

Copyright Protection In Digital Rights Management Systems: Legal And Technical Challenges In Implementing Effective Solutions

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Abstract

This research aims to examine copyright protection against unlawful acts, particularly in the context of piracy and claims over songs in the era of disruption. Through a normative juridical approach and data collection techniques via library research, this study explores the theoretical foundations of justice in law, the definition of unlawful acts, and the urgency of copyright protection for musical works. In-depth analysis is conducted on copyright discourse concerning music piracy, as well as the concept of legal protection that offers solutions and ideals for piracy or claims over songs. The research findings indicate that song piracy is not merely a common legal violation but also threatens the economic sustainability and creativity of music creators. Therefore, copyright protection must be accompanied by proactive preventive measures and effective law enforcement. In conclusion, copyright protection is a prerequisite for achieving justice in the music industry in the current digital era, requiring cross-sector collaboration and policy innovation to address the challenges faced.

KEYWORDS: *Copyright, Unlawful Acts, Song Piracy*



Introduction

Measures of justice are often interpreted differently. Justice itself also has many dimensions, in various fields, for example economics and law¹. Law is often associated with justice. Discussion about justice as the substance and ultimate goals of law has been focusing on the normative dimension of justice. There is an impression that the discussion of justice is actually the most original legal concept and is built by the internal dynamics of law from the era of natural law to *postmodern*. Justice seems to be seen as law itself because it is dynamic in a legal column that is separate from the non-legal column because law is one part (column) of the entire column that builds a social system of human life. Law is not a single and independent system and is not a perfect and unified system (*the finite scheme*). Law, on the other hand, is a subsystem related to other subsystems in the universe of social order on which law depends on these other subsystems, and simultaneously establishes what is called social order.

The above understanding leads to the hypothesis that discussing the law is not only done by seeing and observing the law in the sense and meaning of the law *an sich*. Instead, discussing law in terms of discovering the essence of law must be in broader optics, taking into account all non-legal phenomena that simultaneously shape, change, and even rebuild a more dynamic and substantive legal system.

Some may agree that the essence of law is to bring about justice. Although the dogma of legal positivism that has dominated the style of law enforcement since the nineteenth century emphasizes the principle of legal certainty. In various forms of legal discussion, positivism cannot in the least negate that law enforcement will ultimately lead to efforts to realize justice.

Justice as the essence of law is not a pure concept of law. On the contrary, the concept of justice, long before it found its current form, is a

¹ Inge Dwisvimiari, "Keadilan Dalam Perspektif Filsafat Ilmu Hukum," *Jurnal Dinamika Hukum* 11, no. 3 (2011): 522–531, <https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/179/127>.

representation of moral views and values embodied in a series of ethical norms and behaviors. Justice is a sublime will that is born and develops along with man's presence on earth. The creation of man, coupled with God, is accompanied by the moral obligation of maintaining good relations with fellow humans and the surrounding environment.

The command to do justice, unless interpreted as God's command which later becomes law, is in principle an actualization of the moral obligation of every human being in maintaining harmony in life with fellow humans and the surrounding environment. In this point of view, discussing justice is the obligation to do justice and realize justice in social life is not always related to the normative discussion of justice itself. It is a discussion from another point of view that is much more fundamental as to why one should do justice. From here then a premise was born that justice is not always related to legal norms, justice actually has a lot of direct contact with the ethical aspects of human life².

Regarding justice that has a lot of contact with daily life, not a few unlawful acts that can harm others and contradict the values of justice. If at first unlawful acts were only acts that violated the law, then after 1919 unlawful acts expanded in meaning. The 1919 Hoge Raad ruling in the case between Lindenbaum and Cohen expanded the definition of unlawful acts as acts that not only violate the law, but unlawful acts are doing or not doing that: (a) Infringe the subjective rights of others (rights prescribed by law); (b) Contrary to the legal obligations of the perpetrator (obligations prescribed by law); or (c) Contrary to decency or contrary to the propriety, thoroughness, and prudence that a person should have in association with fellow citizens or towards the property of others³.

The Hoge Raad ruling later became a patron for courts in the Netherlands, not least in Indonesia. The understanding of unlawful acts can no longer be viewed as merely breaking the law, but acts that violate legal

² M. Natsir Asnawi, *Pembaharuan Hukum Perdata* (Yogyakarta: UII Press., 2019).

³ Suharnoko, *Hukum Perjanjian: Teori Dan Analisa Kasus* (Jakarta: Kencana, 2008).

rights and obligations as well as decency in society. Thus, it can be understood that the substance of an unlawful act is an act that causes real harm to another party, regardless of what legal variable it violates.

Unlawful acts related to copyright, and are currently in full swing lately are piracy cases and claims by singer Rama Chan against the song "Sial" owned by a singer named Mahalini. The perpetrator had acted without permission creating his own version until it was uploaded on the *sportify platform*, an app that contains podcasts and music. In addition, Rama Chan also claimed that the song was his own product, and that he had forged permissions (including changing the list of writers, carriers, and production of the song"). It is surprising that it turns out that the cover of the song he uploaded was stolen from someone else⁴.

Of course, it is natural for Mahalini to be angry because copyright infringement can be categorized as unlawful. Therefore, in addition to interesting topics to discuss, this discourse is important to provide a comprehensive understanding to music creators, or even pirates to understand the corridors of their respective rights and obligations so that substantive justice, as well as public comfort and security can be guaranteed. Furthermore, if this kind of problem is not immediately addressed, of course this will be a loophole for other pirates so that protection and effective solutions to copyright problems are needed so that no similar cases occur again later.

Method

The type of legal research carried out is juridically normative. Normative juridical is law conceptualized as what is written in laws or regulations or laws conceptualized as rules or norms that are a benchmark

⁴ Rizkya Fajarani Bahar Donny Adhiyasa, "Tak Cuma Bajak Lagu 'Sial', Rama Chan Juga Dituding Mahalini Telah Palsukan Izin," *VIVA.Co.Id*, January 8, 2024, <https://www.viva.co.id/showbiz/musik/1675262-tak-cuma-bajak-lagu-sial-rama-chan-juga-dituding-mahalini-telah-palsukan-izin?page=3>.

for human behavior that is considered appropriate. In addition to referring to regulations, this research method also examines and examines library materials or other literature studies so that understanding is more comprehensive⁵.

The author in this case uses data collection techniques '*library research*' To conduct studies, research, analysis, and search for data related to the topic the author writes. This research is used to provide prescriptive 'justification' about a legal event by making norms as the center of its study which is certainly intended to provide arguments about events, whether they are right or wrong and how events are according to law⁶.

In this article, the author conducts research on copyright infringement cases on the object of the song 'Sial' by Mahalini which was crowded in early 2024 due to piracy cases and claims by others. These data are then processed and analyzed with in-depth analysis accompanied by approaches to existing regulations so that the author hopes that this paper is worthy of consideration by future research as material for reference, enlightenment, and innovation⁷.

Result and Discussions

Copyright Against Piracy Discourse of Music Works

Copyright is one of the study groups of Intellectual Property (Intellectual Property) which is meaningful *a special category of property created by human intellect (mind) in the fields of arts, literature, science, trade, etc.* This understanding explains implicitly that intellectual property is a person's creation resulting from his own thoughts and discoveries. In addition, Intellectual Property is divided into two, namely '*Copyrights and*

⁵ Amiruddin & Zaenal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. RajaGrafindo Persada, 2016).

⁶ Farkhani Sigit Sapto Nugroho, Anik Tri Haryani, *Metodologi Riset Hukum* (Sukoharjo: Oase Pustaka, 2020).

⁷ I Made Wiratha, *Metodologi Penelitian Sosial Ekonomi* (Yogyakarta: ANDI, 2006).

Related Rights' and *'Industrial Property Rights'*. Because *Industrial Property Rights* Referring to patents, geographical indications, trademarks, trade secrets, and industrial designs, then copyright goes into *Copyrights and Related Rights*, including books, publications, architecture, music, drawing, and more⁸.

Regulations regarding intellectual property rights, including copyright, are regulated in Indonesia because the country is a legal state in accordance with the provisions of Article 1 paragraph (3) of the 1945 Constitution. Historically with reference to formal juridical, Indonesia recognized copyright in 1912 when the promulgation of *Auteurswet* (Wet van, 23 September 1912, Staatblad 1912 Number 600), which came into force on 23 September 1912⁹.

Referring to the provisions of *the Auteurswet* 1912 in Article 1, the definition of copyright is:

“Copyright is the exclusive right of the author of a literary, scientific, or artistic work or his successors in title to disclose the work to public and to reproduce it, subject to the exception laid down by law”.

This means explicitly that copyright is an exclusive right, which is a special or privilege, obtained through its work (including in the fields of literature, knowledge, and art) to publish and reproduce it in view of the restrictions prescribed by law. When referring to history, the term copyright was first proposed in Bandung during the cultural congress in 1951 by Prof. St. Moh. Shah, S.H. as a substitute for author rights so that *Auteurs Recht* which is a translation of the word author rights, was later changed to copyright¹⁰.

⁸ Rupinder Tewari & Mamta Bhardwaj, *Intellectual Property: A Primer for Academia* (Chardigarh: Publication Bureau, Panjab University, 2021).

⁹ Oksidelfa Yanto, “Konsep Perlindungan Hak Cipta Dalam Ranah Hukum Hak Kekayaan Intelektual (Studi Kritis Pembajakan Karya Cipta Musik Dalam Bentuk VCD Dan DVD),” *Yustisia Jurnal Hukum* 93, no. 3 (2015): 746–760, <https://jurnal.uns.ac.id/yustisia/article/view/8706/7796>.

¹⁰ Putu Ayu, Ira Kusuma Wardani, and Ida Ayu Sukihana, “Pengaturan Bentuk Dan Syarat Sahnya Perjanjian Lisensi Hak Cipta,” *Jurnal Kertha Semaya* 9, no. 7 (2021): 1224–1234, <file:///C:/Users/user/Downloads/66287-1033-212548-1-10-20210522.pdf>.

Law No. 28 of 2014 as a regulation that discusses copyright, has stated that copyright is an exclusive right that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with statutory provisions. Furthermore, copyright is also interpreted as a right that regulates intellectual works in the fields of knowledge, art, and literature that are expressed in a unique or distinctive form and have a fixed form¹¹. It can be concluded that copyright relates to exclusive rights or is specifically granted for creating something in the fields of knowledge, art, and literature, which can be reproduced with the permission of its creator in accordance with applicable regulatory provisions.

Copyright is a type of intellectual property that protects the **original work** after the creator **creates a work**. In copyright law, there are various types of works, including paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, films, architectural works, plays, and many more. This work is the result of the creator's own thoughts through independent creation where one makes it himself without copying. The Supreme Court once said, to be creative, a work must have a 'spark' and 'little' creativity.

Recently, in early 2024, there was a hijacking by a person named Rama Chan who violated the rules of the Copyright Law in Indonesia against Mahalini, the original creator of the song entitled 'Sial'. Of course, Mahalini was surprised because the song hijacked by Rama was uploaded to the *Digital Service Provider* (DSP). Referring to Article 40 paragraph (1) letter D of Law number 28 of 2014 concerning Copyright (Copyright Law), a song or music with or without text is one of the protected works. As a result of this, the perpetrator had violated economic rights in the form of exclusive rights owned by Mahalini even though the perpetrator also wrote the name of the songwriter with him.

¹¹ Ferianto Mujiyono, *Memahami Dan Cara Memperoleh Hak Kekayaan Intelektual* (Yogyakarta: Sentra HKI Universitas Negeri Yogyakarta, 2017).

Because it is protected, song copyright holders have economic rights in the form of exclusive rights in obtaining economic benefits from the work. Copyright infringement can occur if piracy or duplication of songs is carried out. That is, the act or duplication of a copy of the work in any form.

For copyright violators, they can be subject to civil damages and the state's right to criminal prosecution under Article 113 of the Copyright Law, which if:

- a. *Any person without the right to violate economic rights, as referred to in Article 9 paragraph (1) letter I for commercial use shall be punished with a maximum penalty of 1 (one) year and/or a maximum fine of Rp100,000.00 (one hundred million rupiah).*
- b. *Any person without the right to violate the rights and/or without the permission of the creator or copyright holder violates the economic rights of the creator as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for commercial use shall be punished with a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000, 00 (five hundred million rupiah)*
- c. *Any person who without rights and/or without permission of the creator or copyright holder violates the economic rights of the creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for commercial use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp1,000,000,000, 00 (one billion rupiah).*
- d. *Any person who fulfills the elements as referred to in paragraph (3) committed in the form of piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of 4,000,000,000.00 (four billion rupiah).*

Therefore, as a *zoon politicon* creature as Aristotle called it, humans must be able to respect the rights of others in order to create order, justice, and comfort when living in society. In addition, respecting the exclusive

rights of others is a step to advance the nation because when that person produces work, it will be a valuable asset for the country. In addition, if you commit piracy, you can be subject to severe sanctions criminally and civilly.

The Concept of Solutive and Ideal Legal Protection Against Piracy or Claims Against Songs

In this era of disruption, Intellectual Property Rights (IPR) or *Intellectual Property* holds a central position in aspects of life because it is related to technology, economics, and even cultural arts. Because IPR has an important position, it is not surprising that it must be protected, especially copyright issues that often occur violations due to piracy that occurs by irresponsible parties with commercial purposes.

Copyright rights consist of two rights, namely moral *rights* and economic *rights* which are protected by the state. Moral rights here mean as inherent rights following the creator so that they cannot be separated or deleted for any reason, even though copyright has been transferred. While economic rights are the right to obtain economic benefits from creation.

Preventive or anticipatory legal protection in Law No. 28 of 2014 concerning copyright, specifically contained in Articles 5 to 7 which regulate moral rights, and Articles 8 to 9 which regulate economic rights which are a manifestation of the exclusive nature of the creator¹².

In copyright protection, there are some basic rules that protect creators from violations that occur, especially piracy problems or claims on songs. One of the principles inherent in material rights is another principle *droit de suite*, where the principle that explains rights follows the object.

¹² Novie Afif Mauludin, "Perlindungan Hukum Terhadap Karya Cipta Lagu Atau Musik Daerah Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Legal Protection Against Song or Regional Music Copyrights According To Law Number 28 of 2014 Concerning Copyright," *Kompilasi Hukum* 5, no. 2 (2020): 274–282, <https://jkh.unram.ac.id/index.php/jkh/article/view/59/40>.

The meaning is that wherever the object goes, the right is still attached continuously following the object¹³.

The advancement of modern technology has resulted in major changes in human life from various points of view. Now, people can easily download or upload digital content as they see fit, either for others to see or sell as merchandise because it has value. This becomes especially important for creators, as digital content consists of data that can be accessed by machines (such as computer programs, video games, web pages, websites, or digital audio). Therefore, digital content often involves intellectual property rights derived from human creativity, including moral rights and economic rights, especially in the context of copyright.

With the advancement of technology that is felt today, it is not surprising that it has an impact on increasing copyright infringement in Indonesia, especially in terms of piracy. According to Marc Ancel, copyright crimes can be categorized in humanitarian and social issues¹⁴.

Piracy itself has a meaning as an act of copying creations and / or products. The unlawfully related right to obtain economic benefits from the work of others. Piracy here certainly harms others because it acts or claims other people's creations without permission. Due to today's technological advancements, it is easy for someone to piracy or duplicate someone else's song work to claim to be his personal own. This is certainly detrimental to creators who have exclusive rights.

Another proof of the increasing technology is that people, especially among young people, can be creative according to their skills and interests in music according to their conscience (such as reggae, pop, rock, and

¹³ Teguh Wibowo Rahul Oscarra Duta, "Perlindungan Hukum Terhadap Pembajakan Lagu Anak- Anak Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Justitiable* 5, no. 2 (2023): 6, <https://ojs.ejournalunigoro.com/index.php/JUSTITIABLE/article/view/568/426>.

¹⁴ Barda Nawawi Arief & Muladi, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 1984).

others)¹⁵. Someone today no longer downloads music on google that requires large storage, or even open youtube to just listen to music. However, now there is a green application called 'Sportify' that can be enjoyed by the audience if they want to listen to songs or podcasts. But unfortunately, not a few piracy occurs in this application, by uploading someone else's or even changing the tune of someone else's song which is then claimed to be the creator. This is certainly not only detrimental, but also very detrimental to the original creators because they do not get economic rights. This violation is contained and discussed specifically in Law No. 28 of 2014 concerning copyright. However, piracy is regulated in Law No. 19 of 2019 concerning Electronic Information and Transactions.

The problem of copyright piracy in the digital realm needs to be anticipated so that the incident does not repeat. Preferably, the Director General of IPR of the Ministry of Law and Human Rights who is responsible for IPR, especially regarding copyright, can collaborate with related ministries, namely the Ministry of Communication and Information of the Republic of Indonesia to find a solutive concept in solving issues that occur because in this case the Ministry of Communication and Information is responsible for internet supervision so that cross-sectoral online areas need to be considered and then protected.

Protection of the copyright of musical works must be done comprehensively, not just a partial effort. This includes the establishment of institutions responsible for overseeing online media, applications, and other related aspects to prevent infringement of intellectual property rights. Collaboration between the two ministries is needed for more effective protection programs. Previously, protection efforts had not been maximally successful, as can be seen from the changes in law related to copyright infringement from 1982 to Law No. 28 of 2014. The establishment of the agency involves various sectors, including information technology, law, and

¹⁵ Agus Dimiyati, "Tinjauan Yuridis Terhadap Perlindungan Hak Cipta Dalam Penggunaan Karya Cipta Musik Dan Lagu Karaoke," *Hukum Responsif* 7, no. 1 (2018), <https://jurnal.ugj.ac.id/index.php/Responsif/article/view/1111>.

cyber teams, to ensure better security. It will conduct data tracking and provide notifications to exclusive rights holders automatically, as well as receive online reports for follow-up. The decision to proceed with the complaint will be the responsibility of the creator.

This means that a new body formed and formulated to combat copyright piracy, such as the Copyright Piracy Security Agency (BKPHC), should not cause pros and cons in the community because the institution will be formed in accordance with existing regulations so that its duties can be carried out optimally and leave aside formalities.¹⁶ This is an ideal and solutive concept that should be immediately considered to deal with piracy of someone else's copyrighted work in order to obtain economic rights that will have an impact on the loss to the creator.

Conclusion

Unlawful acts in the context of piracy and song claims pose a serious challenge to copyright protection and the sustainability of the music industry in the current era of disruption. In this study, we found that song piracy not only violates the law, but also threatens the economic well-being and creativity of music creators. Copyright is not just an exclusive right, it also includes moral rights and economic rights that must be effectively protected by the state.

Legal protection of copyright must be preventive and solutive, involving cross-sectoral cooperation between governments, the music industry, and law enforcement agencies. Integrated and comprehensive efforts are needed in tackling piracy, including public education on the importance of respecting intellectual property rights, increased supervision of digital platforms, and strict law enforcement against copyright violators.

¹⁶ Oksidelfa Yanto, "The Concept of Copyright Protection of Music Works in the Legal Realm of Intellectual Property Rights", *Journal of Legal Ideals* 3, no. 1 (2015): 112.

In addition, the concept of solutive legal protection must be able to accommodate the dynamics of technology and the growing trend of digitalization. The establishment of a specialized body or agency, such as the Copyright Piracy Security Agency (BKPHC), can be a concrete step to effectively handle piracy cases and reduce losses for music creators.

In this context, copyright protection is not only a legal issue, but also a foundation for creating a fair and sustainable ecosystem for music industry players. Through cooperation and policy innovation, it is hoped that copyright protection can provide better protection for music creators and encourage the creation of a conducive environment for the future development of the music industry.

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