

**REMIX SONG ACCORDING TO LAW NUMBER 28 OF 2014
CONCERNING COPYRIGHT
(ANALYSIS OF LICENSE TRANSFER AND ROYALTY CALCULATION)**

THESIS



ARRANGED:

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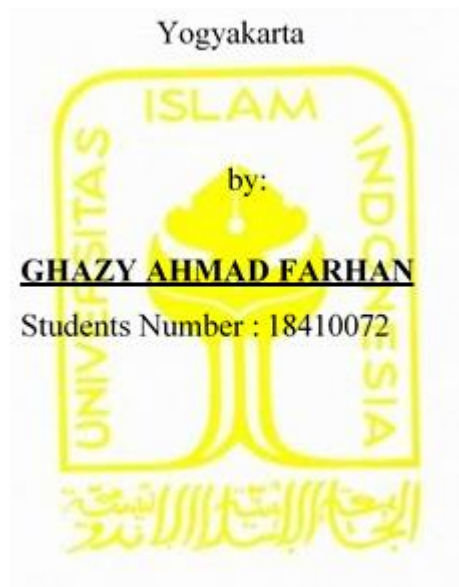
**INTERNATIONAL PROGRAM
UNDERGRADUATE STUDY PROGRAM IN LAW
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

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**REMIX SONG ACCORDING TO LAW NUMBER 28 OF 2014
CONCERNING COPYRIGHT
(ANALYSIS OF LICENSE TRANSFER AND ROYALTY CALCULATION)
A BACHELOR DEGREE THESIS**

Presented as the Bachelor's Degree at the Faculty of Law

Universitas Islam Indonesia



**INTERNATIONAL PROGRAM
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2023



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It has been checked and approved by the Final Project Supervisor for submission
in the future the Examiner Team in the Awareness Examination

on august 24 , 2023

Yogyakarta, July 10 , 2023
Thesis's Supervisor,

Budi Agus Riswandi, Prof. Dr., S.H., M.Hum.



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Final Assignment Exam / Awareness
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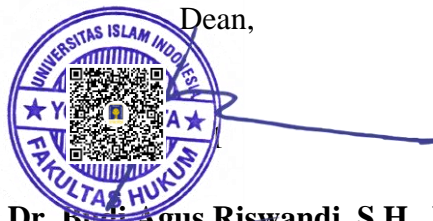
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Yogyakarta, 19 July 2023

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A handwritten signature in black ink, appearing to read 'Ghazy Ahmad Farhan', with a large, stylized initial 'G' and a horizontal line extending to the right.

Ghazy Ahmad Farhan

MOTTO

“ Only Crazy Dream Until You do it “

(Michele Jordan)

“ Di dalam keputusaan terdapat harapan yang indah “

(Nathan)

“Tidak ada yang abadi di dalam dunia ini, bahkan masalah yang kita hadapi juga tidak.”

(Charlie Chaplin)

DEDICATION PAGE

As a form of gratitude, I dedicated this Thesis to:

*Allah SWT,
Prophet Muhammad SAW,
My Parents,
My little brother Zaky,
My blessed big family,
All lecturers in UII,
My closest friends,
My almamater in FH UII,
Everyone who supported me throughout everything.*

FOREWORD

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Alhamdulillahirabbil‘alamin, all praise and gratitude to the presence of Allah SWT who has giving mercy, grace, and guidance to the Author. Shalawat and greetings are conveyed by the Author to our Prophet Muhammad SAW. This thesis titled of **“REMIX SONG ACCORDING TO LAW NUMBER 28 OF 2014 CONCERNING COPYRIGHT**

(ANALYSIS OF LICENSE TRANSFER AND ROYALTY CALCULATION)” was written as a partial fulfillment to attain a bachelor degree in International Program, Faculty of Law, Universitas Islam Indonesia. The Author realizes that the completion of writing this Thesis cannot separate me apart from the guidance, support, and prayers from all parties. Therefore, the Author would like to express gratitude sincerely to:

1. Allah SWT, who has given strength and guidance along this journey of writing the Thesis
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Hopefully the good deeds that have been given sincerely to the author will be rewarded by Allah SWT. Finally, on this occasion the writer realizes that there are some shortcomings in both the content and preparation of this thesis. The author will accept criticism and suggestions for improvement in a better direction. The author hopes that this thesis can be useful and useful for academics and people who need it.

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ABSTRACT

The purpose of this research is to better understand how important legal protection is for creators of musical works and songs, including how to obtain their rights (Royalties) based on Law Number 28 of 2014 concerning Copyright. It's not always that songs belonging to singers outside of Indonesia are the target of "creativity" for song remix makers in rearranging a song, but songs belonging to singers from Indonesia are not spared from this. Therefore, the formulation of the problem in this study is what is the procedure and mechanism for transferring the copyright license to the person who will make the remix of the song? And what is the system for calculating the economic rights obtained by creators? The research method used is primary legal sources in empirical theory, namely by interviewing musicians who have or have composed songs or have copyrighted music published on digital platforms. The results of this study are 1. The procedure for transferring a song license from the creator to the party who will remix the song uses the license agreement described in Article 1 number (20) of Law Number 28 of 2014, and the agreement that occurs refers to the provisions which regulates agreements in general in the Civil Code and 2. The calculation of economic rights for songwriters in the Copyright Law Number 28 of 2014 does not explain what percentage the distribution is. Usually the parties involved have their own policies. As long as the royalty sharing agreement is agreed upon by both parties.

Key Word: Intellectual Property, Song Remix, Economic Rights.

CHAPTER I

PRELIMINARY

A. BACKGROUND

Copyright is part of the Intellectual Property Rights which is the most special and has its own uniqueness compared to other rights in IPR. Because Copyright can be automatically owned when someone creates a new work that has a copyright, without announcing the creation based on declarative principles.¹ In Indonesia, copyright is legally protected through Law Number 28 of 2014 concerning Copyright. The definition of Copyright according to Article 1 number (1) of Law Number 28 of 2014 concerning Copyright, it is emphasized that "Copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in a tangible form without reducing the appropriate copyright. restrictions with the provisions of laws and regulations".²

Copyright protection is a concept of a creator (artist, musician, and filmmaker) who has the right to use the work without being allowed by other parties to apply the results.³ In Copyright there are two aspects of rights in it, namely economic rights and moral rights to a copyrighted work that comes from the copyright itself. Copyright consists of two main elements, namely the Creator and the Creation. The creator is one or several people who individually or together produce a unique and

¹ Haris Munandar and Sally Sitanggang, *Mengenal HAKI-Hak Kekayaan Intelektual*, Erlangga Press, Jakarta, 2011, p. 14.

² Article 1 number (1) of Law Number 28 of 2014 concerning Copyright

³ Henning Hartwig, *Ferrari and the level of intellectual abstraction in design law*, Journal of Intellectual Property Law & Practice, Oxford Academic, Vol. 17 No.10, 2022, p. 792.

personal creation.⁴ While creation is any copyrighted work in the fields of science, art, and literature that is produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise. expressed in real. Intellectual property rights are essentially rights with special and special characteristics, because these rights are granted by the state.⁵

Based on some of the definitions of copyright above, it can be concluded that basically what is meant by copyright is "a special right owned by the creator of a work in the fields of science, art and literature that can be defended against anyone who violates it. these rights in accordance with the provisions of the applicable law". These copyrights include books, music, films, computer programs, plays, paintings, and so on.⁶

In practice, these rights are often violated by many parties. The appearance of piracy is clear evidence that one person's copyrighted work is often controlled and taken by others in a way that is against the law. One way is to cover a song or remix a song and then bring the song to a concert.

In article 43 letter d, the creation and dissemination of copyrighted content through non-commercial information and communication technology media and/or benefits the creator or related parties, or the creator expresses no objection to the creation and dissemination, is not considered a copyright infringement. However, if the cover of the song is done for commercial purposes and for profit, and without

⁴ Irina Kireeva, *How much does it cost to protect your IPRs? Or consistency of different rates of IP state fees with National Treatment and Most Favoured Nation Principles*, Journal of Intellectual Property Law & Practice, Oxford Academic, Vol. 17 No.10, 2022, p. 803.

⁵ Sri Redjeki Harotono at all, *Hak Kekayaan Intelektual*, Suska Press, Pekanbaru, 2008, p. 1.

⁶ Ashwini Siwal and Prashant, *Coverage-Disclosure Conundrum and Future of Species Patents in India*, Journal of Intellectual Property Rights (JIPR), Vol. 27 No. 5, 2022, p. 567.

the permission of the creator and related parties, or the creator objected, then the act is an act that violates copyright. The commercial form in question, for example, is holding paid concerts or performances, using songs for promotion and installing AdSense.⁷

To expand the use of the creation, the creator can give permission to the other party to run further the utilization. Furthermore, the recipient of the permit for the use of creation is referred to as the copyright holder. Special rights granted This is based on the creator's ability to produce a work that is unique and shows the authenticity of creativity as individuals or groups and protect them from the actions of others that can harm the creator.⁸

As the opinion of Sujud Margono who said "Copyright is a legal term that describes the rights granted to the creator for his work in the field of art and literature".⁹

Therefore, there is economic value and satisfaction in a copyrighted work. This resulted in the conception of the need for legal protection. The development of this concept when viewed from a business perspective is to encourage the growth of an attitude and culture of appreciating or appreciating the efforts of others who have significant meaning.¹⁰

⁷ Lovelly Dwina, *Perlindungan Hukum Bagi Pemegang Lisensi Hak Cipta Game Online Terhadap Pihak Ketiga Sebagai Pembuat Program Modifikasi*, Eksekusi Jurnal of Law, UIN Suska Riau, Vol. 1 No. 2, 2019, p. 3.

⁸ *Ibid.*,

⁹ Sujud Margono, *Hukum dan Perlindungan Hak Cipta*, Novindo Pustaka Mandiri, Jakarta, 2003, p. 23.

¹⁰ Bambang Kesuwo, *Pengantar Umum Mengenai Hak Atas Kekayaan Intelektual (HAKI) di Indonesia*, Fakultas Hukum UGM, Yogyakarta, 1994, p. 6.

It is not a secret that songs that are often remixed by several people are enough to make listeners addicted. So, don't be surprised if people of all ages like the remixed song more than the original song. In other words, a song is taken from the original singer, and then the lyrics or tones are rearranged using electronic music or digital instruments by changing the tempo/beat, adjusting the pitch of a note, and adding intros and outros outside the original version of the music.¹¹

It's not always songs belonging to singers from outside Indonesia who are the target of the "creativity" of song remix makers in rearranging a song, but songs belonging to singers from Indonesia are not spared from this as well. For example, the song sung by Reza Artamevia entitled "hope not to be separated" which was rearranged by Feel Koplo made the tone of the song which initially used the pop genre to become a koplo genre which made listeners more able to enjoy the song. With this, more and more people are remixing songs from other people in the hope that it can be enjoyed by more people.

It is certain that things like this cause material and immaterial losses for the singer or the owner of the song. Material losses are in the form of unavailability of royalties for the singer or the original song owner and while for immaterial losses it can be in the form of forgetting the singer or the original owner of the song. Coupled with the rapid development of information technology, so that the dissemination of information becomes easier and faster. That way, we can easily get any information, from anyone and anywhere, including the works of other

¹¹ Ngurah Sri Rahayu Gorda *at all*, *Legal protection for copyright holders of commercialized remix song cover version*, *Legality Jurnal Ilmiah Hukum*, Vol. 30 No. 1, 2022, p. 45.

people which are easily spread and often misused. If something like this has happened, then how does the law in Indonesia view and respond to the problem of deliberately changing songs?¹²

The question is how is the process of transferring the license of a song so that it can be remixed and not violate the copyright of the owner of the song. Is there a regulation that clearly states that remixing a song is a copyright infringement or not, or is there an agreement between the owner of the song and the person who will remix the song.

A license is a form of right to do one or more a series of actions or deeds, given by those who authorized in the form of a permit.¹³ Meanwhile, according to UHC, a license is a license in writing given by the Copyright Holder or Related Rights Owner to other parties to exercise economic rights over their Works or Related Rights products under certain conditions.¹⁴

The protection of the rights of the creator or copyright holder of his creation through the copyright contained in Law no. 28 of 2014 concerning Copyright. The law explains the definition of copyright, namely, the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of the legislation. Copyright is also part of intellectual property rights that have the scope of protection from copyright, namely, science, art and literature.

¹² *Ibid.*,

¹³ Gunawan Widjaja, *Seri Hukum Bisnis, Lisensi*, Raja Grafindo Persada, Jakarta, 2003, p. 3.

¹⁴ Article 1 (20) of Law Number 48 of 2014 concerning copy right.

In principle, all copyrights will have the effect of economic rights obligations when they are used for commercial purposes.¹⁵ The definition of commercial use here, according to Article 1 point 24 of the Copyright Act is the use of works and/or related Rights products with the aim of obtaining economic benefits from various sources or for a fee. As long as the copyrighted work is commercialized, there is an obligation for the person who published it to pay royalties to the creator or copyright holder.

Copyright contains economic rights which means rights that have rights value for money, and can be transferred and exploited by the owner. This economic reason also encourages other parties who illegally exploit the copyright for personal gain. This of course can harm the creators and related licensees as the copyright holder.¹⁶

Logically, by performing the remix song, they will get an income from the concert they hold. In this day and age, many people prefer remixed songs to original songs from their creators.

B. PROBLEM FORMULATION

Based on the description of the background above, the research will discuss:

1. What is the procedure and mechanism for transferring the license from the copyright to the person who will do a remix of the song?

¹⁵ Article 1 (24) of Law Number 48 of 2014 Concerning Copy Right.

¹⁶ Bambang Kesuwo, *Himp. UU, PP, KEPRES dan Konvensi Tentang Intellectual Property Rights, Hak Cipta, Paten Dan Merek II*, Penataran Dosen Hkm.Perdagangan, Yogyakarta, 1992, p. 12.

2. How is the calculation system for the economic rights obtained by the creator?

C. RESEARCH OBJECTIVE

According to the problem formulation above, this research has the following objectives :

1. The purpose of my research is to see if the 2014 Copyright Law in Indonesia regulates the procedure and mechanism for transferring licenses from the copyright party to the person who will perform a song remix.
2. The purpose of the second research is to after transferring the license of ownership of the song, then how is the calculation system for the economic rights obtained by the creator.

D. RESEARCH ORIGINALITY

The originality of the research explains that this research is completely original and no one has researched it or there is a clear difference in the subject matter, the object under study, in order to avoid plagiarism. Based on the research carried out by the author, the author found several literatures that the author used as a reference in proposing this research, including:

1. Konsep Perlindungan Hak Cipta dalam Hukum Hak Kekayaan Intelektual (Studi Kritis Pembajakan Karya Musik Berbentuk VCD dan DVD), Journal of Uns Volume 4. No. 5, September 3 - December 2015 by Yustisia. The focus of this research is to examine whether copyright protection laws have been able to protect against piracy on DVD or VCD

properly. Meanwhile, this research will discuss how the copyright law regulates the transfer of song licenses due to remixing a song.¹⁷

2. Hak Kekayaan Intelektual: Perlindungan Hukum Hak Cipta Musik, Journal of Law Volume 7. No, 2 August 2018 by Lin Indriani, Faculty of Industrial Engineering, University of Pamulang. The focus of the research is to examine the Copyright Law no. 19 of 2002 which has been updated to become Copyright Law no. 28 of 2014. Meanwhile, in this study, it will be discussed specifically for Law no. 28 of 2014 is there any protection regarding the transfer of license rights to remixed original songs.¹⁸
3. Penegakan Hukum Terhadap Hak Cipta Dalam Bidang Industri Kreatif Di Negara Kesatuan Republik Indonesia. Thesis by Zainul Amin University of Surabaya, Faculty of Law, 2019. The focus of this research is to examine the enforcement of copyright law that has not been implemented optimally according to Article 113 paragraph (3) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. The author examines law enforcement against copyright in the creative industry. Meanwhile, in this research, it will be discussed about how to protect and transfer a song license mechanism and calculate the economic rights obtained by the creator.¹⁹

E. LITERATURE REVIEW

¹⁷ Yustisia, *Konsep Perlindungan Hak Cipta dalam Hukum Hak Kekayaan Intelektual (Studi Kritis Pembajakan Karya Musik Berbentuk VCD dan DVD)*, Journal of Uns, Vol. 4 No. 5, 2015.

¹⁸ Lin Indriani, *Hak Kekayaan Intelektual: Perlindungan Hukum Hak Cipta Musik*, Journal of Law, Vol. 7. No. 2, Faculty of Industrial Engineering, University of Pamulang, 2018.

¹⁹ Zainul, *Penegakan Hukum Terhadap Hak Cipta Dalam Bidang Industri Kreatif Di Negara Kesatuan Republik Indonesia*, Thesis in Faculty of Law of University of Surabaya, 2019.

Copyright is the sole right of the Creator or the right of the person who has the right, to his work in the fields of literature, science and art, to publish and reproduce it with due observance of the limitations determined by law.

Copyright is a right that regulates intellectual works in the fields of science, art, and literature which are expressed in a unique form and given to ideas, procedures, methods, or concepts that have been set forth in a fixed form. while music is the science or art of arranging tones or sounds in sequences, combinations, and temporal relationships to produce compositions (sounds) that have unity and continuity. Music copyright is an intellectual work in the art of composing tones that produce a composition that has been translated into a fixed form.²⁰

In discussing copyright, there are several theories that can help in the event of regulation and in the event of infringement:

1. Civil law theory

When we talk about copyright, there is a relationship between individual rights and one another. While the principle is the understanding of civil law which has the meaning of rules or norms that provide boundaries and therefore provide protection for individual interests in a reasonable comparison between one interest and the other interests of people in a particular society, especially those who regarding family relationships. and traffic relations. When we talk about copyright, there is a relationship between individual rights and one

²⁰ Anjaneya Reddy and Lalitha Aswath, *Understanding Copyright Laws: Infringement, Protection and Exceptions*, International Journal of Research in Library Science, Vol. 2 No. 1, 2016, p. 11.

another. While the principle is the understanding of civil law which has the meaning of rules or norms that provide boundaries and therefore provide protection for individual interests in a reasonable comparison between one interest and the other interests of people in a particular society, especially those who regarding family relationships. and traffic relations.²¹

2. Copyright law theory

In copyright, there is a declarative theory, meaning that whoever declares or registers a copyrighted musical work to the authorized party to claim that the work is his, he is the one who has the right to the work. The characteristics of copyright include:²²

- a. Literature reviews the term of protection is for life and an additional 50 years after the rights holder dies.
- b. Copyright is obtained automatically, there is no obligation to register. However, in the interests of the creator or copyright holder, the creation registration letter is still important, especially if there are legal problems in the future. The registration letter can be used as initial evidence to determine who the creator or copyright holder is more entitled to a work.
- c. Forms of infringement, for example there are parts of it that have been synthetically copied, have similarities, are reproduced or published without permission.

²¹ H.F.A. Vollmar, *Pengantar Study Hukum Perdata*, Rajawali Press, Jakarta, 1984. p. 28.

²² Merry Tjoanda, *Karakteristik Hak Cipta Sebagai Objek Jaminan Fidusia*, Batulis Civil Law Review, Fakultas Hukum Universitas Pattimura, Ambon, Vol. 1 No. 1, 2020, p. 5.

- d. Criminal sanctions are imposed if found guilty of copyright infringement, a maximum sentence of seven years and/or a fine of five billion rupiahs.
- e. Protected, for example creations in the fields of science, art and literature, music, lecture books, dance arts, computer programs and others.
- f. The criteria for objects or things that get copyright protection are only original works.

3. Legal Certainty Theory

In enforcing the law there are three elements that must be attention, namely: legal certainty, expediency and justice. These three elements must be compromised, must receive proportionally balanced attention. But in practice it is not always easy to seek a proportionally balanced compromise between these three elements. Without legal certainty, people don't know what to do and finally anxiety arises. But too much emphasis on legal certainty, too strict to obey Legal regulations are consequently rigid and will cause feelings of discontent fair.²³

Normative legal certainty is when a regulation made and promulgated with certainty because it regulates clearly and logical. It is clear in the sense that it does not cause multiple interpretations and is logical in the sense that it

²³ Siti Halilah and Fakhrurrahman Arif, *Asas Kepastian Hukum Menurut Para Ahli*, Siyasa Jurnal Hukum Tata Negara, Vol. 4 No. 2, 2021, p. 14.

becomes a system of norms with other norms. so that they do not clash or conflict with norms.²⁴

4. Licence

Copyright has economic benefits. For optimal use of these economic values, copyright holders often do not can make their own use of these economic values optimal. Therefore, based on the applicable law, copyright holders are allowed to give to give creations to other parties for the maximum use in the form of a license.²⁵

F. DEFINITION TERMS

1. Remix Song

Remix song is re-mixed songs with some changes to previously released audio material.

2. License Transfer

License transfer is the transfer of rights to a second party who is given permission to use the song to be remixed by the second party.

3. Royalty Calculation

Royalty calculation is a calculation of an amount paid or owed in any way or calculation that is carried out periodically or not as compensation for copyright.

G. RESEACH METHOD

1. Research approach method

²⁴ *Ibid.*,

²⁵ Juan Matthew Tampi, *Perlindungan Haki Pada Perjanjian Lisensi Bagi Dunia Bisnis Di Indonesia*, Jurnal Lex Privatum, Vol. 8 No. 4, 2020, p. 23.

The approach method used in this article I wrote is a socio legal research approach. Socio legal is a legal research approach that uses the help of social sciences. This method looks at the existing rules and then compares them with the reality that occurs in society. Whether the existing rules run according to the rules or not according to the rules. Normative-empirical legal research (applied law research) is research that uses normative-empirical legal case studies in the form of legal behaviour.²⁶

The development of sociological thinking about law has opened new opportunities for legal researchers in researching law by not only looking at the law dogmatically and exclusively from the touch of other disciplines, but opening up opportunities to conduct legal research in a multidisciplinary manner, making it possible to see the law in nature. Empirical research is none other than in society, a place where law is considered a dynamic social phenomenon and interacts with other social phenomena such as economics, politics, and others.

2. Type and source of law

Primary sources of law in empirical normative theory are interviewing musicians who have or have made songs or have copyrighted music that has been published on digital platforms. comparing whether what has been arranged in the UUHC is already running properly or not according to the experience of the musician resource persons.²⁷

²⁶ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, PT Citra Aditya Bakti, Bandung, 2004, p. 52.

²⁷ Sunarti Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad ke-20*, Alumni, Bandung, 2006, p. 67.

Secondary sources of empirical normative law are books related to copyright, music and digital platforms. Journals, theses or scientific papers that have ever existed have almost the same title but have different discussions. The last is the law that governs copyright.

Tertiary source of law or the last is a source of law that comes from a legal dictionary. Which contains what content is discussed in the research under study.

3. Legal material collection methods

The method of collecting legal materials used is to collect data from relevant sources, namely musicians who already have their own copyright and then listen to what they have been through to be able to patent their copyright so that it cannot be taken carelessly by other parties. Others, because basically copyright has the characteristic that everyone who claims that he has a copyright has become an acknowledgment to protect the copyright he has made. As stated in the copyright law in Indonesia. The registration of Works and Related Rights products is not an obligation for the Authors, Copyright Holders, or Related Rights owners. Protection of a work begins when the work exists or is realized and not because of recording. This means that a work, both registered and unregistered, is still protected.

Collect data that has been obtained from resource persons, laws, journals that have been obtained and compare it with how it actually is implemented in social life. Comparing whether it has been running correctly according to the applicable rules or the way the community has done it differently from what has been regulated by government regulations. Because with the development of the

era in the digital platform, it is increasingly making the raw material take the copyright of other people's music without the correct procedure.

4. Processing and analysis of legal materials

Reasoning that follows a certain line of thought or logic and combines deductive (abstract) methods with induction (empirical) methods, because scientific research always demands empirical testing and proof of hypotheses or theories formulated deductively.²⁸ In this research I am writing, I use the induction method because it will compare how the copyright regulations governing the transfer of music licenses in Indonesia in Law No. 28 of 2014 concerning Copyright have worked well or not and how the rights are distributed. the economy for songwriters.

Inductive thinking method where the way of thinking is done by drawing general conclusions from various individual cases. For this reason, inductive reasoning begins by prioritizing statements that have a special and limited scope in constructing an argument that ends with statements that are general in nature.²⁹

²⁸ *Ibid.*, p. 69.

²⁹ *Ibid.*, p. 69.

CHAPTER II

LITERATURE REVIEW

A. Overview of Copyright

1. The Understanding of Copy Right

Definition of Copyright The definition of copyright literally comes from two words, namely rights and copyright. In the Big Indonesian Dictionary, the word "right" means an authority given to certain parties that are free to use or not. While the word "copyright" or "creation" is intended for the work of humans by using the mind, feelings, knowledge, imagination and experience. So, it can be interpreted that copyright is closely related to human intellectuals.³⁰

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. The meaning of the word announcing in accordance with article 1 (11) UUHC is reading, broadcasting, performing, a work by using any means, whether electronic or non-electronic or through any means so that a work can be read, heard, or seen by others. whereas propagation according to article 1 (12), law number 28 of 2014 is duplicating is the process, act, or method of duplicating one or more copies of a work and phonogram in any way and in any form, permanently or temporarily.

The issue of Intellectual Property Rights, which is the equivalent word for Intellectual Property Rights (IPR), is a serious issue for developing and developed

³⁰ [Http://Www.Landasanteori.Com/2015/09/Pengertian-Hak-Cipta-Definisi-Menurut.Html](http://Www.Landasanteori.Com/2015/09/Pengertian-Hak-Cipta-Definisi-Menurut.Html), Accessed on 02 November 2022, 20.51 WIB.

countries to pay attention to. Intellectual Property Rights are traded globally, for that it is necessary to take steps to secure and protect them from acts that not responsible. Moreover, intellectual property rights law is a law that provides protection to every creator for the findings and the use of the creator's works large. So, it can bring happiness.

Same with other property rights, of course the use of copyright solely for the personal benefit of the creator, especially if its use can cause harm to society and the public interest. The use of copyright must be adapted to the circumstances and nature of the copyright, so that it brings mutual benefit and in the public interest, its use must also be remembered that it does not mean that the individual's interest in copyright will be pushed by the interests of the general public. In this case, UUHC 2014 also pays attention to the interests of individual interests must balance each other, so that in the end there will be the main goals to be achieved in its use can also be felt by others. the social function of this copyright continues to be attached to the creation.³¹

2. Scope of Copyright

Scope of Copyright in general Intellectual Property Rights divided into two parts, namely:

- a. Copyrights
- b. Industrial Property Rights, which include:
 - 1) Patent

³¹ Saidin, *aspek hukum hak kekayaan (intellectual property right)*, PT Rajagrafindo persada, jakarta, 1995, p. 32-33.

- 2) Industrial Design
- 3) Trademark
- 4) Repression of unfair competition
- 5) Layout design of integrated circuit
- 6) Trade secret
- 7) Plant Variety Protection

Based on Article 40 paragraph (1) of Law No. 28 of 2014 concerning Copyright, which includes the scope of Copyright protection, it includes the following matters: (Article 40 of Law No. 28 of 2014 concerning Copyright)

a. In this law, protected works are creations in the fields of science, art, and literature, which include:

- 1) Books, pamphlets, presentations of published works, and all results other writings;
- 2) Lectures, lectures, speeches, and other similar creations;
- 3) Props made for the benefit of education and science knowledge;
- 4) Songs and/or music with or without subtitles;
- 5) Works of art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture, collage;
- 6) Applied artwork;
- 7) Architectural works;
- 8) Maps;
- 9) Batik art or other motif art;

- 10) Photographic works;
- 11) Portrait;
- 12) Cinematographic works;
- 13) Translation, interpretation, adaptation, anthology, database, adaptation, arrangements, modifications and other works resulting from the transformation;
- 14) Translation, adaptation, arrangement, transformation, or modification of expressions traditional culture;
- 15) Compilation of Works or data, either in readable format with Computer Programs or other media.³²
- 16) Compilation of traditional cultural expressions as long as the work is original;
- 17) Video games; and
- 18) Computer Programs.

- b. The work as referred to in paragraph (1) is protected as a separate work without prejudice to the Copyright of the original work.
- c. The protection as referred to in paragraphs (1) and (2), includes the protection of copyrights which have not been or have not been announced but have been realized in a tangible form that allows the Reproduction of the Works. Furthermore, Law Number 28 of 2014 also explains the meaning of protected types of works as stated in

³² *Ibid.*

the explanation of Article 40 of Law Number 28 of 2014 as follows

:

- 1) The appearance of a written work is a copyrighted work commonly known as typhographical arrangement, namely the artistic aspect of the arrangement and form of writing. This includes, among others, the format, decoration, color composition and arrangement or layout of beautiful letters which as a whole display a distinctive form;
- 2) Props are creations in the form of 2 or 3 dimensions that are relating to geography, topography, architecture, biology or science other knowledge;
- 3) Songs or music with or without text are defined as a unified whole of copyrighted works;
- 4) Images include: motifs, diagrams, sketches, logos and elements beautiful lettering colors and shapes;
- 5) Applied works of art are works of art made with applying art to a product so that it has an aesthetic impression in fulfill practical needs, including the use of images, motifs, or ornament on a product;
- 6) Architectural works include the physical form of the building, layout arrangement buildings, building design drawings, building technical drawings, and building models or mockups;

- 7) A map is a description of natural and/or man-made elements which is above or below the surface of the earth depicted on a flat plane with a certain scale, either through digital media or non-digital;
- 8) Photographic works include all photos produced with use the camera;
- 9) Cinematographic works are creations in the form of motion pictures, including: documentary films, advertising films, reports or films, stories made with scenarios, and cartoons. Cinematographic works can be made on celluloid tape, video tape, video discs, optical discs, and/or other media that allow them to be shown in cinemas, big screen, television or other media. Cinematography is an example of an audiovisual form;
- 10) An anthology includes: a creation in the form of a book containing a compilation of selected written works, a collection of selected songs, and compositions of various dance works of their choice recorded on cassettes, optical discs or other media.³³

3. Subject of Copy Right

Creator and ownership are the most important main points in copyright law, which means that the creator must have certain qualifications

³³ MIP., Irawan, Tinjauan Pustaka Mengenai Perlindungan Hukum Bagi Pemilik Hak Cipta Lagu Atas Pelanggaran Hak Cipta Oleh Barcode Pooltable dan Peranan Korban, Bandung: Universitas Pasundan, 2015, p. 43.

so that his work can be protected. An author must have an identity and status to determine ownership of rights. Basically a person who produces certain works is a copyright owner.³⁴

The difference between creator and copyright holder is based on the provisions of Article 16 Paragraph (1) and Paragraph (2) of Law Number 28 Year 2014 concerning Copyright which classifies copyright as an object movable property whose ownership can be transferred by the creator to a third party other. This transfer of copyright ownership can occur due to inheritance, grants, wills, endowments, written agreements, and other justified causes by laws and regulations. Based on the explanation above it can be concluded that not always the creator has the status of copyright holder.

a. Related rights

Law Number 28 of 2014 concerning Copyright regulates about neighbouring rights by using the term related rights. This law formulates related rights, namely rights that are relating to Copyright which is an exclusive right for performers, phonogram producers, or broadcasting institutions.³⁵ Term neighbouring rights in the legal protection of Intellectual Property Rights the arrangements, among others, are found in the Rome Convention (1961). For

³⁴ Hasbir Paserangi, Ibrahim Ahmad, *Op.cit*, p.34

³⁵ Republik Indonesia, Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, Pasal 1 ayat 5.

this term there are those who translate it with the term right relating to copyright, and in the Copyright Act Indonesia translates it with terms related to rights create.

Regarding this related right, Law Number 19 of 2002 is more firmly set limits. As contained in Article 49, in detail in describe the scope or scope of neighbouring rights, which include:

- 1) Perpetrators have the exclusive right to give permission or prohibit another person who without his consent makes, reproduce, or broadcast sound recordings and/or pictures from the show.
- 2) Producers of sound recordings have exclusive rights to give permission or prohibit others without approval to reproduce and/or lease the work voice recording or sound recording.
- 3) Broadcasters have the exclusive right to give permission or prohibit others who without their consent make, reproduce and/or rebroadcast their broadcast works via wired or wireless transmission, or through the system other electromagnetic.

From the information above, it can be concluded that neighboring rights include:

- 1) The performer's right to his performance
- 2) The rights of the record producer to the recordings he produces

3) The rights of broadcasters to their broadcast works

Protection of neighboring rights apart from being regulated by law
Currently, Indonesian copyright regulations are also contained in the rules
international law, namely:

- 1) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization (1961).
- 2) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.
- 3) Brussels Convention Relative to the Distribution of Program Carrying Signal Transmitted by Satellite.

4. Social Functions in Copyright

The restrictions on the use of copyright that cannot be violated by anyone can be divided into three things, namely:³⁶

First, decency and public order. Limited use of rights Copyright may not violate decency and public order. Example of rights Copyright that violates decency is the use of the right to publish or multiply calendars with naked women/men, sexual freedom or pornography, while violating public

³⁶ Teguh Sulistia dan Aria Zumetti, “Perlindungan Hukum Terhadap Pelanggaran Hak Cipta”, from <http://balitbang.kemhan.go.id/?q=content/perlindungan-hukum-terhadap-pelanggaran-hak> Accessed on 02 November 2022, 20.51 WIB

order is reproduce and distribute books containing teachings that allow women with more than one husband (polyandry).

Second, the social function of copyright. Freedom of use of copyright is not may eliminate/reduce the social function of copyright. Social function Copyright is to provide opportunities for the wider community to use the creation for the benefit of education and science, problem solving materials, case defense in court, lecture materials by citing the source in full.

Third, the provision of mandatory licenses. Freedom of use of copyright is not may negate the authority of the state to oblige creator/copyright holder grants a license (compulsory licensing) to other parties to translate or reproduce their creations with reasonable compensation. Compulsory licensing is based on certain considerations, namely if the state deems it necessary or assesses a creation is very important for the life of society and the state, for example for the purposes of education, teaching, science, research, defense, security, and public order that require the use of creation the. Restrictions on the use of copyright are an effort the balance of rights between the creator and the interests of society. It means, It is hoped that the use of copyright by the creator will also realize justice in social life. Copyright exception in this case means that the exclusive rights regulated in the law on rights are not valid create.³⁷

5. Copyright-Related Rights

³⁷ Black Law Dictionary Third Pocket Edition 279 (Thomson West.2001).

As for the rights related to the copyright in question are related rights, related rights are the equivalent of neighboring or related rights right. Related rights are exclusive rights intended for perpetrators, sound record producers and broadcasting agencies respectively for, in the case of the perpetrator to give permission or prohibit other parties, reproduce and or rent the recorded works of sound or sound. As for broadcasting institutions to grant permission or prohibit other parties reproduce and or rebroadcast the work broadcast by means of transmission with or without cable, or through the system other electromagnetics.

Based on the statement above, it is stated that the owner of related rights include actors who produce performance works sound record producer who produces the producer's performance work sound recordings that produce broadcast works, other than provisions concerning the content of the rights is also determined by the period of legal protection and the provisions other provisions that apply to these rights.³⁸

6. Types of Copyright Infringement

Copyright as a monopoly right, in which there are two kinds rights, have the potential to be violated. The violation can includes violations of moral rights and economic rights. Violation of rights Moral of the creation can be realized by not mentioning the name creator or make changes to the

³⁸ Eddy damian , *Op Cit* , p. 121.

work without the permission of the creator. Violations of economic rights to creations can be realized by doing announcements and reproductions intended for commercial purposes. Copyright infringement that contains civil elements is usually evidenced by the existence of a loss on the part of the creator or rights holder create both material and immaterial.

7. Legal protection regarding copyright

Intellectual Property Rights are exclusive rights granted by the state to a person, group of people or institutions to hold power in using and benefiting from intellectual property that owned or created. The term IPR is a translation of Intellectual Property Rights (IPR), as regulated in Law no. 7 years 1994 concerning the ratification of the WTO (Agreement Stashing The World Trade organizations).³⁹ Intellectual Property Rights are classified as immovable objects form. Objects are defined as symptoms of something that can be used as an object right of ownership. As objects, the properties of material rights are also attached to rights Intellectual Property, one of which is transferable to other parties.⁴⁰

The definition of Intellectual Property Right itself is an understanding of the rights on wealth arising from human intellectual faculties, which has a relationship with a person's personal rights, namely human rights human rights.

³⁹ Tim Lindsey, *Hak Kekayaan Intelektual Suatu Pengantar*, Bandung: Alumni, 2002, p. 3.

⁴⁰ Hadi Setia Tunggal, *Tanya Jawab Hukum Hak Kekayaan Intelektual*, Harvarindo, Jakarta, 2012, p. 120.

Intellectual Property Rights are personal property that can be owned and treated the same as other forms of wealth.⁴¹ Wealth that owned by someone does not just appear, but needs to be mixed state hands. In the sense that the state gives recognition to the work somebody. If the right to his work is recognized, then the person concerned has the right reproduce or give permission to others. Provisions regarding Rights Intellectual Property is regulated through three laws, namely:

- 1) Law No. 1 of 2016 concerning Patents
- 2) Law no. 20 of 2016 Trademark
- 3) And finally, after going through the process of revision and discussion in the DPR, The new Copyright Law was later ratified by DPR by enacting the Copyright Law no. 28 years 2014 concerning Copyright.

Copyright in Indonesia was recognized in 1912, namely during the Indies era Dutch. Where at that time according to the law in force in the country The Dutch were also enforced in Indonesia based on the principle of concordance (St. 1912 No. 600; 23 September 1912 Act). But actually copyright contained in the “Auteurs wet of 1912 Stb. No. 600, So get it is said that the first Copyright Law is the Copyright Law originating from Netherlands.⁴² And in the Law Copyright No. 19 of 2002 article 1 paragraph 1 states that copyright is the exclusive right of the creator or recipient to

⁴¹ Eddy Damain, *Hak Kekayaan Intelektual Suatu Pengantar*, Alumni, Bandung, 2002, p. 120.

⁴² Sophar Maru Hutagalung, *Hak Cipta Kedudukan dan Peranannya di dalam Pembangunan*, Akademika Presindo, Jakarta. p. 1.

publish or reproduce his creation or give permission for it without reduce restrictions according to laws and regulations applicable. As an exclusive right, the creator and or copyright holder has the right to reproduce among them his creation, meaning the creator or the holder may increase the number of works with the same act, almost the same or similar to these creations by using materials that are the same or not the same, including transforming creation.

Reproduce and announce and give permission to other parties actually the rights of the creator of the copyrighted work. Without permission is equal with copyright infringement. For communities and governments who has based his life on Pancasila and the Constitution 1945 is clearly required to participate in carrying out order in the association society based on freedom, lasting peace and social justice. For this reason, it is necessary to carry out comprehensive protection in foster community recognition of one's rights.⁴³

Recognition of that protection, for example through copyright works on the results innovative and creative work. In relation to copyright then according to the theory of natural law copyright is eternal as long as the creator lives. Only in practice the theory is changed to be even longer several years after its creator died. To give even stricter regulation, the copyright must be granted a firm period of time, especially in the articles that govern

⁴³ <http://doktersehat.com/manfaat-mendengarkan-musik-bagi-kesehatan/> accessed in 02 November 2022 time 18.45

it so that later there will be more serious efforts to transfer rights create someone to someone else.

Then article 29 paragraph (2) also states that if the copyright is represented by two or more people, the copyright is valid for life creator who died last and lasts up to 50 years afterward. Protection is also described in the new copyright law No. 28 of 2014 article 58 paragraph 2 states "that in terms of creation" as referred to in paragraph (1) is owned by two or more persons for protection Copyright is valid for the life of the creator, but the creator is the most important person at the end of his death and lasts for 70 (seventy) years thereafter, starting January 1 of the following year.⁴⁴

B. Overview of Licenses And Royalties Copyright Song Or Music

1. Licence

As described above, that the creator is not always can exploit their own creations, the creators have limitations to make his creations into money. Therefore, the creator needs the role of another party, and for that the creator will transfer all or part of its economic rights to another party. In connection with the transfer of the creator's economic rights, what emerges? which is called a license. The essence of licensing is the act of giving the power manage copyrighted works and or related rights products by the owner copyright or related rights holders to other parties through agreements written or deed. In the context of song or music creation, basically There are 5 (five) types of licenses for the use of copyrighted songs or music, namely:

⁴⁴ *Ibid.*

- a) Mechanical licenses
- b) Performing licenses
- c) Synchronization licenses
- d) Print licenses
- e) Overseas license

Mechanical licenses are granted to record company as a form of permission to use copyrighted works. A songwriter can negotiate directly or through his music publisher with anyone who wants his songs to be exploited. That is, anyone who wants to record, reproduce, and distribute a copyrighted work for the benefit of commercial companies are required to obtain a Mechanical License. When a song has been released commercially for the first time and has passed mutually agreed time limit, the songwriter can provide mechanical license for the song he created to anyone who need it to be exploited again. Usually in the form of album releases This second and subsequent edition is published in the form of a cover version, album selection or compilation.

An announcement/broadcasting license (performing license) is a form of permission granted by the copyright holder to institutions 22 broadcasting such as television, radio, concerts and so on. Every time a song is performed or played to the public for commercial interests, the broadcast operator is obliged to pay royalties to the composer. Royalty collection These performing rights are generally managed or handled by an institution

collective administration of copyright or Collecting Society or hereinafter referred to as Lembaga Collective Management (LMK).

Synchronization licenses are a form of permission granted by the copyright holder to another person or party to be able to exploit the creation in visual form image for commercial purposes. This visual image is usually in the form of usually in the form of films, videos, VCDs, television programs or audio visuals other.

Print licenses are licenses given for the purpose of announcing a song in the form of prints, both for musical scores as well as a collection of notation and song lyrics that are distributed commercially. It is widely produced in form of singing songs or published in music magazines and others.

A foreign license is a license that given by a songwriter or music publisher to an Agency in a country to represent them in collecting their song royalties for the use made by the user in the country concerned instead 24 around the world. In addition to the five types of licenses described above, In the copyright law environment, it is known as a forced license or license mandatory (compulsory license). The purpose of this mandatory license is that for the benefit of education, science, and research activities and development, the government can require creators to provide permission to translate, and or reproduce his work. Even though it is called a mandatory license, usually the creator still gets a license reward, but the amount is not based on the agreement, but determined by the government.⁴⁵

⁴⁵ Gatot Supramono, *Hak Cipta Dan Aspek-aspek Hukumnya*, 2009, p. 45-46.

To obtain rights from a license, an agreement between the license owner and the licensee must be set forth in an agreement and enforcement

to apply to third parties. This requirement is regulated in Government Regulation Number 36 of 2018 concerning the Recording of Intellectual Property License Agreements.

The presence of Government Regulation Number 36 2018 is a mandate from several legal rules in intellectual property rights, including:

1. Law Number 28 of 2014 concerning copyright.
2. Law Number 30 of 2000 concerning Trade Secrets.
3. Law Number 31 of 2000 concerning Industrial Design.
4. Law Number 32 of 2000 concerning Integrated Circuit Layout Designs.
5. Law Number 13 of 2016 concerning Patents.
6. Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

2. Royalty

Royalties are at the core of the creator's economic rights and relevant rights holders. The existence of royalties shows respect for the efforts and talents of the creators and related rights holders, at the same time provide passion (motivation) to creators and related rights holders to give birth to new creations or to work. royalty free, there is no proper respect for creators and rights holders related and consequently the process of creation or creativity will stagnate. In general, royalties are payments made by rights

users copyright or related rights products to the creators and or related right holders in connection with granting permission to exploit or use the copyrighted works or products. Amount of royalty payments usually based on agreement with certain sizes and then stated in a written agreement or deed.

In order to provide protection and certainty for economic rights to creators, copyright holders and owners of related rights to songs and music, as well as people who use them commercially, Government Regulation No. 56 of 2001 was stipulated. Article 3 Paragraph 1 of this Government Regulation reads, "Everyone can use commercially songs and/or music in the form of commercial public services by paying royalties to creators, copyright holders and/or related rights owners through LMKN."

The term and application of royalty, originally from a the fact that in England in the VI century which is called the golden century and silver, gold, silver, natural gas and oil mines and other mineral mines belonging to the United Kingdom can only be mined if paid (royalty) to the king. In development Furthermore, the term royalty is not only a payment someone to the king because he has been allowed to profit from mining the kingdom's mining materials, but royalties are also used for payments given to creators or inventors (patents) and others so on for the use of the exclusive rights of the copyrighted work or works his findings.⁴⁶

3. Copyrights Assigned To Other Persons Or Parties Or Other Entities

⁴⁶ Bernard Nainggolan ,*Op Cit*, p. 164-169.

The position of the creator on the results of his work that has been submitted to other parties are as follows:

a. If the copyright is transferred to another party “in part” then the part that was handed over to the creator no longer has the right, while The part that is not submitted by the author still has the right fully.

b. If the copyright is handed over to another person/party entirely then the creator is still authorized to carry out a legal claim for get compensation for someone who violates rights create it. In principle that one can sue another /body that violates its copyright, rights are also added make changes, whose permits remain in effect for as long as he is alive. Rights that can be assigned or transferred and rights which can be submitted. Example: Transferable rights or transferred, including:

1. Multiply creations,
2. Announcing the work,
3. Translating the work,
4. Relying on it, both on radio and on television and others.

Meanwhile, the rights that cannot be given up, that remain or attached to the creator:

1. Prosecuting copyright infringement,

2. Permission to make changes, and so on. These rights are better known as transferable and non-transferable rights are now called moral rights.⁴⁷

C. Overview of the Song

A song is an artistic composition of tones or sounds that are sequential, combined and related to time to produce a unified and continuous musical composition. And various rhythmic sounds are also called a song. The song can be sung individually, in pairs, three people and even in groups.

While music is a work of art in the form of a song or a combination that describes the thoughts and feelings of the creator through the main elements of music, namely rhythm. melody. harmony and also the form or structure of the song as an overall appearance.

Songs and music are elements that have a relationship with one another, in essence music can be said as a set of sounds composed of several musical instruments that produce sounds with rhythms that are arranged independently so as to produce harmonious rhythmic sounds that can be enjoyed by song listeners or listeners. the music. On Wikipedia, the meaning of a song is a variety of notes or sounds that have a rhythm.

1. History of Songs and Music

Music is believed to have appeared at the same time as the start of civilizationman. The elements of music have been used by humans since

⁴⁷ Sophar Maru Hutagalung, Op cit, p. 18-19.

ancient times. Formerly, Humans communicate through aspects of sounds and motion sign language. The screams and roars of humans at that time had their own meaning.

One of the works protected by copyright under Article 12 UUHC is a song or music creation (letter d). The work of songs or music is a complete creation consisting of elements of a song or melody, poetry or lyrics and arrangements, including notation, in the sense that the song or music is a unity Copyright works. The creator of a music or song is a person or persons together whose inspiration was born a musical creation or song based on ability of mind, imagination, dexterity, skill or expertise expressed in a distinctive and personal form, which in other terms known as composer.⁴⁸

The invention of musical instruments brought about a change in aesthetics or beauty music from time to time, ranging from types of music for religious rituals, palace music, folklor music, music as an autonomous art, entertainment music, and other types of music very serious.

If sorted based on the historical development of music from various literatures and existing materials, the authors divide there are 7 (seven) periods of musical development⁴⁹, namely:

a) Greek Era Music

Like the history of Greece which is full of triumphs in the field of discovery and also the civilization of its people,

⁴⁸ Hendra Tanu Atmadja, *Hak Cipta Musik atau Lagu*, Penerbit Pasca Sarjana Universitas Indonesia, Jakarta, 2003, p. 55.

⁴⁹ <https://www.gramedia.com/literasi/musik-klasik/> accessed in 03 November 2022 at 18.90.

music is also developing well. In Greece in the past, music was used for entertainment, folk celebrations, and also religious activities. Music is very important for the civilization of society Greece. In ancient Greek music, the musical instruments played by the people Greece is very interesting for the size of the era. One of the musical instruments. The most famous is the aulos made of two reeds. Then There is also a stringed instrument called the lyre. But there are also special types and special from lyre called kithara. Musical instruments from the ancient Greek era, in the future became the forerunner of modern musical instruments. One of the example, Lyre in the future became the forerunner of the harp.

b) Medieval Music

Medieval music begins with the fall of the Roman Empire and ended around the middle of the 15th century. The end of music is thought to be around 1400, coinciding with the start of renaissance-era music. However, on medieval era, the high price of parchment paper and also the amount of time spent needed to write it, the creation of a musical manuscript becomes very expensive. Due to the high cost involved, only a few parties only certain people can write manuscripts, let alone just for a piece of music. Only churches and church

institutions such as the monastery. Secular music and Sacrificial music was also created by the church. Early medieval notation does not have a specific rhythm. The music in that era was monophonic and homorhythmic music.

c) During the Renaissance (1450-1600)

At this time, the attachment of the church's influence is getting looser, people have start thinking rationally and get to know science. In music, this influence appears in the way artists work. They more individual and able to develop new ways. the music that created no longer as a musical order, but rather a style individual expression.⁴⁹

d) Baroque Era Music (1600-1750)

This is an era where European classical music is very successful. Meaning of baroque itself is a formless pearl. This meaning also describes Musical architecture in this era is very abstract. The dominance of classical music In this era, the baroque era is also known as the era of classical music europe. The best composers from the world of European classical music were very successful in this era this. Among them Claudio Monteverdi, Antonio Vivaldi, George Frideric

⁴⁹ Yuliawan Kasmahidayat, *Learning More Art & Culture 3*, Grafindo, Bandung, 2011, p.190.

Handel, Arcangelo Corelli, and the classical music mogul, Johann Sebastian Bach.

e) Classical Music Period (1730-1830)

The era of classical music lies between the baroque era and the romantic era. Lots once the greatest composer-composer the world of music has ever lived in the era classic. Call it Joseph Haydn, Wolfgang Amadeus Mozart, and Ludwig van Beethoven. Then there's Luigi Boccherini, Muzio Clementi, Carl Philipp Emanuel Bach, Johann Ladislaus Dussek, and Cristoph Willibald Gluck.

f) Romantic Age Music (1830-1910)

Called the era of romantic music, it doesn't mean that music in this era only contains about love or romantic love. Actually that era of music called romantic because it can describe musical compositions in the long term that time.

g) Age of Impressionism (Modern Era)

The music of this era started from 1900 to 2000. Meanwhile Contemporary music started in 1975 until now. From 1975 until 2000 is the time when the music of the 20th century and contemporary is running side by side. 20th century music was started by Claude Debussy who brought impressionist style. The composers of the American continent began their careers in the field of music and success.

2. Definition of Song and Music

Music can be defined as a spark of expression of feelings or thoughts that are issued regularly in the form of sound. Music starts with Greek, namely mousike taken from the name of the god of ancient Greek mythology Mousa, who led the arts and sciences.⁵⁰ According to Aristotle, music has the ability to reconcile troubled hearts, have recreational therapy and cultivate patriotism.

The terms song and music in everyday life tend to be used for the same purpose. Etymologically, the song is a musical unit consisting of a series of successive notes. Each song is determined by the long-short and high-low of the notes, in addition, the rhythm too give a certain style to a song.

The definition of music and song when viewed from the explanation of article 12 paragraph 1 copyright law "Songs or music in this law are interpreted" as a work that is intact even if it consists of elements of a song or melody, poetry or lyrics, and the arrangement includes notation. What is meant by whole is that the song or music is an integral part of the copyrighted work.”

The definition of a song according to law No. 28 of 2014 UUHC is not explained in detail, but it can be concluded that the song is a work that can be protected by copyright. Song or music in this law is defined as a complete work even if it consists of elements of song or melody, poetry or lyrics, and their arrangement including notation.

Music is the most abstract art as well as reality sound physics which has many advantages to help character education smooth someone. According to

⁵⁰ *Ibid.*

Lorenzo Lippi, is the sound received by the individual and varies based on history, location, culture and individual tastes.⁵¹

Music and song have different meanings, but in the Convention Bern mentions the term used to describe a song or music is musical work. One of the protected works is a musical composition or song with or without words. The Berne Convention does not provide a strict description of musical work, however From the provisions it can be concluded that there are two types of song or music creation copyright protected, namely songs or music with words and songs or music without words. Music with words is a song whose elements consist of melody, lyrics, arrangement and notation, while music without words is music which only consists of elements of melody, arrangement and notation.⁵²

3. Legal Protection Regarding Songwriters

In song copyright there are economic rights, namely the right to obtain economic benefits on intellectual property. It is said to be an economic right because intellectual property rights are objects that are can be valued in terms of money.⁵³ Economic rights are taken into account because rights Intellectual Property can be used by other parties in the industry or trading which brings profit. The way to give legal protection of copyright of songs downloaded on the internet with way through legal protection, namely by enforcing regulations through state administrative law with registration and supervision, criminal law and civil law. In Article 64 Paragraph (2) of the Law Copyright states the Registration of Works and Related

⁵¹ <http://pengertian-musik.html> accessed in 03 November 2022 at 18.90.

⁵² Van Hoeve, *Ensiklopedia Indonesia Buku 4*, Ichtiar Baru, Jakarta, 1940.

⁵³ Muhammad, Abdulkadir, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*. PT. Citra Aditya Bakti, Bandung, 2007. p. 23.

Rights Products as mentioned in paragraph (1) is not a requirement to obtain Copyright and Copyrights Related. According to the explanation of Article 64 Paragraph (2) of the Copyright Law that the Recording of Works and Related Rights products is not a must for Authors, Copyright Holders or Related Rights Owners. The protection of a work begins when the work exists or is realized and not because of the record. This means a recorded good work or unregistered remains protected. To obtain a creation record at the Ministry of Law and Human Rights of the Republic of Indonesia, the applicant can submit an application through three alternatives, namely:⁵⁴

- a. Through the Directorate General of Intellectual Property Rights (Directorate General of Intellectual Property Rights).
- b. Through the Regional Office of the Ministry of Law and Human Rights Republic of Indonesia.
- c. Through an Intellectual Property Rights Consultant Legal Counsel registered.

By some musicians, cover songs and bring them at a concert have become a land for monetization or profit. Sing a son Other musicians are a natural thing, but unfortunately it can be said that almost no party has asked permission from the original songwriter Moreover, some of the performers of the cover song then benefite economy without any agreement from the Musician Creator or Copyright Holder of the song and/or music that has been sung again. From phenomeno

⁵⁴ Yustisia, *Panduan Resmi Hak Cipta Dari Mendaftar, Melindungi, hingga Menyelesaikan Sengketa*, Visimedia, Jakarta, 2015, p. 20.

Because of this, many parties are increasingly aggressively doing cover songs on a song without asking the creator's permission as if it's not a big problem especially if the performer of the cover song benefits from the song which is sung again. Use of songs and/or music that re-sung without permission is a violation of rights exclusively owned by the Creator or Copyright Holder of songs and/or music because it has been regulated in Article 40 of the Copyright Law.

As based on Article 40 paragraph (1) letter d of the La Copyright that songs and/or music with or without text are include into copyright protection, then the act of exploiting a son you should first ask permission from the creator of the song and/or music, especially if it is related to the commercial value of the a song and/or music. The act of doing the cover song used for these commercial activities, making creative art resources humans descend. This causes people to be lazy to make works create their own, because they think why make a song if only with cover songs or sing other people's songs freely popular and liked by the public.

CHAPTER III

RESULTS AND DISCUSSION

A. Procedures and mechanisms for transferring licenses from copyrights to people who will remix the song

In this day and age, technological developments have developed rapidly with the presence of internet technology. The internet has changed distance and time that is not limited, by doing various activities that are difficult in the real world because they are separated by distance, it becomes easier.

With the presence of the internet, it is easier for people to access everything that is available on the internet, as is the case with Intellectual Property Rights (IPR), especially song copyrights which can be easily downloaded via the internet. In this case songs are included in the realm of protected Intellectual Property Rights as stipulated in Article 58 letter (d) of Law Number 28 of 2014 concerning Copyright (UUHC), namely Copyright Protection for Song or Music Creations with or without text. As protected by the Copyright Act, songwriters are entitled to economic rights over their creations. This economic right is needed as a form of appreciation or value for the creative results of his creations in the form of songs that can be enjoyed by the public or people when listening to them. This means that the creator is entitled to the economic rights of the song enjoyed by the public.

Copyrights in digital form are indeed very easy to duplicate and the results of these actions can also be said to be difficult to distinguish and almost indistinguishable from the original. Not only that, people can then make modifications to the copies and distribute them throughout the world at almost no

cost, which for now is referred to as remixes or changing part and almost all of the song, both in terms of tone and song lyrics. . On the one hand, this certainly makes it very easy for almost anyone to infringe on other people's copyrights on a very large scale, but on the other hand it is very difficult for copyright owners to find out that an infringement has occurred, to recognize it, or to take legal action.⁵⁵ It can violate copyright if it is duplicated or remixed without the permission of the copyright owner.

Then According to Angela Bowne as quoted by Ok. Saidin, an internet user is considered to have violated copyright if the user downloads the contents of the site he opens and then saves it to his computer's hard disk.⁵⁶ In song copyright there are economic rights, namely the right to obtain economic benefits from intellectual property. It is said to be economic rights because intellectual property rights are objects that can be valued in money. This economic right is taken into account because IPR can be used/utilized by other parties in the industry or trade that generate profits.⁵⁷

Of the several types of copyrighted works in the arts in Indonesia, the dynamic development of copyrighted works is copyrights in the fields of music and songs. Music and songs have economic value so that they have the opportunity to bring benefits to those who use creations. In order to get economic benefits, songwriters need to cooperate with sound recording producers to help reproduce

⁵⁵ Isnaini, Yusran. *Hak Cipta dan Tantangannya di Era Cyber Space*, Ghalia Indonesia, Bogor , 2015, p. 28.

⁵⁶ Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, PT Rajagrafindo Persada, Jakarta, 2010, p. 521-522.

⁵⁷ Muhammad,. *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, PT. Citra Aditya Bakti, Bandung, 2007, p. 23.

their creations. In this collaboration, the songwriter gives permission to the record producer through a license agreement. In this case, of course, it is very clear that the parties who will use the song with the intention of changing or relating to the song are required to obtain a license from the holder or owner of the copyright in the form of a license or written permission.

Juridically, the license agreement refers to the provisions governing agreements in general in the Civil Code, namely Article 1338 concerning freedom of contract, as well as referring to Article 1313 concerning the definition of an agreement, Article 1320 concerning the validity of the agreement, and Article 1234 concerning fulfilment of achievements.

The relationship between creator and producer is set forth in the licensing agreement. The definition of a license is regulated in Article 1 point (20) of Law Number 28 of 2014, namely:

“A license is a written permission granted by the copyright holder or related rights owner to another party to exercise economic rights over his creation or related rights product under certain conditions.”

Based on Article 1 number 14 of the Law of the Republic of Indonesia No.19 of 2002 Concerning Copyright, what is meant by a license is permission granted by the relevant copyright holder to other parties to publish and/or reproduce their creations or related rights products with certain requirements”

So in this case it can be said that a license agreement causes a legal relationship between the creator and another party. This other party becomes the copyright holder who receives permission from the creator to exploit his

copyrighted work. By granting a permit, the copyright holder can exercise his economic rights in the form of the right to enjoy the licensed creation. In the copyright license agreement for the song, the songwriter is the owner as well as the copyright holder, in the license agreement he acts as the licensor, while the sound recording producer acts as the licensee.

Whether or not to ask for permission from the original songwriter depends on the license used for the song that someone else wants to arrange or remix. If the song has copyright, of course the person who will use the song must ask permission from the author or copyright holder of the song. However, it's another matter if the song has a license that allows copying, duplicating, modifying activities, so it can be concluded that it depends on the license terms that have been made. In this case there are several licenses contained in copyright regarding songs, namely:

1. Creative Commons

In this case, this license allows the creator to determine the type of license he wants to use and determine what other creators want or are not allowed to use the creator's content. So, the songs that are under this license, the parties do not need to ask permission from the original creator as long as the user of the song gives the original song credits in the content he remixes

2. Public Domain

In this case the content that is in this state is no longer copyrighted or the creator has released it in this form. In this case, other creators don't need to ask for permission, and even credit the song to the original creator.

3. Free Software or Open Source license

In this case, if the original creator releases a song under this license, the DJ may remix the song without asking permission from the original songwriter.

In Law Number 28 of 2014 Article 40 paragraph (1) it is stated that songs are part of protected works, namely: Protected works include Works in the fields of science, art and literature, consisting of:

- a. books, pamphlets, descriptions of published works, and all other written works;
- b. lectures, lectures, speeches, and other similar creations;
- c. visual aids made for the benefit of education and science;
- d. songs and/or music with or without subtitles;
- e. drama, musical drama, dance, choreography, wayang, and pantomime;
- f. works of art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture, or collages;
- g. applied art works;
- h. architectural works;
- i. map;
- j. batik artwork or other motif art;
- k. photographic works;
- l. Portrait;
- m. cinematograph works;
- n. translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation;

- o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. compilation of Works or data, both in readable formats with Computer Programs and other media;
- q. compilation of traditional cultural expressions as long as the compilation is an original work;
- r. video games; and computer program.

Regarding the procedures and mechanisms for transferring licenses from copyrights to people who will do remixes of songs, in this case it means that they are based on a license, where the license is a legal action based on a voluntary or obligation. Voluntary licensing is one of the ways in which intellectual property rights holders choose to grant rights based on civil agreements on their intellectual property economic rights to other parties as licensee rights holders to exploit them. Compulsory licenses are generally a way of granting economic rights that are required by law, regardless of whether the owner wants it or not. So the procedure or thing to do is:

The obligations that must be fulfilled by the licensor to the licensee include handing over or transferring the copyright in accordance with what was agreed in the agreed license agreement. The rights that can be obtained by the licensor from the licensee include:

- 1) Exclusive rights to utilize, use or exercise the Intellectual Property Rights that have been licensed;

- 2) The copyright holder, in this case the licensor has the right to grant licenses to other parties based on a license agreement;
- 3) Obtaining compensation from the licensee (licensor) There are 2 (two) types of compensation that may be requested by the licensor from the licensee, namely:
 - a. Direct monetary compensation Direct monetary compensation is direct compensation in the form of material or a certain amount of money. Compensation included in direct monetary compensation is:
 - a) Lump-sum payment is a pre-calculated amount that must be paid by the licensee when the licensee agrees to grant the license. This payment can be made at once or in several payments;
 - b) Royalty is the amount of payment associated with a certain percentage which is calculated from the amount of production, sales of goods and or services that contain Intellectual Property Rights that are licensed, whether accompanied by a binding minimum or maximum amount of certain royalties or not.
 - b. Indirect and non-monetary compensation Indirect and non-monetary compensation is compensation that is not given in the form of a direct amount of money or materials.

Compensation included in indirect and non-monetary compensation.

So that the Licensee (licensee) can use the song after obtaining permission from the licensor. In Article 80 paragraph (1) of the Copyright Law, unless otherwise agreed, the Copyright holder or Related Rights owner has the right to grant a License to another party based on a written agreement to carry out the actions referred to in Article 9 paragraph (1), Article 23 paragraph (2)), Article 24 paragraph (2), and Article 25 paragraph (2) and also in Article 80 paragraph (3) of the Copyright Law it is stated that unless otherwise agreed, the execution of the act referred to in paragraph (1) is accompanied by the obligation of the licensee to pay Royalties to Copyright Holders or Related Rights owners during the License period.

The agreement is based on Article 1320 of the Civil Code concerning the legal requirements for an agreement, namely agreeing, being competent, on a certain matter and for a lawful reason. Then for that reason anyone who wants to do a work in a commercial nature, whether a song or music in the form of a commercial public service, can apply for a license from the party who is the copyright holder or owner of related rights through the institutions mentioned above. namely the National Collective Management Institution (LKMN) and royalties are also paid through this institution. Then the mechanisms that must be considered are:

- 1) Parties must obtain a permit or license first
- 2) After the party obtains a license, the party must pay royalties.

The author conducted interviews with four parties including Abraham Kevin as the composer of the song titled Allow from Yogyakarta, Shaggydog band grub record label management from Yogyakarta, vocalist and band management Letto and finally the music publisher in Bandung.

The results of the author's interview with the four parties are that according to Abraham Kevin, the transfer of the license rights of the songwriter to the person who will cover the song through a transfer mechanism using an agreement according to applicable law, in the agreement contains terms and what are the rights of each party . However, there are also fellow musicians who do not make an agreement but only use it verbally. ⁵⁸

According to Shaggydog (record label management) the mechanism for transferring licenses uses an agreement that has been agreed upon by both parties who will enter into the agreement, there are no specific rules for the agreement but what is important is that it is legal before the law if a problem occurs. Usually the agreement contains a contract for how long people can remix the song. In remixing the song copyright license does not move.⁵⁹

According to Mas Sabrang (vocalist Letto) and Mas Patub (Manger Letto) the mechanism for transferring licenses uses an agreement as usual, in which there is an agreement between the two parties, in remixing the song the copyright for the song does not change, the remixer of the song only gets the right to perform the song with their own way.⁶⁰

⁵⁸ Abraham Kevin, Yogyakarta, 15 November 2022

⁵⁹ Menus, Manegent label rekamanan, Yogyakarta, 8 Januari 2023

⁶⁰ Sabrang dan Patub, Pencipta dan Manager band, Yogyakarta, 17 Januari 2023

According to a music publisher in Jakarta (Mas Wito), the transfer mechanism uses an agreement that has been approved by both parties, but if it's only performed at a concert, it usually doesn't use an agreement but through LMK (Collective Management Institution), and if the remixed song will be uploaded on social media must then carry out licensing for songwriting and publishing to become an affiliate as a sign of permission to do the remix.⁶¹

B. The Creator's Economic Rights Calculation System

Songs fall into the realm of protected IPR as stipulated in Article 58 letter (d) of Law Number 28 of 2014 concerning Copyright (UUHC), namely Copyright Protection for Song or Music Creations with or without text. As protected by UUHC, songwriters are entitled to economic rights over their creations. This economic right is needed as a form of appreciation or value for the creative results of his creations in the form of songs that can be enjoyed by the public or people when listening to them. This means that the creator is entitled to the economic rights of the song enjoyed by the public.

Songs and/or music are a medium for someone to be able to express what he thinks through art and there are connoisseurs, namely people who use songs and/or music as a means to release their boredom because it is believed by some people that listening to songs and/or music can eliminate boredom because of its activities. There are many genres of songs and/or music, including classical music, popular music, jazz, hip hop, rock, traditional, dangdut, and many others. Songs and/or music always change and develop with the times and are inseparable from

⁶¹ Wito , Publisher Music, Jakarta, 21 Januari 2023

everyday life. Behind people being able to enjoy songs and music easily, there are complexities that songwriters and/or music creators go through both materially and physically so that the songs can be heard and widely circulated in the general public. Songs and/or music circulating in the community, of course, have the song copyright. With the completion of the recording of songs and/or music, that's when the copyright of songs and/or music arises. Songs and/or music are objects of copyright that must be protected for use. Law No. 28 of 2014 concerning Copyright (hereinafter referred to as "UUHC") is a regulation that regulates copyright protection including songs and/or music as a work of the copyright owner. In protected songs and/or music there are economic rights against copyright owners to do so as written in Article 9 paragraph (1) UUHC.

In fact, we can easily access songs and/or music on song and music application services such as Joox, Spotify, and Youtube. This application can make it easier for people to listen to and download songs easily, if the songs and/or music are listened to and downloaded for individual enjoyment, this is a legal action. However, if this convenience is used and exploited to gain profit for himself, this can be questioned and we should ask how legal certainty is for the songwriter. For example, if someone owns a business, most of them will play songs and/or music at their place of business to fill the void in the atmosphere at their place of business. We often encounter things like this when we visit restaurants, malls, supermarkets, and other public places. This example can be said to be an act that violates Article 9 paragraph (1) UUHC regarding the performance of works. Of course it is clear, in playing songs and music in public spaces a legal certainty is needed to protect the

owner of the copyright of the song and/or music related to economic rights in the form of royalties for copyright users. However, there are still many copyright users who do not pay these royalties.

Copyrights in digital form are indeed very easy to duplicate and the results of these actions are almost indistinguishable from the original. Not only that, people can then make modifications to the results of the copy and distribute it around the world at almost no cost. On the one hand, this certainly makes it very easy for almost anyone to infringe on other people's copyrights on a very large scale, but on the other hand it is very difficult for copyright owners to find out that an infringement has occurred, to recognize it, or to take legal action.⁶²

The 2014 UUHC has regulated copyright protection in relation to technological and information developments as stipulated in Articles 54, 55 and 56 of UUHC, but in the end until now since the enactment of UUHC there are still many popping up on social media regarding remixes or covers of a song. Creators are of course harmed by the actions of many people who listen to and enjoy remixes or covers of songs regardless of who is the creator of the song and the results of the copyrighted work are remixed without paying royalties.

Article 40 UUHC regulates objects that are guarded or protected by copyright. The regulation of copyright objects is carried out to provide protection for works created by creators with the principle of originality of a work based on invaluable individual creativity. Protection of copyrighted objects also gives the

⁶² Isnaini, Yusran, *Hak Cipta dan Tantangannya di Era Cyber Space*, Ghalia Indonesia, Bogor, 2009, p. 28.

impression of legal protection, so copyrighted works have legal certainty. Legal certainty can be proven when there is a dispute or violation of a work. Of course, with this legal certainty, it can minimize everything that can cause harm to the creator.

Songs and/or music are things that cannot be separated in everyday life because songs and/or music are needed in order to run a business. Songs and/or music can attract consumers to visit their place of business. Songs and/or music as man-made products or human intellectual works that can be enjoyed by other humans, with a process that requires a lot of energy, effort, time, even material, make these human intellectual products need to be protected in accordance with Indonesian law. The term of copyright on songs and/or music is for the life of the creator and will continue to be valid for 70 years after the creator dies world by January 1 of the following year.

Forms of creativity produced by human thinking are included in IPR if used for the purpose of fulfilling one's own needs.⁶³ Songs and/or music consisting of notations, melodies and arrangements along with lyrics or verses created by a person or group of people referred to as songwriters also need to be respected and protected. The rights of a person or group of people need to be protected in order to obtain preventive or repressive justice, therefore legal protection is needed.⁶⁴ Preventive legal protection is protection to prevent violations, which are carried out before an act has occurred. Then, repressive legal protection, is a protection in the form of

⁶³ Anak Agung Mirah Satria Dewi, *Perlindungan Hukum Hak Cipta Terhadap Cover Version Lagu di Youtube*, Jurnal Magister Fakultas Hukum Udayana, Vol. 6 No. 4, 2017. p. 508.

⁶⁴ Abiantoro Prakoso, *Hukum Perlindungan Anak*, LaksBang Pressindo, Yogyakarta, 2016, p. 6.

sanctions which will later be imposed on those who violate an act by means of fines, confinement and/or imprisonment, as well as additional punishment.⁶⁵

Article 9 of the HC Law explains that copyright has economic rights so that owners of song and/or music copyrights can obtain economic benefits from their creations. In addition, copyright also has rights that are impossible to remove and are always attached to the creator, even though they exist agreement for the copyright to be transferred to another party, the right is called a moral right. Based on the provisions of Article 40 UUHC confirms that songs and/or music are things that get copyright protection. So to get copyright protection, there is a Collective Management Institution (hereinafter referred to as "LMK") to withdraw royalties as stipulated in Article 89 paragraph (2) UUHC, LMK has the authority to withdraw royalties related to copyrighted songs used by other parties commercially through a power of attorney agreement.

The sophistication of technology in this era requires that law must continue to develop, one of which is regarding copyright protection which also protects works in digital form or digital copyrights. It is no different from ordinary copyrights, digital copyrights will also be attached to original works of creation even though the work is in digital form.

The existence of digital copyright is intended so that digital copyright owners have legal protection and their work will not be used by other parties for their personal interests. One creation that has digital copyright is a video blog on the

⁶⁵Ayup Suaran Ningsih, Balqis Hedyati Maharani, *Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring*, Jurnal Meta-Yuridis, Vol. 2 No. 1, 2016. p. 24.

YouTube platform. The Youtube platform is used by a large number of people to access video blogs, both content in the form of something useful or mere entertainment. Video blogs that are uploaded on Youtube by video blog owners or so-called creators are of course protected by digital copyright. Creators may only upload video blogs that are their own and may not upload other people's videos without their permission, such as music, copyrighted footage, and/or videos made by other creators.⁶⁶

Of course, with such a policy, creators on Youtube must be careful when uploading content. If there is an act of copyright infringement on Youtube, then Youtube will take action, namely Youtube will delete videos that violate digital copyright and will apply a warning. If a user gets three warnings regarding copyright infringement, then Youtube will take firm action by terminating the Youtube account in question.⁶⁷

We often encounter a video blog that contains songs and/or music from other parties, but is not included in the category of copyright infringement. Of course this can happen if the creator of the video blog has obtained permission from the copyright owner to use the song and/or music in the video in accordance with the provisions of Article 9 paragraph (2) of the UUHC, namely that people who have the intention to use other people's copyrighted work must obtain permission. from

⁶⁶ Aturan dan Kebijakan Youtube Mengenai Hak Cipta, https://www.youtube.com/intl/ALL_id/howyoutubeworks/policies/copyright/?utm_source=paidsearch&utm_medium=txt&utm_campaign=ytgen&utm_content=idco&gclid=Cj0KCQjw0KHBhDDARIsAFJ6UGjnzSD1Ncg3HdzkQsCVagItC_dVWXIWgXIaqnmVnCmFiJX_NL_Fi7AaAst0EALw_wcB&referrer=gclid%3DCj0KCQjw0KHBhDDARIsAFJ6UGjnzSD1Ncg3HdzkQsCVagItC_dVWXIWgXIaqnmVnCmFiJX_NL_Fi7AaAst0EALw_wcB#overview accessed in 10 Desember 2022.

⁶⁷ *Ibid.*

the relevant copyright owner. However, if the video blog is intended to gain profit for himself or be monetized, then there is an obligation to share royalties for song and/music copyright owners related to video creators. It's the same as covering a song and/or music on Youtube even though the cover video for the song is not monetized, the creator who covers must obtain permission from the owner of the copyright of the song and/or related music and if the video is monetized, then there must be a distribution of royalties with the owner of the rights. copyright songs and/or music to avoid digital copyright infringement.

That way, with regard to economic rights, people who want to use other people's copyrighted works for commercial purposes need permission from the copyright owner, and that person is obliged to obtain the copyright owner. In this case, economic rights must be taken into account because the copyrighted work is used by other parties to bring in or generate profits for themselves. Thus, if the economic rights to a copyright are violated by taking self-beneficial actions against a song and/or music without obtaining the consent of the creator, sanctions can be imposed in the form of fines or criminal penalties as if an act of violation had been committed.

In this era, remixes and covers of a song are very popular. Protection of copyright from creators is something that must be prioritized considering that the mechanism and supervision regarding this matter are also quite complicated. When the creator's song is remixed or covered again, of course the creator must get royalties or economic rights from the creator. Economic rights in copyright are also called exploitation rights, these include among others:

- a. The right to reproduce creation.
- b. The right to publish works.
- c. The right to transform creation or transfer creation
- d. The right to reproduce creation.

Economic rights are often synonymous with exploitation rights, this is because copyright provides a certain period of time to exploit the economic benefits of copyrighted works to creators. Exploitation activities can be in the form of performer activities in which a singer sings a song (composition) of music recorded on a compact disc or cassette by the recording producer for general sale to consumers. Economic rights are rights that include rights of reproduction, adaptation, distribution and communication (broadcasting, cabling and public performances).⁶⁸

Music or song creators have economic rights which are exclusive rights. Economic rights which are of a nature to bring economic benefits to creators can cause disputes. These economic rights can be in the form of performing rights and mechanical rights. The performing right or also called the performance right is one of a group of rights obtained from copyright ownership, which gives the copyright holder the power to control the public performance of a song. Every public performance requires users to pay fees or royalties to copyright holders and songwriters. Performing rights, generally broadcast by television stations, radio, pubs, karaoke or through performances, concerts, exhibitions, etc. While what is

⁶⁸ Eddy Damian, *Hukum Hak Cipta menurut Beberapa Konvensi Internasional, Undang-undang Hak Cipta 1997 dan Perindungannya terhadap Buku serta Perjanjian Penebitannya*, FT. Alumni, Bandung, 1999, p. 62-63.

meant by Mechanical Rights, is one of a group of rights obtained from the copyright owner which gives power to the right holder copyright to control the mechanical reproduction of a song, without prejudice to the mandatory licensing provisions of the Copyright Act. Mechanical rights, recording of musical works or songs in the form of cassettes, gramophone records, VCDs (video compact discs), CDs (compactdiscs), films and video clips.

One of the efforts to exploit the economic rights of a song or music, the creator can:

- a. announce or reproduce the copyrighted work themselves in order to derive economic benefits, or
- b. transfer the copyright to another party through an agreement, and or
- c. receive royalties⁶⁹ from other parties who have good faith for the exploitation of their copyrighted works.

In the case of copyright being reproduced and disseminated by other parties, namely by the user, or users, the user must ask permission from the creator or

⁶⁹ Royalties are generally understood as a special form of giving to creators who get a share in the profits derived from the use of their work. Royalties are usually in the form of distributing reproduced works or repeated performances. Royalties are generally determined as a percentage which is calculated from the retail price of the product or which is calculated according to the proceeds from the gross ticket sales counter which are paid to creators periodically to the amount of copyrighted works sold or obtained from performances, quoted from, WIPO Glossary of Terms of The Law of Copyright and Neighboring Rights, (World intellectual Property Organization, Geneva, 1980), p. 231. Bdg., Sarah Jones, Enforcement of Copyright and Related Rights Affects The Music Industry (Netherlands: MAKLU Publishers, 1993). 210, which defines royalties as a reward or payment for the right to use copyrighted material, or compensation for services (such as services through a recording artist or record producer). In a contract or license, royalties are usually stated in dollars and cents for the units used in each work created, distributed or sold based on the percentage received. So a songwriter can receive as compensation for the copyright of his composition, royalties are given 50 percent of the net proceeds collected by the music publisher. A recording artist gets a 10 percent ROV as compensation from performing as an artist, which is obtained from the net proceeds that are realized from the sales of his recordings minus fees such as container charges and so on.

copyright holder. In general, requests for permission from creators or from copyright holders are represented by a royalty-collecting body, such as YKCI (Yayasan Karya Cipta Indonesia) in Indonesia, BMI (Broadcast Music, Inc.), ASCAP (American Society of Composers, Authors and Publishers) in the United States, PRS (Performing Right Society Limited) in England, BUMA (The performing right society in the Netherlands) in the Netherlands, or JASRAC (Japanese Society for Fights of Authors, Composers, and Publishers) in Japan. This user is also required to pay royalties to the royalty-collecting organization. For Indonesia, only creators or copyright holders have a forum for collecting royalties, on the other hand, for other copyrighted works there is no forum to represent them, such as literary arts, dance and drama arts.

The function and nature of copyright can be seen in Article 2 paragraph (1) of the National Copyright Law, which states, among other things, that what is meant by "exclusive rights" is the right to publish or reproduce their creations, which arise automatically after a creation is born without reduce restrictions on the provisions of applicable laws and regulations. As an example, the composer of the song Bengawan Solo, Gesang, has received a royalty of IDR 10,000,000 from a PVC drinking water pipe businessman, because the entrepreneur in advertising his drinking water pipes uses the phrase " water flows far away" from his Bengawan Solo song⁷⁰ That is one of the best examples of protection and respect for copyright applied by employers to copyrighted works of a person's song. This may be because

⁷⁰ Rooseno Haijowldagdo, *Masalah Pungutan Royaiti dan Perllindungan Karya Cipta BPHN*, Departemen Kehaklman RI, 1993/1994, p. 40.

the entrepreneur is aware that Gesang as a creator has exclusive rights, which if another party wants to take advantage of his copyrighted work, he must be compensated because to produce a copyrighted work in the fields of science, art and literature requires sacrifice of energy, time, thoughts and costs are not small in number.

Systematics regarding the calculation of economic rights by the creators are regulated in Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties where the remix or cover of a song itself is also commercial in nature so that royalties for the creator must also be fulfilled as the rights of the creator. The following are royalty rates for venue managers and types of activities according to Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties:

1. Where the royalty rate for holding commercial seminars and conferences is IDR 500 thousand per day.
2. The royalty rates for restaurants and cafes are determined based on each seat per year at a price of IDR 60,000 for creator royalties and related rights royalties.
3. Meanwhile, the royalty rates for pubs, bars and bistros are determined per square meter per year in the amount of IDR 180 thousand per square meter per year for creator royalties and related rights royalties.
4. Then, royalty rates for nightclubs and discotheques are determined per square meter per year in the amount of IDR 250,000 per square meter per

year for creator royalties, and IDR 180,000 per square meter per year for related rights royalties.

5. The amount for music concert royalties is 2% of gross ticket sales + 1% of free tickets.
6. The amount for free music concert royalties is 2% of music production costs.
7. The amount for royalties on airplanes, buses, trains and ships, namely the number of passengers multiplied by 0.25% of the lowest ticket price multiplied by the duration of the music multiplied by the percentage level of music usage.
8. Exhibitions and bazaars (Rp 1.5 million per day).
9. Cinema (Rp. 3.6 million per screen per year).
10. Telephone waiting tones (Rp 100 thousand per telephone call each year).
11. Banks and offices (Rp 6 thousand per square meter per year).
12. For owners of supermarkets, supermarkets, malls, shops, distros, beauty salons, fitness centers, sports arenas and showrooms, the calculations are:
 - a. The first 500 square meters of space is subject to a fee of IDR 4,000/meter (for songwriter royalties) and IDR 4,000/meter (for related rights royalties).
 - b. A 500 square meter room is then subject to a fee of Rp. 3,500/meter (for songwriter royalties) and Rp. 3,500/meter (for related rights royalties).

- c. A 1,000 square meter room is then subject to a fee of Rp. 3,000/meter (for songwriting royalties) and Rp. 3,000/meter (for related rights royalties).
- d. A 3,000 square meter room is then subject to a fee of Rp. 2,500/meter (for songwriter royalties) and Rp. 2,500/meter (for related rights royalties).
- e. A 5,000 square meter room is then subject to a fee of Rp. 2,000/meter (for songwriter royalties) and Rp. 2,000/meter (for related rights royalties).
- f. A 5,000 square meter room is then subject to a fee of Rp. 1,500/meter (for songwriter royalties) and Rp. 1,500/meter (for related rights royalties).

13. Recreation centers (1.3% ticket price multiplied by the number of visitors in 300 days multiplied by the percentage of music use).

14. Free indoor recreation center (Rp 6 million per year).

15. For hotel owners and hotel facilities, the amount of royalties:

- a. Rooms 1-50 are subject to a royalty rate of IDR 2 million/year.
- b. Rooms 51-100 are subject to a royalty rate of IDR 4 million/year.
- c. Rooms 101-150 are subject to a royalty rate of IDR 6 million/year.

- d. Rooms 151-200 are subject to a royalty rate of IDR 8 million/year.
 - e. The number of rooms above 201 is subject to a royalty rate of IDR 12 million/year.
16. Resorts, exclusive hotels and boutique hotels are subject to a lumpsum royalty rate per year of Rp. 1.6 million.
17. Untuk Bisnis Karaoke hitungan besarnya sebagai berikut:
- a. Karaoke without rooms (Hall) Rp. 20 thousand per room / day.
 - b. Family Karaoke Rp. 12 thousand per room / day.
 - c. Exclusive Karaoke Rp. 50 thousand per room / day.
- With a calculation of 50% for copyright and 50% for related rights. Karaoke cube (Booth) the calculation for copyright and related rights is Rp. 300 thousand per cube / year.
18. The calculation of radio broadcasting institutions is 1.15% of the previous year's advertising revenue or subscription fee.
19. For non-commercial radio and RRI, a royalty rate of Rp. 2 million per year is imposed.
20. The calculation of television broadcasting institutions is 1.15% of the previous year's advertising revenue or subscription fees. With a note, payments for television broadcasting institutions are divided into 3 (three) categories, namely:
- a. Music television is subject to a royalty rate of 100%.

b. Information and entertainment television is subject to a royalty rate of 50%.

c. News and sports television is subject to a royalty rate of 20%.

21. Non-commercial local television is subject to a royalty rate of Rp. 10 million per year. With a distribution calculation of IDR 6 million for copyrights and IDR 4 million for related rights.

Meanwhile, when talking about the economic rights of the creator, when his creation is remixed or covered by someone else, it will also be related to moral rights, namely moral rights give the creator various controls over the use of his copyrighted works by giving the right to a creator to claim his work as the creator of a work (the principle of "attribution" or the principle of "paternity")⁷¹ and prevent its use in a way that the creator deserves to be rejected or that is not agreed upon on the basis of "integrity". The United States grants rights to copyright holders, regardless of whether the rights holder is the author of a work or an agent of an author. Because the existence of moral rights independently stands outside "economic rights". So the creator to a certain degree has control over these rights even though the copyrighted work is commercially exploited by transferring his economic interests into the work. For example, the composer of a song can ask for his moral right to guarantee that he is named as the creator, or even to prevent the performance or performance of his song in a form that he feels or understands as a

⁷¹ Istilah "*attribution*" adalah sinonim dari gender-neutral untuk kata tradisional "*paternity*". "*Attribution*" dipergunakan Kongres Amerika dalam undang-undang hak cipta, 17 U.S.C. § 106A, dan para sarjana kontemporer, 2 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT, 8-255 p. 6.

distortion, destruction or other modification that could harm his honor or reputation. With the coming of the music video era digital sampling techniques are most For discussion comprehensive understanding of digital sampling and the impact of legal developments.

In the current era, of course, a remix or cover of a song, of course, must have permission from the creator, considering that digitalization is now very widespread where when it comes to remixes or covers of songs or music, it must be in its nature.

If not through permission because it affects the economic rights and moral rights of the composer of the song or music. The royalty system, of course, when remixing or covering a song can be discussed in advance with the artist accompanied by the Collective Management Organization (LKM) so that the royalties can also be agreed upon and fair to the composer and the remix or cover.

The author conducted interviews with four parties including Abraham Kevin as the composer of the song titled Allow from Yogyakarta, Shaggydog band grub record label management from Yogyakarta, vocalist and band management Letto and finally the music publisher in Bandung.

The results of the author's interviews with the four parties are that according to Abrraham Kevin, there is no exact calculation system for the economic rights of the songwriters. There is no exact calculation of the percentage of the royalty distribution, but usually it is divided into 70% for the composer and 30% for the person who will do the remix of the song.⁷²

⁷² Abraham Kevin, Yogyakarta, 15 November 2022.

According to Shaggydog (record label management) the calculation of the economic rights of the songwriter does not depend on how many agreements are in the agreement, but usually the amount of royalty distribution is 50% and 50% but some use 70% and 30%, so there is no exact calculation for sharing provide royalty remix of the song.⁷³

According to Mas Sabrang (vocalist Letto) and Mas Patub (Manger Letto) the calculation of the economic rights of the songwriters for the songs being remixed depends on the contents of the agreement at the beginning. There is no fixed amount so every agreement varies.⁷⁴

According to Mas Sabrang (vocalist Letto) and Mas Patub (Manger Letto) the calculation of the economic rights of the songwriters for the songs being remixed depends on the contents of the agreement at the beginning. There is no fixed amount so every agreement varies.⁷⁵

⁷³ Menus, Manegent label rekamanan, Yogyakarta, 8 Januari 2023.

⁷⁴ Sabrang dan Patub, Pencipta dan Manager band, Yogyakarta, 17 Januari 2023.

⁷⁵ Wito, Publisher Music, Jakarta, 25 Januari 2023.

CHAPTER IV

CLOSING

A. Conclusion

Based on the results of the research described in the previous chapter, the following conclusions can be drawn:

1. The procedure for transferring a song license from the composer to the person who will remix the song uses the license agreement described in Article 1 number (20) of Law Number 28 of 2014, and an agreement that occurs refers to the provisions regulates agreements in general in the Civil Code, namely Article 1338 concerning freedom of contract, and refers to Article 1313 concerning the definition of an agreement, Article 1320 regarding the validity of the agreement, and Article 1234 concerning fulfillment of achievements.
2. The calculation of economic rights for the songwriter in the Copyright Act No. 28 of 2014 does not explain what percentage of the distribution is. Usually the parties involved have their own policies. As long as the royalty distribution agreement is agreed by both parties.

According to the results of the interviews that I have conducted, it can be concluded that the transfer of the copyright license of the music uses the agreement in accordance with what has been arranged and the amount of royalty distribution depends on the agreement that has been agreed upon by both parties. According to

the research object, without clear rules on music, it doesn't interfere with their work because in terms of music, rules cannot be too limited because a work has no boundaries.

B. Recommendations

Indonesia must further strengthen the rules, especially for music copyright, because now music has become one of the things that everyone or all Indonesian people enjoy. There are still many violations that are often committed unconsciously because there is still a lack of awareness about the importance of respecting the moral rights of a song that they hear or that they will remix and cover.

My advice to every copyright holder who feels disadvantaged by remixing a song without using permission is that they must file a lawsuit for infringement against the law. The first party as the song creator or copyright owner of the song must sue the second party who remixed it without permission and submit it to court.

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REGULATION

Law Number 28 of 2014 concerning Copyright