of tones, containing harmony and rhythm, and having meaningful lyrics⁸⁴. Another meaning of music explained according to Adjie Esa Poetra, who is a senior and famous vocal teacher from Bandung, West Java, said that music can stimulate the sense of hearing, so it can convey information, and has the power to express everything, both feelings, attitudes, thoughts, atmosphere psychological, natural phenomena, and many more⁸⁵. Besides that, according to Koentjaraningrat which explains that music is part of the arts. Art is an element of human culture⁸⁶.

Basically, the literal meaning of the word of music is the art of combining vocal or instrumental sounds in a harmonious or expressive way. Music is an art that is produced by a person or group of talented people or ordinary people who want to express their feelings. Music can be enjoyed by listening to it, listening to music can bring peace or calm to his mind. Music is very fascinating and also has its own meaning and can evoke certain

⁸⁴*Ibid.*

⁸⁵*Ibid.*

⁸⁶Koentjaraningrat, Pengantar Ilmu Antropologi, Aksara Baru, Jakarta, 1986, p. 203-204.

feelings for listeners, such as feelings of sadness, happiness, excitement, and so on.

A musical work or song has an important element that must be considered, what is meant by an element here is something that is attached to something. One of the elements in a musical work or song is copyright. The element of copyright itself can be called the right of the creator. In a musical work or song, there must be an element of copyright because the creator has the right to always be bound to his or her work, which means that the name of the creator cannot be separated from a musical work. Copyright itself as previously explained is the right that is inherent in the creator. Patricia Loughlan provides an opinion on copyright,

"Copyright is a form of ownership that gives the holder the exclusive right to supervise the use and use of an intellectual creation, as defined in the copyright category, namely literature, drama, music and work, art work as well as sound recordings, films, radio and broadcasts. television, as well as written works that are reproduced through more publications"⁸⁷.

Thus, it can be concluded that a music copyright is a creator's exclusive right in a musical work or song. As an exclusive right, creators and or copyright holders have the right to reproduce their copyrights, which means that the creator or holder can increase the number of works with the same actions, almost the same or resembling these creations by using the same or different materials,

⁸⁷ Afrillyanna Purba, Gazalba Saleh, Andriana Krisnawati. *Trips – WTO dan Hukum HKI Indonesia*. Jakarta, Rineka Cipta, 2005, p. 19.

including transforming the works. The act of reproducing and announcing and giving permission to other parties is actually the right of the creator of the copyright work. Without permission from the creator is equated with infringing the copyright field⁸⁸. This right is protected by the state, in Indonesia it is regulated in the form of Law number 28 of 2014 concerning copyrights. There are several rights which are protected rights in a musical work namely economic rights and moral rights owned by the composer of the song. Yet these rights do not always refer to the creator, but can also refer to the copyright holder, who is mostly the publisher of the song. Copyright protection is a form of protection from intellectual property. Intellectual property rights can be interpreted as rights arising from a work that is produced using human intellectual abilities that are beneficial to people's lives. In this case, the benefit is derived from the economic value in the work, namely as property rights that are generated due to human intellectual ability, so intellectual property rights can include science, technology and works that have moral, economic and practical values.

2. Music Copyrights in National and International Perspective

Music can be said as the favorite thing of most people, music might be considered as something that most people love to,

⁸⁸ In Indriyani, "Hak Kekayaan Intelektual: Perlindungan Hukum Terhadap Hak Cipta Karya Musik", *Jurnal Ilmu Hukum*, Vol. 7, No. 2, Fakultas Teknik Industri Universitas Pamulang, 2018, p.251

either in national scope or even international. Besides, music can also be said having the advantage to unite the hearts and souls of mankind. Music copyright is protected by the state in the form of a law which has been amended several times. These changes aim to renew or revise the old regulations.

Copyright was first known in Indonesia in 1912, while during the Dutch East Indies period. At that time according to the applicable law in the Netherlands it was also enforced in Indonesia based on the concordance principle. However, in fact that the copyright derived on Auteurswet 1912 can then from that the first Copyright Law in Indonesia is a law originating from the Netherlands⁸⁹. Then it undergoes a renewal regulated in the Copyright Law Number 19 of 2002. After going through the revision and discussion process at The People's Consultative Council, the Law on Copyright which was only then passed by the Indonesian People's Consultative Council (DPR) by enacting Law number 28 of 2014 concerning Copyrights. According to Widyopramono, basically, copyright is called by a special or exclusive right. In the other word, copyright is an exclusive right that must be protected. If not, it will be dangerous for national economic growth⁹⁰.

⁸⁹ Sophar Maru Hutagalung, *Hak Cipta Kedudukan Dan Peranannya di Dalam Pembangunan*, Akademika Presindo, Jakarta, 1994, p.1.

⁹⁰ Widyopramono, *Tindak Pidana Hak Cipta; Analisis dan Penyelesaiannya*, Sinar Grafika, Jakarta, 1992, p. 4.

The copyrights protection system at the national level is specifically regulated in Article 33 of the Copyright Law number 19 of 2002 which explains that it is valid indefinitely and Article 34 states the validity period of copyright protection, hereinafter referred to as;

“Without prejudice to the Creator's rights over the period of Copyright protection calculated from the birth of a Work, the calculation of the period of protection for a protected Work:

- a. for 50 (fifty) years;*
- b. during the Creator's life and continues to 50 (fifty) years after the Creator passed away, starting from January 1 for the following year after the Work is announced, known by public, published, or after the Creator passed away.”⁹¹*

Moreover, Article 29 paragraph (2) also states that if the copyright is represented by two or more people, then the copyright is valid for the life of the creator who dies the last and lasts up to 50 years thereafter. Protection of copyright is also described in the latest copyright law which is Law number 28 of 2014 article 58 paragraph (2) states

“In the event that the work as referred to in paragraph (1) is owned by two or more people, Copyright protection is valid for the life of the Creator who passed away at the latest and lasts 70 (seventy) years thereafter, starting January 1 of the following year.”⁹²

⁹¹ Article 34 Law number 19 of 2002 concerning Copyright.

⁹² Article 58 on Law number 28 of 2014 concerning Copyright.

The regulations described above is applied to intellectual works made by the creator, in the other words, these rules also apply to a musical work or song. Even though these regulations are the applicable regulations in Indonesia, the International level also has copyright protection which is not much different, because in essence music copyright protection has the objective of protecting the rights of the creators of his works.

Based on in International level, music copyrights means giving the regulation of works both published and unpublished works⁹³. The protection itself given to the creator, or copyrights holder, in the case of music copyrights the copyrights often given to to the master of the musical work. From this we know that copyrights apply in song also in sound recording⁹⁴. The form of copyrights in sound recording is usually given to the record company and the artist, but in indonesia, all copyright protection only applies to the creator or the publisher. Yet artists often work for an agency which is also called a publisher. Thus, there is no specific regulation related to artist and record company protection in Indonesia.

The protection of copyrights over works include original music works, original artistic works, original literary works, original dramatic works, also all works that is originally made by the creator

⁹³ Gammons, *The art of music publishing*, Focal Press, United Kingdom, 2011, p. 14.

⁹⁴ Gammons, *Op. Cit*, p. 21.

such as films, sound recordings, broadcasts, cable programs, typographical arrangements of published editions⁹⁵. On International level, just like the latest regulation about the period of copyrights, Law number 28 of 2014 concerning copyrights states that copyrights of the creator will no longer be 70 years after the creator has passed away. Same like International level, the period is 70 years after the last creator passed away to still get their income of the works, or can be said as the economic right⁹⁶.

Basically, music copyright merely gives the protection over the creator or the author instead of the singer. The first regulation of copyright specifically regarding musical work in America was regulated in Act of 1831 also known as United States Copyright Law. In making a musical work, there are several parties who play a role in the making of the song, between the songwriter (creator), singer or record company has a role that is no less important, the benefits of copyright on the song are divided equally between these parties. Yet it cannot be denied that the creator has bigger authority, because the creator holds a license from the copyright⁹⁷. Yet all regulations in all countries regarding copyright protection still regulate under Berne Convention. After the Act of 1803, then came the Act of 1909 concerning Copyright, the Act that provided the regulation to adapt and arrange the works from the creator of the

⁹⁵Gammons, *Op.Cit*, p. 14.

⁹⁶*Ibid.*

⁹⁷Gammons, *Op. Cit*, p. 21-22.

musical works. Thus it still needs to know that nowadays music publishers have an authority in the scope of legal music copyrights. The digital revolution raises the crisis in the music industry in all areas including both national and international level. The importance of copyright ownership classification, the complexity of copyright law particularly as it applies to music, have played a major role in the industry's inability to respond to the changing nature of the distribution modes of digital works and if not exploited⁹⁸.

The development of digital technology makes the distribution and transactions of musical works on the internet increasingly supported by the convenience of this technology, but this actually makes the protection of copyright in cyberspace overwhelmed and not that perfect⁹⁹. The inadequate protection of musical works in digital technology is caused by problems in resolving the process of distributing and transacting digital audio content¹⁰⁰. In music copyright infringement cases, a musical work is protected under a copyright law which regulates the interests between creators and performers, it creates a bit of controversy.

⁹⁸Lydia Pallas Loren, 'Untangling The Web of Music Copyrights', Case Western Reserve Law Review, Vol. 53, Case Western Reserve University, 2002, p. 675.

⁹⁹U. F. Ugwu, "Reconciling the right to learn with copyright protection in the digital age: Limitations of contemporary copyright treaties", *Law Develop. Review*, vol. 12, no. 1, p. 41-77, May 2018.

¹⁰⁰V. Sunita, R. S. Dhavale, Deodhar and L. M. Patnaik, "Walsh Hadamard transform based robust blind watermarking for digital audio copyright protection", *Commun. Comput. Inf. Sci.*, vol. 250, p. 469-475, Jan. 2011.

Music copyright cases are increasing day by day, and many are resolved through litigation. On the other hand, dispute resolution through inappropriate litigation actually obstructs musical creativity and costs taxpayers that musical work to resolve this dispute¹⁰¹. There are two main concepts in the US Copyright Law to define the elements of music copyright infringement, the first is “substantial similarity” which means that someone commits an offense if there is a similarity in the content of a musical work. The second is the “protectable expression” of violation elements which refers more to a certain tone, rhythm pattern from another musical work¹⁰². Basically, what is actually protected under copyright regarding musical works are the melody and the lyrics then expands the other elements of composition on a musical works such as tone, rhythm, and tempo¹⁰³. Getting from a standard established in nineteenth-century Europe, U.S. courts truly gave more assurance to song than to other melodic components since that is the thing that they thought embodied the work. That view might be still valid for specific genres classifications. Yet, it has since quite a while ago outlasted

¹⁰¹Yuchen Yuan, et al, ‘Perceptual Vs. Automated Judgements of Music Copyright Infringement’, *Proceedings of the 21st ISMIR Conference, Montré’al, Canada*, Keio University, Japan; George Washington University Law School, USA; Goldsmiths, University of London, UK; University of Auckland, New Zealand, 2020, p. 23.

¹⁰²P. Fishman, ‘Music as a Matter of Law’, *Harvard Law Review*, vol. 131, no. 7, p. 1861-1923, Harvard Law University, 2018.

¹⁰³P. Fishman, *Op.Cit*, p. 1866.

when it could profess to be valid for the full scope of music made and applied¹⁰⁴.

3. Legal Enforcement Towards Moral Rights in Music Copyright

Practically, law enforcement in Indonesia has not been maximally protected as what is regulated in Article 113 Paragraph 3 on Law Number 28 of 2014, this article which only covers infringements of economic rights has not been maximized¹⁰⁵, even less law enforcement in the event of an infringement of moral rights. Law Number 28 of 2014 only provides law enforcement in the event of piracy which is closely related to the protection of moral rights, it is very common in cases of music copyright in Indonesia. Based on the IIPA (International Intellectual Property Alliance) report, it was stated that a number of countries that had committed copyright infringement were quite serious, including China, Taiwan, India, Korea, Malaysia and Indonesia¹⁰⁶. The fact is that Indonesia is one of the countries that conducting "piracy" seems very profitable business in Indonesia¹⁰⁷.

Music piracy is conducted because the tax is quite expensive to make consumers think twice about paying for it and

¹⁰⁴ P, Fishmand, *Op.Cit*, p. 1921.

¹⁰⁵Zainul Amin, 'Penegakan Hukum Terhadap Hak Cipta dalam Bidang Industri Kreatif di Negara Kesatuan Republik Indonesia', *Mimbar Keadilan Jurnal Ilmu Hukum*, Fakultas Hukum, Universitas 17 Agustus 1945 Surabaya, 2018, p. 127.

¹⁰⁶Hendra Tanu Atmadja, 'Perlindungan Hak Cipta Musik atau Lagu di Indonesia', *Jurnal Hukum dan Pembangunan*, 2003, p. 285

¹⁰⁷H.R. Report No. 487. 92t1 Cong.. 15th Sept. 2 (1971). Frank L. Fine, 'Record Piracy And Modern Problems of Innocent Infringement: A Comparative Analysis of United States And British Copyright Law', *Santa Clara Law Review*, Vol. 21, 1981, p. 361.

the reason for producers to pirate other people's work is because in terms of cheap capital and from an economic point of view they get more profits, as well as the reason consumers buy pirated products because of the very price cheap¹⁰⁸. The role of the Directorate General of Intellectual Property is very large in law enforcement to protect the rights of creators in the creative industry in Indonesia¹⁰⁹.

In Article 113 on Law Number 28 of 2014 the government only imposes criminal sanctions in the event of economic rights infringements, and the sanctions are too light for the perpetrators who conduct infringements, as the result, the perpetrators have no deterrent effect from carrying out the infringement. Thus, law enforcement and legal protection in Indonesia in music copyright are not enforced with maximum sanctions so as to be burdensome for the perpetrators of copyright infringement. Especially, for acts of infringement of moral rights which are not regulated in the Indonesian copyright law, making the public feel free to commit such infringements without any deterrent effect from doing so. The state of Indonesia stipulates that copyright protection is granted to works that are private in nature by fulfilling the requirements of authenticity, based on the ability of thought, imagination,

¹⁰⁸Zainul Amin, *Op. Cit.*, p. 129.

¹⁰⁹*Ibid.*

creativity, and in a unique form that reflects the creator¹¹⁰. However, the lack of law enforcement makes the moral rights of creators less protected.

Law enforcement on the copyrighted works from the perspective of criminal law can be found in Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. However, the formulations found in the articles relating to criminal provisions are not explicit formulations that mention special protection for the creative industry, but the protection is intended for all works which are protected by a copyright regime in implementation¹¹¹, so that law enforcement One of the preventive measures can be done through the approach of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. Including a criminal element in the threat of punishment for copyright infringement that occurs shows that this rule of law wants to make a rule that is not only repressive but also preventive against existing infringements, the preventive and repressive characteristic is also one of which can be seen in the changing of the characteristics of the offense. Copyright which was originally a complaint offense becomes an ordinary offense. It means that efforts to enforce the law even harder can be

¹¹⁰Rahmi Jened, *Hak Kekayaan Intelektual; Penyalahgunaan Hak Eksklusif*, Universitas Airlangga Press, Surabaya, 2007, p. 60.

¹¹¹Arif Lutviansori, *Konsep Dasar Hukum Hak Cipta*, Graha Ilmu, Yogyakarta, 2010, p. 162.

found in the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright¹¹².

Law enforcement is only a repressive system of a copyright protection system, another system that is equally important is a preventive system by increasing the awareness and knowledge of the public, including government officials and law enforcers. In cases related to moral right infringement, prevention can be done by only paying attention to the creator, the importance of respecting the creator¹¹³.

4. Music Copyright Protection System

Music is a form of culture, meaning that music is created by humans to fulfill their need for their magnificence. It can be interpreted that music has a function in human life. Music copyrights is one of the copyrights protection branches that has a big role nowadays. Copyright in a song or musical work creation basically has two protections, including music consisting of elements of lyrics, notations, arrangements including literary or artistic creations that are copyright protection and music recorded works that is included in the protection of sound recordings on the related copyrights or can be called as neighboring right¹¹⁴.

¹¹²Zainul Amin, *Op. Cit.*, p. 136.

¹¹³Zainul Amin, *Op. Cit.*, p. 137.

¹¹⁴Etty Susilowati, *Hak Kekayaan Intelektual dan Lisensi Pada HKI*, Undip Press, Semarang, 2013, p. 66.

Copyrights protection is just like a protection that covers license of “using” other creation in the form of work.

In musical works or songs, the granting of a license from the creator or copyright holder or authorizer of the songs to a third party is generally set out in the form of a License Agreement. License agreement relates to the economic rights owned by the creator or copyright holder or authorizer of the songs to obtain all economic benefits for their creation. The economic rights consist of two rights, namely the right to announce the song or can be said as performing right and the right to duplicate the song or can be said as mechanical right¹¹⁵. Beforehand, what is meant by license is a form of permission granting to utilize an intellectual property right that can be granted by the licensor to the licensee so that the licensee can carry out a form of business activity, either in the form of technology or knowledge that can be used to produce, sell, or marketing of certain goods as well as those that will be used to carry out certain service activities, by utilizing the licensed intellectual property rights. For this purpose, the licensee is required to provide counter performance in the form of royalty payments, also known as license fees¹¹⁶. For the granting of such a license, the licensor gets compensation in the form of royalties paid by the licensee, the

¹¹⁵ Rischy Akbar Santosa, Budi Santoso, Rinitami Njatrijani, ‘Perlindungan Hak Komersial Pencipta Lagu Tanpa Ijin Untuk Kepentingan Komersial’, *Diponegoro Law Journal*, Vol. 5, No. 3, Faculty of Law Universitas Diponegoro, 2016, p.2.

¹¹⁶ Rezky Lendi Maramis, *Op. Cit.*, p. 118.

amount of which depends on the negotiation of the parties. Royalty itself can be interpreted as a reward for the creator or copyright holder for the use of his copyright work.

Beside economic rights that are protected in copyright protection, there is another right which is not less important than economic rights, namely moral rights. A creator cannot transfer their moral rights as creators to other people as long as the creator is still alive, but can revoke this right in the form of a written contract. In the other words, copyright is revocable, but not transferable¹¹⁷. Not all countries have regulations regarding moral rights in a musical work, in America, moral rights are not so considered in musical works¹¹⁸. This is very crucial because people who have the highest dedication to the work they create, in the form of their own creativity, which of course spend a lot of energy and time, their moral rights are not protected by the state. The concept of moral rights is to reward the creator because a copyrighted work is a personal reflection of the creator so that it cannot be divided or changes or modifications the work itself.

In the recording of the song, several parties were involved, including the songwriter, the one who transferred his rights for a certain time in accordance with the agreement made, for example, a license, music copyright in the recording, to a sound recording

¹¹⁷Gammons, *Op. Cit*, p. 29.

¹¹⁸Gammons, *Op. Cit*, p.30.

producer, to be exploited by recording, duplicating, then selling it. Sound record producers record musical creations in the form of a master sound recording, which includes the musical composers. Master record copying companies that duplicate or reproduce sound recordings¹¹⁹. In Indonesia, there is an institution that helps protect the economic rights of creators to get their rights called the Collective Management Institute. A work such as music is a work that is very popular with people of all ages, like everyone has been listening to music. Due to the popularity of music, it is not easy to protect the rights in the work, this institution helps the creator get their rights more easily and orderly. The Collective Management Institute is an institution mandated by the new Copyright Law, namely Law Number 28 of 2014. In Law Number 28 of 2014 concerning Copyright states that the Collective Management Institute or in Indonesia called as “Lembaga Manajemen Kolektif” is an institution in the form of a non-profit legal entity that is authorized by the creator, copyright holder, and or related rights owners to manage their economic rights in the form of collecting and distributing royalties¹²⁰. It is also explained that in order to obtain the economic rights of every creator, copyright holder, owner of related rights to become members of collective management institutions in order to be able to collect fair compensation from

¹¹⁹Etty Susilowati, *Hak Kekayaan Intelektual dan Lisensi Pada HKI*, Undip Press, Semarang, 2013, p.67.

¹²⁰Rischy Akbar Santosa, Budi Santoso, Rinitami Njatrijani, *Op. Cit*, p.8.

users who use Copyright and Related Rights in the form of commercial public services¹²¹.

D. Legal Procedure to Register Music Copyrights

In the reformation era, creators can be creative with all bright ideas to produce a literary work that can be enjoyed by everyone in social life, but often occurs in everyday life due to the limitations of economic factors and a lack of understanding of law awareness by the public in enjoying it. Appreciating a work of art so that it creates a tendency to enjoy art in the wrong way. One of the most popular works of art is music. Music is a work of art that can be enjoyed by everyone, all groups, all ages, and in various events. There is almost no human who has never listened to music. In fact, almost all places, everywhere we can find music.

Music is believed to give calm to the listener. Beside the fact that music is believed to have many benefits for listeners, favored by many people, in this very advanced era it makes music easier to access. As we know that everything we can access via the internet, as well as what happens to musical works, we can search various genres of music via the internet very easily according to our needs. Beforehand, the definition of the internet in simple terms is as a network that is connected to each other using a standard system of the global transmission control protocol. The internet itself can be connected to all types and types of computers around the world using links with types of communication such as telephones,

¹²¹*Ibid.*

satellites, and others¹²². The function of the internet is as a communication media. With the internet, distance and time are no longer a problem, we can communicate with anyone at any time from various parts of the world. In addition, everyone can access information easily from the internet, such as, accessing news via the internet, accessing digital books so that everyone can get information more easily via the internet¹²³.

The internet brings bigger negative impacts that should be avoided as much as possible. For example, fake information or what is known as hoax is also very widespread on the internet. This information is of course frightening people on the internet, especially those who do not really understand this information. Moreover, it could be that fake information is more frightening than murder because the effects last in the long run, of course this is a harm thing on the internet that must be avoided. In addition, the frequent occurrence of fraud that harms the victims Too free to access the internet is also one of the negative impacts, such as adult content that can be accessed by anyone, of course it is dangerous for people who are not supposed to know yet of this content. The internet also often makes us put aside the reality, for example, the excitement of accessing the internet makes us forget to do our obligations in real life. The excitement about

¹²²Appkey, 'Pengertian Internet & Dampak Positif dan Dampak Negatif Internet', on <https://appkey.id/pembuatan-website/teknologi-web/pengertian-internet/>, accessed in 16 December 2020.

¹²³*Ibid.*

accessing the internet also makes us forget the time. This makes us have to be more careful in accessing the internet¹²⁴.

The ease of internet access for listening to music has many impacts on creators, there are negative aspects and positive aspects. The positive aspect is that it makes it easier for creators or publishers to publish their musical work to the public. The ease of accessing the internet also increases copyright infringement. The most significant copyright infringement related to music that is disseminated by creators on the internet is music piracy. Music piracy occurs because of many factors, one of them because of the economic factors. This economic factor occurs because high taxes in Indonesia make the price of the musical work high. It leads consumers to take shorter steps by illegally ignoring the work of the creator's rights. Seeing the negative impacts that have been described above, preventive action is needed to prevent copyright infringement on musical works. Preventive action aims to prevent violations against musical copyright works. Preventive action can be done by recording a song copyright work that has been made in real form, this real form means the tangible ones. Although copyright does not require registration which is automatic, it is advisable for creators and copyright holders to register their works, because such registration letters can be used as evidence in court if a dispute arises in the future against the musical work itself. Registering the musical works is done by submitting an application to the Directorate General of

¹²⁴ Eriil, 'Begini Dampak Positif dan Negatif Internet Saat Ini', on <https://qwords.com/blog/dampak-positif-dan-negatif-internet/>, accessed in 16 December 2002.

Intellectual Property of the Ministry of Law and Human Rights, as regulated in Article 64 of the Copyright Law. If the application is accepted, the ministry will issue a registration letter of the creation or the musical works¹²⁵.

Basically, the registration of the musical work's copyright is not a requirement for the creator to register it but if a creator registers his or her work, it gives stronger legal certainty as evidence that his or her work has been registered to the government. With the registration of a musical work copyright by the creator, it is easy to find out who is the copyright holder for a song¹²⁶. If later there is a violation of the musical works that have been registered, at least the creator has evidence to get his or her rights as the creator of the song.

Registration of works is carried out at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia. By registering, the officers will record the name, address, title of the work concerned in the general register of works specially prepared for this purpose. The recording shall be made in the General Register of Works and the official announcement shall be made in the Supplement to the State Gazette. The procedure for registration of works is as follows¹²⁷:

¹²⁵ Desak Komang Lina Maharani, *Op. Cit.*, p. 11.

¹²⁶ Habi Kusno, *Op. Cit.*, p. 494.

¹²⁷ Rahmi Jened, *Hukum Hak Cipta (Copyrights Law)*, Citra Aditya Bakti, Bandung, 2014, p.108-109

1. Applications for registration of works are filed by filling in the form provided for it in Indonesian and typed in 2 (two) copies.
2. Application must enclose:
 - a. Special power of attorney, if the application is submitted by proxy;
 - b. Examples of works with the following conditions:
 - 1) Books and other written works: 2 (two) pieces that have been bound with the best edition;
 - 2) If a book contains a person's photo, a letter of non-objection from the person in the photo or their heir must be attached;
 - 3) Computer program: 2 (two) floppy disks accompanied by an operating manual of the computer program;
 - 4) CD / VCD / DVD: 2 (two) pieces accompanied by a description of the creation;
 - 5) Teaching aids: 1 (one) piece accompanied by a manual
 - 6) Songs: 10 (ten) pieces in the form of notations and / or lyrics;
 - 7) Drama: 2 (two) written or recorded scripts;
 - 8) Dance (choreography): 10 (ten) pictures or 2 (two) recordings;
 - 9) Puppet: 2 (two) written or recorded manuscripts;
 - 10) Pantomime: 10 (ten) pictures or 2 (two) recordings;
 - 11) Performance works: 2 (two) recordings;
 - 12) Broadcast works: 2 (two) recordings;
 - 13) Painting, motif art, batik art, calligraphy art, logos and pictures: each 10 (ten) photos;
 - 14) Carving, sculpture, handicraft and collage: each 10 (ten) photos;
 - 15) Architecture: 1 (one) architectural drawing;
 - 16) Map: 1 (one) fruit;
 - 17) Photography: 10 (ten) sheets;

- 18) Cinematography: 2 (two) recordings;
 - 19) Translation: 2 (two) manuscripts accompanied by permission from the copyright holder;
 - 20) Tafseer, adaptation and potpourri: 2 (two) texts.
- c. An official copy of the deed of establishment of a legal entity or a copy of it legalized by a notary, if the applicant is a legal entity;
 - d. Photocopy of identity card; and
 - e. Proof of payment of application fees¹²⁸.

Public awareness of illegal pirated of musical work is still very low. The current trend in society does not seem to care about legal or illegal goods which only want low prices and can enjoy songs or music. People who are not well informed that pirated goods cannot be circulated, and if they are circulated, they will be subject to penalties¹²⁹. Piracy through the internet is a violation of intellectual property rights, where the creator decides against copyright infringement of songs or musical works that occur on the internet by downloading for free without permission and the real knowledge of the copyright holder¹³⁰. However it is clearly stated in Law Number 28 of 2014 which provides legal protection to creators, copyright holders and related rights entirely, legal protection is intended as legal protection both criminal and private, by doing the act of pirating

¹²⁸*Ibid.*

¹²⁹ Surya prahara, 'Pembajakan Musik dan Lagu: Sebuah Kajian Yuridis Berdasarkan Perjanjian Internasional Tentang Perlindungan Karya Seni dan Sastra Secara Digital di Indonesia', *Jurnal Pelangi*, Vol.5, No. 1, Jurnal Pelangi, 2012, p. 34.

¹³⁰ Depa Oktariansyah, 'Perlindungan Hukum Pencipta Lagu Terhadap Pembajakan Yang Dilakukan Melalui Website Penyedia Jasa Download Lagu Gratis Dalam Media Internet', Fakultas Hukum Universitas Muhammadiyah Palembang, 2016, p. 72.

songs or musical works as known as it is tantamount to not respecting the rights of the creator himself¹³¹.

Law Number 28 of 2014 especially in Article 95 paragraph (4) describes states that if in any case there is a dispute and one of the parties concerned with the copyright dispute is outside the territory of Indonesia, which consists: "Apart from violations of Copyright and / or Related Rights in the form of Piracy, as long as the disputing parties are known to exist and / or are in the territory of the Unitary State of the Republic of Indonesia, must first seek dispute resolution through mediation before making criminal charges."

One of the government's efforts to respond to cases related to music piracy is the government through the Ministry of Communication and Information Technology or also known as (*Kemkominfo*) is to curb sites or websites that provide song download features by blocking them. So that internet users cannot freely access these sites that do the copyrights infringements¹³². The blocking is carried out in two ways, namely, by the complaints and by findings by the Ministry of Communication and Information itself. Complaints are usually made by people who find these banned sites by sending an email from *Kemkominfo* and responding by contacting the admin of the site owner and giving a written warning. Most of the site admins do not admit that the content on the site is illegal content so the admin refuses to delete the content. If this is the case, *Kemkominfo*

¹³¹*Ibid.*

¹³²Habi Kusno, *Op. Cit*, p.496.

will contact the creator or copyrights holder of the musical works, if it is true that there is no permission, *Kemkominfo* will unilaterally block the site. This blocking must be carried out by the government, because the government is obliged to protect the copyrighted works of musicians which of course have economic and moral values. Thus the protection provided, musicians will not be afraid to create works because later their musical works will be hijacked or freely used by other people. Thus this kind of action by the government through the Ministry of Communication and Information is what is expected by the creator to protect their musical works in the future¹³³.

There are two types of legal remedies by the creator of musical works that can be taken to resolve violations of copyright, through civil protest by filing a lawsuit in commercial court or by criminal protests, then this copyright violation can be divided into several types just like violations of criminal provisions contained in the Law. Copyrights law also explains that the resolution of copyright disputes can be done through alternative dispute resolution, arbitration, or court. Any creator, copyright holder and related rights owner can also file a claim for compensation through the commercial court for infringement of copyright or related copyrighted works. The submission of claims for Copyright infringements can also be carried out criminally, previously, the criminal offense related to copyright was a complaint offense, but later changed to an ordinary offense. By

¹³³ Habi Kusno, *Op. Cit*, p.497.

making it an ordinary offense, prosecution can be carried out immediately without having its rights violated. If a complaint is still a complaint offense, the action will be solely based on a complaint from the creator or copyright holder who feels aggrieved, so that the law enforcement becomes less effective¹³⁴. Intellectual property law in the field of copyright provides sanctions if there is a violation of a criminal act in the field of copyright is imprisonment and / or a fine. in Law Number 28 of 2014 concerning copyrights regulates criminal provisions in the event of a violation in copyrighted works, in article 112 it is explained as follows;

“Every person without having rights commits the act as referred to in Article 7 paragraph (3) and / or Article 52 for any Commercial Uses, shall be punished with imprisonment of up to 2 (two) years and / or a maximum fine of Rp.300,000,000.00 (three hundred million rupiah).”¹³⁵

Besides the case that ends up in criminal provisions, the legal efforts that the creator, copyright holder, or related rights owner can file is a claim for compensation. A claim for compensation occurs when a person suffers a loss on the one hand, and on the other hand, there is a person who is liable to compensate for the loss suffered by the other person because of his actions. The act occurs because there is an element of an act against the law that causes people to suffer losses. In the event of a case that causes a person to suffer losses on his or her work, the settlement of the case shall be submitted in the civil domain through the commercial court. What is considered in the claim for compensation is to see whether the act that

¹³⁴ Surya Prahara, *Op. Cit*, p. 35.

¹³⁵ Article 112 on Law Number 28 of 2014 concerning Copyright.

caused the loss occurred from an act that was based on intention or negligence¹³⁶.

E. State's Responsibility Towards Moral Rights Protection

The protection of moral rights given by the state to creators has basically been explained under Indonesian Copyright Law Number 28 of 2014. Accountability is a term used to describe the level of responsibility of a person or a certain institution related to its administrative system¹³⁷. The accountability of the state to protect moral rights of creators means protecting the reputation of the creator who has produced a work that is recognized by the state. Indonesia is a civil law system and protects moral and economic rights equally. Thus which legal system does Indonesia follow in protecting copyright in Indonesia?

Basically, the modern copyright laws all around the world having their own protection yet in essence still has the same meaning. In comparison of copyright laws we can be divided into two different legal systems, the first one is copyright approach which applied in Anglo Saxon and other common law countries including the United States of America and the United Kingdom. And the second one is author's rights or the *droit*

¹³⁶ Surya prahara, *Op. Cit*, p. 35.

¹³⁷ Adzikra Ibrahim, 'Pengertian Akuntabilitas Menurut Para Ahli', Pengertian definisi, quoted from <https://pengertiandefinisi.com/pengertian-akuntabilitas-menurut-para-ahli/>, Accessed on 30 January 2021.

d'auteur approach of copyright protection which applied in the Continental European countries and in South American Countries¹³⁸.

Historically, both of the systems above are systems that become fundamental choices as copyright protection in the world. Anglo-American usually used the term “copyright”, the copyright protection in Anglo-Saxon system is mostly applied in common law countries, including the United States of America and the United Kingdom. Copyright in Anglo-Saxon system encourages the commercialisation of the work, promotes dissemination, emphasises on economic rights, that implements the monetarist legal perspective, which means the moral rights are not separately recognized in that system yet has position under the economic rights. The copyright approach in Anglo-American only aims in simple protection of commercial and technical interest¹³⁹. In contrast, the Continental system used the term of “author’s rights” which applied in Continental European countries, civil law countries, such as France and Germany. Modern French copyright law is reflected in dualist perspective¹⁴⁰. It means that the creator has two major rights, which are divided into economic rights and moral rights. On the other hand, it can be called that moral rights in continental system are separately recognized. Moreover, in continental system, the economic rights have limited duration, while the moral rights

¹³⁸ Adolf Dietz, ‘Chinese Copyright System: Anglo-American or Continental European Model?’, *China Patents and Trademarks*, No. 1, 2011, p. 84.

¹³⁹ *Ibid.*

¹⁴⁰ Natalie C. Suhl, ‘Moral Rights Protection in the United States Under the Berne Convention: A Fictional Work?’, *Fordham Intellectual Property, Media and Entertainment Law Journal*, Vol. 12, No. 4, Fordham Law University, 2002, p. 1210.

here are always attached to the creator, because the work that the creator makes assumes the reflects of the creator, so the power of moral rights is over the economic rights, there is no duration regarding the moral right or lasts forever¹⁴¹. Continental system which receives international recognition towards the moral rights under Article 6bis on Berne Convention 1928¹⁴².

Copyright in Anglo Saxon is focused on the dissemination or the audience or aim to serve the public interest, it is about the protection of commercial interest, they do not even think about the reputation of the creator¹⁴³. As mentioned before, the Copyright approach prevails in common law countries including The United States of America and the United Kingdom, however, both of them have differentiation on their regulation over moral rights. The United Kingdom already regulates the moral rights of the creator¹⁴⁴, since realizing that it is having much pressure to not protect moral rights due to the increasingly sophisticated spread of the internet. While the United States of America still does not recognize even does not have systematic regulation of moral rights until today especially over a musical work. Therefore, in USA when there is case related to something that harm the creator towards the creator's moral

¹⁴¹ *Ibid.*

¹⁴² Robert C. Bird and Lucille M. Porte, *Op.Cit.*, p. 224.

¹⁴³ Peter Baldwin, *Op.Cit.*, p. 16.

¹⁴⁴ Robert C. Bird and Lucille M. Porte, 'Protecting Moral Rights in the United States of America and The United Kingdom: Challenges and Opportunities under the U.K.'s New Performances Regulation', *Boston University International Law Journal*, Vol. 24, No. 213, Boston University, 2006, p. 216.

rights, the plaintiff filed suit in the court outside America that not applying anglo saxon system¹⁴⁵.

Looking back to the accountability that Indonesia holds to protect the moral rights of the creator is regulated in Law Number 28 of 2014 concerning copyrights, it is stated in Article 4 that explained about copyright which divided into economic right and moral right¹⁴⁶. Specifically about moral rights, is regulated in Article 5 on Law Number 28 of 2014. Therefore, if there is any case regarding the moral rights infringement, Indonesia holds accountable to protect the moral rights of the creator on dispute settlement through litigation and through non-litigation as stated in Article 95 on Law Number 28 of 2014. In Law Number 28 of 2014 concerning copyright, the dispute settlement over infringement of moral rights of a copyrighted work can be done through alternative dispute settlement, arbitration, or court. The dispute settlement through litigation is carried out in court by filing a lawsuit against violations or infringements of moral rights. The court that has the authority to adjudicate these disputes is the commercial court. Other courts apart from the commercial court do not have the authority to handle any copyright disputes. Apart from violations or infringements of copyright and or related rights in the form of piracy, as long as the parties to the dispute are known to exist and or are in the territory of the Unitary State of the Republic of Indonesia, they must first seek dispute resolution through

¹⁴⁵ Robert C. Bird and Lucille M. Porte, *Op.Cit.*, p. 232.

¹⁴⁶ Article 4 on Law Number 28 of 2014 Concerning Copyright

mediation before making criminal charges¹⁴⁷. According to Article 1 Paragraph 10 on Law Number 30 of 1999, alternative dispute settlement is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment¹⁴⁸. Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties¹⁴⁹. Also in Article 99 of Law Number 28 of 2014 concerning Copyright, it is determined that the Creator, Copyright Holder, or Related Rights owner has the right to file a claim for compensation, namely as follows¹⁵⁰ :

1. *Creators, Copyright Holders, or Related Rights owners have the right to file a claim for compensation to the Commercial Court for infringement of Copyright or Related Rights products.*
2. *A claim for compensation as referred to in paragraph (1) can be in the form of a request to surrender all or part of the income obtained from holding lectures, scientific meetings, performances or work exhibitions which are the result of violations of Copyright or Related Rights products.*
3. *In addition to the lawsuit as referred to in paragraph (1), the Creator, Copyright Holder, or Related Rights owner can request a provisional decision or interlocutory decision to the Commercial Court to:*
 - a. *request confiscation of Works that are made Publication or Reproduction, and / or Reproduction tools used to produce Works resulting from*

¹⁴⁷Cokorde Istri Dian Laksmi Dewi, 'Penyelesaian Sengketa Terhadap Pelanggaran Hak Moral Dalam Kerangka Perlindungan Hak Cipta', *Jurnal Hukum*, Universitas Ngurah Rai Denpasar, 2018, p. 8.

¹⁴⁸ Article 1 Paragraph 10 on Law Number 30 of 1999

¹⁴⁹ Frans Hendra Winarta, *Hukum Penyelesaian Sengketa*. Sinar Grafika, Jakarta, 2012.

¹⁵⁰ Article 99 on Law Number 28 of 2014 Concerning Copyright.

- copyright infringement and Related Rights products; and / or*
- b. *stop the activities of the Announcement, Distribution, Communication, and / or Reproduction of Works which are the result of a violation of Copyright and Related Rights products.*

F. Intellectual Property on Islamic Law Perspective

As a country that has a majority of muslim population, where the majority of the people are moslems, there are various kinds of regulations need to look at the perspective of Islam. Islam as a religion that has universal values, in other words, Islam respects humans as individuals and society. These characteristics indicate that this Islamic law includes various legal and statutory systems that regulate various aspects of formation and reform as well as organize all aspects of community life, those related to issues of faith, worship and muamalah which include economy, civil law, criminal, international relations, or social order¹⁵¹. One of the issues that is happening a lot lately is about intellectual property rights. However, what is the Islamic perspective of the problems that arise with these intellectual property rights? Legal protection of intellectual property rights has experienced rapid developments in the international order, and has even become one of the issues in the era of globalization and liberalization,

¹⁵¹ Abdullah Nasih Ulwan, *Islam Syari'at Abadi*, Gema Insani Press, Jakarta, 1996, p. 23.

especially since the agreement of TRIPs (Trade Related Aspects of Intellectual Property Rights) was agreed¹⁵².

As we know before, that Islam is the religion that highly values respect. Basically, intellectual property rights are rights that are born based on the results of a person's intellectual work. Intellectual works can be in the form of research, art and literary works, which include all literary works, musical works, etc. Therefore, appreciating people's work is needed, because the creator creates the work with the expertise, creativity, time, belonging to the creator itself. The increase in protection against intellectual property rights as contained in the TRIPs Agreement is motivated by the importance of protecting intellectual property rights from the cases of plagiarism, fraud of works of intellectual property rights of the creators. In the era of globalization, the exploitation of creative works is increasingly sensitive, complex, and multifaceted. Thus this case tends to ignore respect for the moral rights of creators, especially due to advances in media, information technology, telecommunications, and transportation. Those are implications for the emergence of all forms of plagiarism and piracy occur massively and can be carried out very easily¹⁵³.

The discussion of copyright uses the argument of *maslahah mursalah*, namely that every thing or action is in accordance with the

¹⁵² Nita triana, 'Menggagas Hak Kekayaan Intelektual Perspektif Hukum Islam Ke Dalam Hukum Nasional', Jurnal Hukum Islam, Vol. XII, No. 2, Fakultas Syariah IAIN Purwokerto, 2018, p.178.

¹⁵³ Nur Sania Dasopang, 'Hak Cipta Di Era Modern (Perspektif Hukum Islam Dalam Menyelesaikan Persoalan Bisnis Kontemporer)', on <https://www.academia.edu/diakses>, Accessed in 16 Desember 2020.

objectives of Islamic law, and has the value of bringing goodness and eliminating damage, but has no explicit argument, must be enforced by law. The benefit can be seen from several aspects, including the creator of this new invention who has spent so much time, money and thought to find a new invention, it should be protected¹⁵⁴.

Islamic law's perspective on Intellectual Property Rights which include copyrights, inventions or trademarks of trade businesses, patents, trademarks, and so on, when seen from the point of view of Islamic law, are new problems in classical fiqh studies. Problems that arise are related to intellectual property rights, regarding the ownership status of the owner and the laws that surround it in the view of Islamic muamalat law¹⁵⁵. The word 'right' comes from the Arabic haqq which means provision or obligation or certainty.

Meanwhile, in terms of terms, the right has several meanings. 'Ali Khafif argues that the right is a benefit that can be owned in a shar'i. Mustafa Ahmad al-Zarqa defines rights as a privilege with which the requirement to establish an authority or a burden (utility)¹⁵⁶. In Islamic teachings, rights are divine gifts that are based on sources used in determining the syarak laws. Fiqh scholars argue that a right must fulfill the pillars of rights, namely the owner of the right and the object of the right. In essence, there is actually no source of rights except Allah, because there is

¹⁵⁴ Nita triana, *Op. Cit.*, p. 183.

¹⁵⁵ Angga Cahya, 'Hak Atas Kekayaan Intelektual Dalam Perspektif Islam', Fakultas Hukum Umitra, p. 22.

¹⁵⁶ Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah*, Pustaka Pelajar, Yogyakarta, 2008, p. 3.

no judge or decision maker apart from Allah and no one has the right to make something except Allah. For this reason, humans have an obligation to respect the rights of others, and there is no authority to destroy their rights¹⁵⁷.

There are several legal consequences related to rights. First, regarding the implementation and prosecution of rights, which is the right owners must comply with whatever has been approved by Allah in fulfilling their rights. Second, regarding the maintenance of rights, means that everyone needs to maintain and protect rights in all forms abused by others, both in criminal and in civil. Third, regarding the use of rights, in exercising rights, a person must be in accordance with the rules and not cause harm to themselves or others¹⁵⁸. Creativity is naturally owned by a person. Therefore, copyright is one of the assets or wealths that must be protected by both the creator and the society, as what mentioned in surah al-Baqarah verse 188¹⁵⁹:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْمُكَلَّفِ لِتَأْكُلُوا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Do not eat up each other's property by false means, nor approach with it the authorities to eat up a portion of the property of the people sinfully, while you know (that you are unjust in doing so).

— Mufti Taqi Usmani

The Indonesian Ulama Council (MUI) argues that in its fatwa, MUI states that every form of violation of copyright, especially piracy, is an unlawful crime whose law is haram. Plagiarism against copyright is also an act of copyright infringement, so that with it plagiarism becomes an

¹⁵⁷ Dimyauddin Djuwaini, *Op. Cit.*, p.4.

¹⁵⁸ Dimyauddin Djuwaini, *Op. Cit.*, p. 9.

¹⁵⁹ Nita Triana, *Op. Cit.*, p. 185.

unlawful act to do because there is an element of tyranny. Therefore, it is appropriate for the MUI through its fatwa to state that "copyright is a right that must be protected, and piracy and anything that violates copyright is an unlawful tyranny."¹⁶⁰



¹⁶⁰ Fatwa Number 1 and 4, Fatwa MUI Number I of 2003 Concerning Copyright.

CHAPTER III
STATE'S RESPONSIBILITY FOR THE PROTECTION OF MORAL
RIGHTS IN MUSIC COPYRIGHT CASES IN INDONESIA

A. Introduction

Copyright protects various kinds of works, one of the works protected by copyright is music. a musical work or song is a collection of beautifully strung words sung to musical accompaniment. Songs are made based on musical compositions and have a rhythm and tempo so that listeners are carried away with their feelings into the meaning of the song. In addition, human life cannot be separated by rhythm. The pulse and heartbeat of humans also have a special rhythm. The right hemisphere of the brain shows work activity when music is played, and what kind of reaction the brain will show is depending on the type of music that affects it. Music is believed to be able to spark the imagination and bring out hidden things that are kept by a person. Music can also stimulate connections between neurons. Thus, when someone listens to music, it means that there are certain nerve parts that are stimulated to always be connected. Moreover, when someone listens to music, especially in soft music, music can make the atmosphere feel comfortable and when the brain feels comfortable this is usually the brain will work optimally¹⁶¹.

¹⁶¹Lely Halimah, 'Musik Dalam Pembelajaran', *Jurnal Pendidikan Dasar*, Vol. 1, No.1, Universitas Pendidikan Indonesia Cibiru, 2010, p. 2.

Music provides many benefits to its listeners, because of the many advantages that are gained in listening to music itself. The creator of the musical work must be appreciated. A musical work created by the results of the creator's intellectual thoughts which is also known as the creator's creativity. In a musical work, the creator or the songwriter has two rights, namely moral rights and economic rights. One of the rights that should be obtained by a songwriter is the royalty that included economic rights for the creator of musical work. Apart from the royalty, songwriters also have other rights to their copyrighted musical works, which is called by moral rights. A musical work or song is included in the realm of intellectual property rights¹⁶².

Therefore, this research emphasizes the moral rights of the creator because some people underestimate the moral rights and only rely on the creator's economic rights in a musical work. Previously, it has been briefly explained about the economic rights of a creator in the form of royalties, economic rights have an equal position with the moral rights of the creator. Then why are moral rights ignored by most people who only pay attention to economic rights in a musical work? whereas moral rights are no less important than economic rights. In addition, this research will explain more deeply about musical works that are protected in copyright. A piece of music or song here is protected from the elements of a song or

¹⁶²Rischy Akbar Santosa, Budi Santoso, Rinitami Njatrijani, 'Perlindungan Hak Komersial Pencipta Lagu Tanpa Ijin Untuk Kepentingan Komersial', *Diponegoro Law Journal*, Vol. 5, No. 3, Faculty of Law Universitas Diponegoro, 2016, p.2.

melody, poetry or lyrics and the arrangement includes notation. In other words a person can be called infringing the copyright on a musical work if someone changes the song lyrics, changes the tone or notation or melody of the song, arranges the song without the creator's permission.

B. Creator's Protection Regarding Moral Rights of Their Musical Works

1. Creator of The Copyrighted Musical Works

Things are now changing, music becomes very popular today coupled with everything that is facilitated by the internet. The convenience of the internet does not always bring benefits, sometimes it also brings losses. In the case of music that is currently booming, music that becomes a necessity today, we found music wherever we are, it does not always bring benefits to the creator. In addition, the lack of people's knowledge in Indonesia about copyright over a work which can be said to be the human right protection of the creator which is manifested in a work often underestimated. Beforehand, The definition of copyright according to Law Number 28 of 2014 concerning Copyright, copyright means the exclusive right of the creator which arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with statutory provisions¹⁶³.

¹⁶³Article 1 Paragraph 1 on Law Number 28 of 2014 concerning Copyright.

A creator refers to someone or several people who creates a creation or a work. As previously explained, the creator according to Law Number 28 of 2014 is a person or several person who creates a work that is a reflection of the creator's self, so that the work is naturally created by the creator who has its own characteristics from the other work. Moreover, the creator can also be said as the copyright holder of a work, but the copyright holder does not merely consist of the creator, the copyright holder consists of whoever participates in making the work.

The recent development of technology is one of the reasons that it is difficult to determine the creator of a work, especially in determining the creator of a musical work. According to Berne Convention, copyrights appear automatically, this means that actually it is not necessary to register the copyright over a work. Whoever firstly introduces the work to the public means that the person is the one who has the right of the copyright over the work. In the case of musical work, the copyright protection is not merely given to the creator. The copyright holder could be the related rights of the works, such as the performer or the singer, sounds recording of the song, and the publisher agency. The first authority is given to the creator or the songwriter, the protection that given to the songwriter is about the song itself, because they are the one who made the creator. The second authority is given to the

performance, the performer or also called as the singer or the artist or the work is given copyright protection over his or her voice. While the other authority given to the publisher or the sound recording, the protection that given to the publisher is because sometimes they are the person that has the idea of the music video theme or the theme of the album looks like (if any). However, in Indonesia, the publisher and the creator are common, which means they both get along together and become in one agency. The music publisher acting on behalf of the songwriter and the singer.

Some people may not be concerned about concern the moral rights because its intangibility, however, for the creator, moral rights are the most crucial rights, yet it is very important. Moral rights covers the importance of the legal rules and legal procedures to protect any piracy, integrity, authenticity, authorship also the dignity of the creator's original works¹⁶⁴. Moreover, creator is also a "taxpayer" so state has responsibility to protect their citizen.

2. Moral Rights of The Copyrighted Musical Works

Music is part of an art that is very influential because through music a person can also express feelings to the public about their conscience. Music is believed could create relaxation and excitement for someone who listens to it. Moreover, music can

¹⁶⁴ Javier A.M. Chavez, *Op.Cit.*, p. 4.

be a motivator for certain people¹⁶⁵. A musical work is a form of art as the result of creativity that must be appreciated. The form of appreciation itself includes the intention to appreciate the efforts of the creator to create their work. Indonesia has a wide variety of arts and works because of the diversity of its ethnic groups, the abundance of arts and works make it necessary to protect creators' rights. The protection of a musical work is regulated under Law Number 28 of 2014 concerning Copyright. There have been many changes in the determination of the law on copyright, but in fact there are still a few things that need to be improved to better provide protection and advance the development of intellectual work in the field of copyright and related rights even though these changes have contained several adjustments to the appropriate article with TRIPs agreement, and has accommodated the provisions of other international agreements in the field of copyright and other rights relating to copyright¹⁶⁶.

The concept of intellectual property rights law has the idea that intellectual property rights are rights that arise from natural rights which are intrinsically or inherently exist since humans are born, so, intellectual property rights can be said as part of human rights and natural law by John Locke which emerges the doctrine

¹⁶⁵Lely Halimah, 'Musik Dalam Pembelajaran', *Jurnal Pendidikan Dasar*, Vol. 2, No. 2, Universitas Pendidikan Dasar, 2016, p. 3.

¹⁶⁶Bernard Nainggolan, 'Landasan Filosofis dan Substansi Pembaharuan Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta', *Jurnal Paradigma Hukum Pembangunan*, Vol. 1, No.1, Fakultas Hukum Universitas Kristen Atmajaya, 2016, p. 31.

of moral rights, namely a personal right that is owned by a creator or inventor to prevent deviation from his work or findings and to get respect or appreciation for the work¹⁶⁷. The exclusive rights owned by the creator in this case is that only the copyright holder has the authority to exercise the copyright, for example, in giving the permission on using any work of the creator. While other people or parties are prohibited from exercising the copyright without the consent of the copyright holder. This is supported by the principle of intellectual property as exclusive, which means that the intellectual property legal system grants special rights to people who are directly related to the intellectual property produced. Through this right, the creator has the right to prevent others from creating or infringing or using or acting over a work without permission¹⁶⁸.

The concept of moral rights comes from the Continental legal system, namely from France. The moral rights referred to Paragraph 2 Article 5 on Law Number 28 of 2014 cannot be transferred as long as the creator is still alive, but the exercise of these rights can be transferred with a will or other reasons in accordance with statutory provisions after the creator passed away.

The moral rights of a copyright can include the right to include the

¹⁶⁷Kholis Roisah, *Konsep Hukum Hak Kekayaan Intelektual: Sejarah, Pengertian dan Filosofi Pengakuan HKI Dari Masa Ke Masa*, Setara Press, Malang, 2015, p. 15.

¹⁶⁸Sartika Nanda Lestari, 'Perlindungan Hak Moral Pencipta di Era Digital di Indonesia', *Private Law Review*, Vol. 4, No. 3, Universitas Diponegoro, 2019, p.9.

author's name in the work and the right to change the title or content of the work¹⁶⁹. The regulation of moral rights in continental countries has similar principles with the regulation of moral rights in Indonesia. In the Indonesian system, the protection of moral rights and economic rights has equal position. In addition to the right of using copyrighted works in the community that obliged to link and protect the image of the creator. Different to Common Law countries. These countries put the protection of moral rights under economic rights¹⁷⁰. The implementation of the protection of moral rights in Indonesia needs to be more considered. As a country adhering to the Continental system, the copyright law equalizes the position of economic rights and moral rights. Moreover, the number of cases of moral rights infringements shows the weakness of protection from the government.

Therefore, the substance of moral rights that attached to the creator includes¹⁷¹:

- a. The right to be recognized as a creator. Means that it is obligatory to include or link the name of the creator on the creation or works.

¹⁶⁹ Djumhana & Djubaedillah, *Hak Milik Intelektual: Sejarah dan Teori Prakteknya di Indonesia*, Citra Aditya Bakti, Bandung, 2003, p. 91.

¹⁷⁰ Sartika Nanda Lestari, *Op. Cit*, p. 10.

¹⁷¹ Henry Soelistyo, *Op.Cit*, p. 105.

- b. The right to refuse actions that can distort, cut or remove part of the work or modify the creator's work.
- c. The right to refuse any form of action or treatment that can harm the reputation of the creator.

The protection and fulfillment of moral rights are very related to the dignity of the creator, so if the protection of a moral right is fulfilled, the moral right will run well, the creator will feel more respected. The moral rights are very important to the creator, it is arguably that the damage and the impact caused by moral rights infringements is not comparable to the impact of the economic rights infringements, because creativity is very expensive. The main difference between the economic right and the moral right of the creator is economic right is only about getting the financial reward of the work. However, the moral right is about secure, respect, and protection. Moral rights allow the creator to take any action to preserve their work, so by the moral rights, the creator of the work will be remembered all the time¹⁷².

One of the examples of the importance of moral rights is described in the heart-warming Disney movie, with the title “Coco”. The film is about the role of copyright including song, lyrics, music, and the protection of the interests of the creator¹⁷³.

¹⁷² Chavez, *Log. Cit.*

¹⁷³ *Ibid.*

Coco shows how the importance of moral rights is, moral rights are very meaningful for the creator in life and in death. The story about the film is talking about what can happen when a creator's moral rights are infringed, how is the reputation of the creator even after the creator passed away when the imposter takes their position. The creator enables to preserve their rights to the creator's heirs, it gives a look to the universe in which the dead people are unable to defend their interests if someone stole it. This case is about plagiarism that becomes a normal action to conduct by the public. Plagiarism is part of moral rights infringements that is hard to detect, it happens because of the lack of copyright knowledge of the creator and also the infringers have innocent feelings of doing their underhanded behavior. This film emerges as a copyright-aware to the citizen, so that people start paying attention to the creator's rights¹⁷⁴.

C. The State's Responsibility Towards the Creator's Protection Regarding the Moral Rights of Their Musical Works

1. Moral Rights Protection Based on Law Number 28 of 2014 Concerning Copyright

Copyright is a branch of intellectual property rights which means the umbrella of various kinds of creator's rights that must be

¹⁷⁴*Ibid.*

protected. Suyud Margono argues that the most fundamental thing for the protection of intellectual property rights is that someone who has devoted his efforts to creating or discovering something then has a natural or basic right to own and control what he has created. This understanding gives meaning to respect and fairness, so it will create unethical if it is not respectful, unreasonable and unfair if stealing someone's business without asking permission first¹⁷⁵. Therefore, Abdulkadir Muhamad expressed in his book that as indicated by the predominant regulation in the public arena, licensed innovation rights are impalpable resources beginning from one's protected innovation. Each benefit including licensed innovation must have a lawful proprietor so it should be secured. Licensed innovation rights may not be utilized by others without the approval of their creators, except if in any case determined by relevant traditions. The arrangements of the law or also called by rule of law requires the creator of licensed innovation rights to get their privileges and each enrolled right is demonstrated by the enlistment declaration¹⁷⁶.

Basically, the copyright of a work includes two protected rights, namely economic rights and moral rights, these two rights are stated on Article 4 of Law Number 28 of 2014 concerning

¹⁷⁵ Suyud Margono dan Longginus Hadi, *Pembaharuan Perlindungan Hukum Merek*, Novindo Pustaka Mandiri, Jakarta, 2002, p. 4.

¹⁷⁶ Abdulkadir Muhamad, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, Citra Aditya Bakti, Bandung, 2007, p. 153

Copyright. The first right is economic rights, economic rights are regulated under the copyright law in Article 8 which explains that economic rights are the exclusive rights that the creator has for his or her work to get economic benefits for his or her creation. While the second right is a moral right, moral right is regulated on Article 5 of the copyright law as follows¹⁷⁷:

1. *The moral rights referred to in Article 4 are rights that are eternally attached to the Creator to:*
 - a. *continue to include or not include his name on the copy in connection with the use of his work to the public;*
 - b. *using his alias or pseudonym;*
 - c. *change his work in accordance with the appropriateness of society;*
 - d. *change the title and subtitle of the work; and*
 - e. *defend their rights in the event of a work distortion, mutilation of a work, modification of a work, or anything that is detrimental to one's honor or reputation.*
2. *The moral rights as referred to in paragraph (1) cannot be transferred as long as the creator is still alive, but the exercise of these rights can be transferred by will or other causes in accordance with the provisions of laws and regulations after the creator dies.*
3. *In the event of a transfer of the use of moral rights as referred to in paragraph (2), the creator can relinquish or refuse to exercise his rights provided that the release or refusal of the exercise of said rights is stated in writing.*

The understanding of moral rights first emerged in the middle of 19th century to solve the practical problems of creators at the time of the rapid development of publication in France¹⁷⁸.

Moral rights include two major things, namely the right of integrity

¹⁷⁷Article 5 on Law Number 28 of 2014 concerning Copyright.

¹⁷⁸Mira Sundara T. Rajan, *Moral Rights: Principles, Practice and New Technology*, Oxford University Press, New York, 2010, p. 4.

means the rights concerning all forms of attitudes and treatment related to the integrity or dignity of the creator. In practice, these rights are expressed in the form of prohibitions to modify, reduce, or destroy works that can harm the integrity of the creator. The principle is that the creation must remain intact in accordance with the original creation. For example, violating the Right to Integrity is changing song lyrics that change the meaning of the original lyrics¹⁷⁹. The second right is the right of attribution which is also called the right of paternity. Moral rights require that the identity of the creator be placed in the work, either under a personal name or an alias. In certain cases and on the basis of consideration of the creator, the creator can negate his identity and leave his work anonymous¹⁸⁰.

Basically, moral right is giving reward to the creator because a copyrighted work is a personal reflection of the creator so that it cannot be divided and cannot be changed or modified by another person who does not participate in making the works. Moral rights are the rights to claim a work which are owned by the creator of their work if there is any violation of the works itself¹⁸¹. Copyright has been amended by the law several times until the latest copyright law has been valid, namely Law Number 28 of 2014 concerning copyright. In fact, the law does not have too many

¹⁷⁹ Sartika Nanda Lestari, *Op.Cit*, p.5.

¹⁸⁰ Henry Soelistyo, 2011, *Op.Cit*, p. 16.

¹⁸¹ Sartika Nanda Lestari, *Op. Cit*, p. 7.

changes to the point, yet there are some differences, one of the differences is related to the moral rights of the creator which applies according to the term of the copyright where there is an additional period of time. In the previous Copyright Law, namely Law Number 19 of 2002, protection of copyright was 50 years after the creator passed away, but in the current copyright law it is 70 years after the creator passed away. In other words, it can be interpreted that there is increased protection of the creator's moral rights.

In essence, moral rights are rights that are always attached to the creator. Every person who uses a work that is protected by copyright, must always be obedient to fulfill the moral and economic rights of the creator. The way to fulfill these two rights to the creator is to at least always give credit to the name of the creator in exercising these rights and also not forget to ask for permission if using the work of the creator.

The facilities with the sophistication of technology had threatened the dignity of the creator. The infringement of works is increasing, especially in cases related to musical works that are very easy to be hijacked, which seriously harm the honor of the songwriter. Therefore, a dispute settlement is needed to resolve those cases. The dispute resolution itself aims to provide justice for the creator in the eyes of the law. Basically, dispute resolution on

copyright can be resolved either through court or outside of court. Settlement of copyright disputes through courts is resolved at a Commercial Court. The dispute that cannot be resolved properly, can be resolved with criminal charges in accordance with the law number 28 of 2014 concerning Copyright, there is mediation before proceeding the case to criminal charges. In addition, Article 96 also continues the dispute settlement system for copyright, among others are:

- 1) *Creators, Copyright holders and / or Related Rights holders or their heirs who experience a loss of economic rights are entitled to compensation.*
- 2) *Compensation as referred to in paragraph (1) shall be granted and included at once in the court's decision regarding criminal cases of Copyright and / or Related Rights.*
- 3) *Compensation payments to creators, copyright holders and / or related rights owners are paid no later than 6 (six) months after the court decision is legally binding.¹⁸²*

2. The Comparison Between the System of Anglo Saxon and Continental

Basically, the modern copyright laws all around the world having their own protection yet in essence still has the same meaning. In comparison of copyright laws we can be divided into two different legal systems, the first one is copyright approach which applied in Anglo Saxon and other common law countries including the United States of America and the United Kingdom.

¹⁸²Article 96 on Law Number 28 of 2014 Concerning Copyright.

And the second one is author's rights or the *droit d'auteur* approach of copyright protection which applied in the Continental European countries and in South American Countries¹⁸³. There are several differences between Anglo Saxon System and Continental System, namely as follows:

Table 3.1
The Comparison between Anglo Saxon System and Continental System¹⁸⁴

The Criteria of System	Anglo Saxon System	Continental System
Approach	Copyrights Approach	Author's Rights Approach
Prevails on	Mostly by common law countries (such as the United States of America and the United Kingdom.)	Mostly by civil law countries, Continental European Countries (France and Germany, South American countries, etc)
Legal Perspective	Monist Legal Perspective	Dualistic Legal Perspective
More Oriented on	More Producer oriented than Author oriented	More Author oriented than Producer oriented
The protection towards rights	More emphasis on economic rights	Moral rights and economic rights has equal position

¹⁸³ Adolf Dietz, 'Chinese Copyright System: Anglo-American or Continental European Model?', *China Patents and Trademarks*, No. 1, 2011, p. 84.

¹⁸⁴ Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*, Princeton University Press, Oxford, 2014, p. 14-16.

Historically, both of the systems above are systems that become fundamental choices as copyright protection in the world. Anglo-American usually used the term “copyright”, the copyright protection in Anglo Saxon system is mostly applied in common law countries, including the United States of America and the United Kingdom. Copyright in Anglo Saxon system encourages the commercialisation of the work, promotes dissemination, emphasises on economic rights, that implements the monist legal perspective, which means the moral rights are not separately recognized in that system yet has position under the economic rights. The copyright approach in Anglo-American only aims in simple protection of commercial and technical interest¹⁸⁵. In contrast, the Continental system used the term of “author’s rights” which applied in Continental European countries, civil law countries, such as France and Germany. Modern French copyright law is reflected in dualist perspective¹⁸⁶. It means that the creator has two major rights, which are divided into economic rights and moral rights, on the other hand, it can be called that moral rights in continental system are separately recognized. Moreover, in continental system, the economic rights have limited duration, while the moral rights here are always attached to the creator,

¹⁸⁵ Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*, Princeton University Press, Oxford, 2014, p. 14-16.

¹⁸⁶ Natalie C. Suhl, ‘Moral Rights Protection in the United States Under the Berne Convention: A Fictional Work?’, *Fordham Intellectual Property, Media and Entertainment Law Journal*, Vol. 12, No. 4, Fordham Law University, 2002, p. 1210.

because the work that the creator makes assumes the reflects of the creator, so the power of moral rights is over the economic rights, there is no duration regarding the moral right or lasts forever¹⁸⁷.

Copyright in Anglo Saxon is focused on the dissemination or the audience or aim to serve the public interest, it is about the protection of commercial interest, they do not even think about the reputation of the creator¹⁸⁸. As mentioned before, the Copyright approach prevails in common law countries including The United States of America and the United Kingdom, however, both of them have differentiation on their regulation over moral rights. The United Kingdom already regulates the moral rights of the creator¹⁸⁹, since realizing that it is having much pressure to not protect moral rights due to the increasingly sophisticated spread of the internet. While the United States of America still does not recognize even does not have systematic regulation of moral rights until today especially over a musical work. Therefore, in USA when there is case related to something that is potentially harmful the creator's moral rights, the plaintiff filed suit in the court outside America that not applying anglo saxon system¹⁹⁰.

¹⁸⁷ *Ibid.*

¹⁸⁸ Peter Baldwin, *Op.Cit.*, p. 16.

¹⁸⁹ Robert C. Bird and Lucille M. Porte, 'Protecting Moral Rights in the United States of America and The United Kingdom: Challenges and Opportunities under the U.K.'s New Performances Regulation', *Boston University International Law Journal*, Vol. 24, No. 213, Boston University, 2006, p. 216.

¹⁹⁰ Robert C. Bird and Lucille M. Porte, *Op.Cit.*, p. 232.

After several explanations about those both systems, also according to the table above we know that Indonesia is more suitable in continental system. Therefore, Indonesia categorized as civil law countries, Indonesia implement that dualistic theory, which means that Indonesia recognized the moral rights separately and has equal position with economic rights protection. Therefore, Indonesian court could examine whether there are cases related to the moral rights of the creator regarding musical works, the protection itself given by the state is based on the Berne Convention, just like in continental system which receives international recognition towards the moral rights under Article 6bis on Berne Convention 1928¹⁹¹.

3. The State Responsibility Regarding the Moral Rights for the Creator's Protection Towards Their Musical Works

The development of digital technology makes the distribution and transactions of musical works on the internet increasingly supported by the convenience of this technology, but this actually makes the protection of copyright in cyberspace overwhelmed and not that perfect¹⁹². The inadequate protection of musical works in digital technology is caused by problems in resolving the process of distributing and transacting digital audio

¹⁹¹ Robert C. Bird and Lucille M. Porte, *Op.Cit.*, p. 224.

¹⁹²U. F. Ugwu, "Reconciling the right to learn with copyright protection in the digital age: Limitations of contemporary copyright treaties", *Law Develop. Review*, vol. 12, no. 1, p. 41-77, May 2018.

content¹⁹³. In music copyright infringement cases, a musical work is protected under a copyright law which regulates the interests between creators and performers, it creates a bit of controversy. Music copyright cases are increasing day by day, and many are resolved through litigation. On the other hand, dispute resolution through inappropriate litigation actually obstructs musical creativity and costs taxpayers that musical work to resolve this dispute¹⁹⁴. There are two main concepts in the US Copyright Law to define the elements of music copyright infringement, the first is “substantial similarity” which means that someone commits an offense if there is a similarity in the content of a musical work. The second is the “protectable expression” of violation elements which refers more to a certain tone, rhythm pattern from another musical work¹⁹⁵. Basically, what is actually protected under copyright regarding musical works are the melody and the lyrics then expands the other elements of composition on a musical works such as tone, rhythm, and tempo¹⁹⁶. Basically, the accountability regarding the moral rights for the creator’s protection towards their musical works is regulated under the Copyright Law Number 28 of

¹⁹³ V. Sunita, R. S. Dhavale, Deodhar and L. M. Patnaik, "Walsh Hadamard transform based robust blind watermarking for digital audio copyright protection", *Commun. Comput. Inf. Sci.*, vol. 250, p. 469-475, Jan. 2011.

¹⁹⁴ Yuchen Yuan, et al, ‘Perceptual Vs. Automated Judgements of Music Copyright Infringement’, *Proceedings of the 21st ISMIR Conference, Montré’al, Canada*, Keio University, Japan; George Washington University Law School, USA; Goldsmiths, University of London, UK; University of Auckland, New Zealand, 2020, p. 23.

¹⁹⁵ P. Fishman, ‘Music as a Matter of Law’, *Harvard Law Review*, vol. 131, no. 7, p. 1861-1923, Harvard Law University, 2018.

¹⁹⁶ P. Fishman, *Op.Cit*, p. 1866.

2014. The state gives the protection of a work with the aim to give the prosperity life of the creator who creates a work which is also called as copyright law. In Law Number 28 of 2014 concerning copyright, the dispute settlement over infringement of moral rights of a copyrighted work can be done through alternative dispute settlement, arbitration, or court as affirmed in Article 95 paragraph (1) of Law Number 28 of 2014 concerning copyright. Priyatna Abdurrasyid argue that arbitration is a legal action in which a party submits a dispute or difference of opinion between two people or more or two groups or more to a person or several experts agreed upon with the aim of obtaining a final and binding decision¹⁹⁷.

The dispute settlement through litigation is carried out in court by filing a lawsuit against violations or infringements of moral rights. The court that has the authority to adjudicate these disputes is the commercial court. Other courts apart from the commercial court do not have the authority to handle any copyright disputes. Apart from violations or infringements of copyright and or related rights in the form of piracy, as long as the parties to the dispute are known to exist and or are in the territory of the Unitary

¹⁹⁷Priyatna Abdurrasyid, 2002, *Arbitrase & Alternative Penyelesaian Sengketa: Suatu Pengantar*, Fikahati Aneka, Jakarta, h. 16.

State of the Republic of Indonesia, they must first seek dispute resolution through mediation before making criminal charges¹⁹⁸.

In Article 99 of Law Number 28 of 2014 concerning Copyright, it is determined that the Creator, Copyright Holder, or Related Rights owner has the right to file a claim for compensation, namely as follows¹⁹⁹ :

1. *Creators, Copyright Holders, or Related Rights owners have the right to file a claim for compensation to the Commercial Court for infringement of Copyright or Related Rights products.*
2. *A claim for compensation as referred to in paragraph (1) can be in the form of a request to surrender all or part of the income obtained from holding lectures, scientific meetings, performances or work exhibitions which are the result of violations of Copyright or Related Rights products.*
3. *In addition to the lawsuit as referred to in paragraph (1), the Creator, Copyright Holder, or Related Rights owner can request a provisional decision or interlocutory decision to the Commercial Court to:*
 - a. *request confiscation of Works that are made Publication or Reproduction, and / or Reproduction tools used to produce Works resulting from copyright infringement and Related Rights products; and / or*
 - b. *stop the activities of the Announcement, Distribution, Communication, and / or Reproduction of Works which are the result of a violation of Copyright and Related Rights products.*

The moral rights that is attached to the creator shall include or do not include his or her name on the copy in connection with the use of his work for the public, use his or her alias or disguise

¹⁹⁸Cokorde Istri Dian Laksmi Dewi, 'Penyelesaian Sengketa Terhadap Pelanggaran Hak Moral Dalam Kerangka Perlindungan Hak Cipta', *Jurnal Hukum*, Universitas Ngurah Rai Denpasar, 2018, p. 8.

¹⁹⁹ Article 99 on Law Number 28 of 2014 Concerning Copyright.

and defend his or her rights in the event of a distortion of work, cut of work, modification of work, or other things that are detrimental to creator's honor or reputation, which is valid indefinitely. In the case of musical works, or the current cases related to the moral rights, the state mostly settled the case by doing the action of 'take down' the works that assumed not to fulfill the moral rights of the creator. The state or government settling the case through the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights of Indonesia cooperate with the Ministry of Communication and Informatics (kominfo) to take down or delete all works that uploaded on the internet deemed to violate copyright.

Yet the infringements of copyrights regarding musical works have been encountered recently. This case happens because of the sophistication of technology. The advancement of technology today brings a negative impact on some people, for example the works uploaded on the internet have negative impacts. The internet's coverage is too broad, it takes effect and brings the effect that the country is overwhelmed to protect a work owned by the author which is already written in the copyrights law. One of the factors that encourage copyrights infringements is the lack of awareness to respect the creator by including the author's name for his or her work. Many people underestimate the moral rights of the

creator, even though it means a lot to the creator. If someone neglects the moral rights of a creator, it will also have an impact on the creator's economic rights, which makes the creator's copyright in his or her creation not fulfilled.

One of the examples is the case between plaintiffs. It has been trending in the media lately and many people talk about it, namely Nagaswara Music Label and the plaintiff, namely Gen Halilintar, who sang a song from the Nagaswara Music Label which is quite a big name in the world of music in Indonesia. The song of Nagaswara was entitled "*Lagi Syantik*" which was covered by Gen Halilintar. Not only cover the song, the defendant, Gen Halilintar, changed some of the lyrics of the song and published it on the internet via Youtube. By publishing a work on Social Media such as Youtube, they can earn money or get adsense from Youtube. It can be said that Gen Halilintar commercialized the work, or violated the economic rights of the creator or copyrights holder in this case is the Nagaswara Music Label. Actually, what is emphasized in this case is the moral rights of the creator or copyrights holder, being a public figure like Gen Halilintar should know about respecting a creation, by at least including the name of the creator or copyrights holder when using the song. In this case, Gen Halilintar did not give any credit to the name of the work and did not ask permission from the creator or copyrights holder,

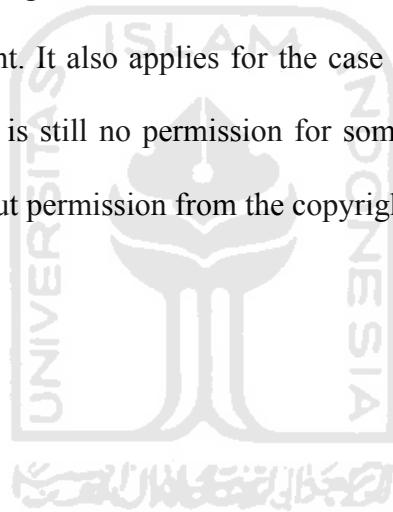
namely Nagaswara Music Label. As has been explained above, the defendant's action is categorized as conducting an infringement of moral rights on copyright in the case of musical works. Nagasrawa Music Label and the composer of the song titled "*Lagi Syantik*" are suing Gen Halilintar for compensation for violating the moral rights of the creator or copyrights holder²⁰⁰.

Responding to this case, it can be seen that the government is protecting works that have been registered with the Directorate General of Intellectual Property with a civil suit to the Commercial Court by requesting compensation by the party who feels aggrieved. Although in the end after going through several stages of the trial the judge rejected the lawsuit due to several considerations. Basically, everyone has the right to get their rights if they feel aggrieved by others, especially using the work without the permission of the creator or the copyright holder. Responding to the actions taken by Gen Halilintar as a defendant, actually covering the music itself can be allowed or even not allowed, depending on the purpose of covering the music itself, as stated in Article 43 letter (d) of the Copyright Law states, "the making and distribution Copyright content through non-commercial media of information and communication technology and / or benefit the

²⁰⁰ Adi Briantika, 'Duduk Perkara Kisruh Gen Halilintar vs Nagaswara Soal Lagu Syantik', *tirto.id*, quoted from <https://tirto.id/duduk-perkara-kisruh-gen-halilintar-vs-nagaswara-soal-lagu-syantik-eBeQ>, 2020, (accessed on 29 November 2020).

Creator or related parties, or the Author expresses no objection to the creation and distribution."²⁰¹

The meaning of the provisions of Article 43 of the Copyright Law above that covering activities in order to become permissible, the cover actor must have a permission or request a license from the creator and / or copyright holder, then if someone cover that does not have a permit or license from the creator and / or the copyright holder, then the act is considered as a copyright infringement. It also applies for the case related to the earring the song, there is still no permission for someone who rearranges the song without permission from the copyright holder.



²⁰¹Article 43 Letter (d) on Law Number 28 of 2014 concerning Copyright.

CHAPTER IV

CLOSING

A. Conclusion

1. To protect the moral rights of the creator over a musical work, it is not just about enjoying the music, yet people have to always respect the creator. It is known that the moral rights of the creator lasts forever, because it is given as a natural right of the creator when making the creation into a work. Therefore, moral rights protection over a work is merely as simple as including the name of the creator when using the musical works. Moral rights protection is about giving the sense of security by respecting and protecting the rights of the creator over the creator's integrity and authenticity, so the creator will be remembered all the time. Moreover, by fulfilling the moral rights of the creator is equal to encouraging the creator to make creation.
2. State's responsibility for the protection of moral rights is not sufficient enough because there are no clear regulations governing infringements of moral rights. The protection towards the moral rights of the creator following the continental system, because moral rights protection recognized separately in Indonesia.

B. Recommendation

1. As explained by Law Number 28 of 2014, a work registered in copyright has two main rights, namely moral rights and economic rights. Both are attached to the creator and must be fulfilled. The law does not clearly regulate if there is a violation of moral rights. As it is known that in the Article 96 on Law Number 28 of 2014 it is explained about giving compensation to the creator if his economic rights are violated. This writer expects the government to provide more specific regulations regarding infringement of moral rights which are underestimated by the public.
2. Moral rights are known as rights attached to creators, which are not tangible yet. Therefore, people often underestimate moral rights and care more about the economic rights of creators, plus the times that make it easier for someone to access any musical works on the internet. Public becomes negligent on moral rights of the creator and because there is no special regulation that regulates if there is a violation or infringement of moral rights, the public does not pay attention to moral rights to the creator, and even becomes a bad habit of not mentioning the name of the creator which causes harm to the creator. Therefore, the writer expects that the government to provide any kind of socialization to the public so that people are not too ignorant about the importance of respecting copyright. People not only enjoy the work created by the creator and forgetting the services and

struggles of the creator in realizing his work. Through counseling and socialization to the community, such as holding seminars and scientific work competitions, it is expected that public becomes more of the applicable sanctions. For the example, the community such as Wahana Musik Indonesia and the Indonesian Music License Center as collective management institutions, can actively participate in overcoming the rampant circulation and piracy in the creative industry, because the creative industry emerges from both individual and group communities. For law enforcement officials to prioritize law enforcement regarding copyright, in addition to handling cases of copyright infringement, they must be firm and able to prove that the law is not discriminatory so that law enforcement officials can carry out their duties and adhere to ethics and morals as a source of legal norms. Letter on, researcher should conduct research on law enforcement officers in investigations, especially the Indonesian National Police, so that there is no dualism with the civil servants.

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