

STATE'S LEGAL PROTECTION TO COPYRIGHT HOLDERS OF SONGS IN RELATION TO THE ONLINE SONGS PIRACY

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Abstract

Indonesia has a law regulating about copyright, namely Law No. 28 Year 2014 on Copyright. This law gives legal protection towards copyright infringements. However, the number of piracy of songs through online sources has been increasing rapidly. Song is a subject under copyright concept, hence, is protected by the copyright law. The piracy of songs gave disadvantage for the song writer, the singer, the recording label, and other related parties. This irresponsible behavior is difficult to tackle because of it is conducted online and free and netizens somehow are capable to pirate songs no matter how it is banned. This situation leads to the question on how the Indonesian government provides the protection and conduct to eradicate piracy of songs through internet.

Keywords: copyright, copyright infringement, online, state's legal protection

Abstrak

Indonesia memiliki undang-undang terkait hak cipta yakni Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta. UU ini memberikan perlindungan hukum atas pelanggaran hak cipta. Akan tetapi, jumlah pembajakan lagu melalui sumber daring meningkat pesat. Lagu adalah objek yang dilekatkan hak cipta dan merupakan objek dari UU Hak Cipta. Pembajakan lagu secara daring memberikan kerugian bagi penulis lagu, penyanyi, label music dan pihak terkait lainnya. Perilaku tidak bertanggung jawab ini sulit untuk dihentikan sebab dilakukan secara daring, gratis, dan orang tetap dapat membajak music secara daring walau telah diblok. Situasi ini menimbulkan pertanyaan tentang bagaimana Pemerintah Indonesia menyediakan perlindungan dan tindakan pencegahan atas pembajakan lagu secara daring.

Kata kunci: Hak Cipta, Pelanggaran Hak Cipta, Lagu, Daring, Perlindungan Negara

INTRODUCTION

Copyright is an exclusive right for the creator or the recipient of the copyright to announce or reproduce his creation or

give permission for it to not reduce limitations according to the regulations of

the copyright law in force⁴³. Exclusive rights in this case is the right to announce or reproduce a creation.

According to the Berne Convention, the principle of automatic protection is the grant of legal protection should be given directly without having to meet any requirement⁴⁴. In article 64 paragraph 2 of ACT No. 28 2014 explained that the registration of creation instead of the creator is a must to get copyright protection and cause a creation since there was creation.

Copyright protection in the internet media have been regulated in article 11 paragraph 1 of ACT No. 28 by 2014 about copyright which reads the announcement is reading, broadcast, exhibit, a creation by using any tool either electronic or non electronic or perform in any way so that a creation can be read, heard, or seen other people. It can be concluded that when the announcement of a creation on the internet without permission from the holder of its exclusive rights and in its spread of

electronic instruments like computers is a violation of copyright.

The Act download songs via the internet into the scope of Act No. 8 of 1999 on the protection of consumers because in the legislation described in article 1 paragraph 2 that the consumer is every one user of goods and/or services available in the community, both for the benefit of themselves, their families, other people or other living things and not to be traded. Items in the Act is intended as a good move or not object moves that used to be traded or exploited by consumers. So the song download on internet activity can be said to consume goods commercial. In the legislation described the owner of the goods entitled to receive pay when goods are traded or exploited his property for an interest.

The deed to download or download mp3-formatted songs via the internet if the purpose for the public or for commercial interests, then it becomes a criminal action stipulated by article 112 of LAW No. 28 by 2014 on copyright (law HC). If the deed is to download an mp3 song's goal is to be enjoyed or his own interests, then such a feat can also be categorized under copyright infringement when a reasonable economic interests adversely from the creator or copyright holder.

Elements of copyright infringement in article 113 of ACT No. 28 by 2014 are

⁴³ DJKI, Memahami Hak Cipta, from <http://www.dgip.go.id/hak-cipta> . Accessed, March 21th 2016, 14.34.

⁴⁴ Circular 38A: International Copyright Relations of the United States (PDF). U.S. Copyright Office. 2014. p. 2. Retrieved 22 April 2016. The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886.

as follows 1. Every person, every person is anyone, so it can be addressed to anyone, in this case is the perpetrator or download downloader. The perpetrators of the downloader that has may be subject to liability and not worn or forgiving criminal removal reason meet the elements of whoever. 2. Purpose, elements of "knowingly" met with it does the download of the song with the intention of getting the songs that have been downloaded. 3. Without the right, without the right here means have no right to do such a deed. The copyright is owned by the copyright holder. The copyright holder is the creator as the owner of the copyright, or parties who accept the rights of the creator, or other parties which received more rights. In this case, without the transfer of any right or power of the creator or copyright holder then the deed committed by a download is without any rights. 4. Perform any act that is intended to deed can download songs on the internet dam spreading or reproduce causing economic losses of the creator. The act here is reproduce, by download. Reproduction is the addition of a number of things of the creation, either in whole or part that very substantially by using the same materials, nor does the same, including the mengalihwujudkan permanently or temporarily.

In article 40 paragraph (1) grain d UU HC protected, creation is a creation in the fields of science, art, and literature, which includes the song or music with or without text (one of them). In this case, means the creation of protected include songs that are downloaded by Downloader.

But of course, the download can be said to do a copyright violation is if it meets the elements of copyright infringement as aforementioned to do download songs through the internet. If it does not meet any of the elements, then it cannot be said that the perpetrators had committed copyright infringement.

Royalty payments made for the use of a creation to the copyright holder. The users are obliged to request permission and pay royalties are the parties that make the songs and performs the song on the activities of the non-commercial use.

When a copyrighted work is used for the benefit of its own there is no obligation to pay royalties. Who may be prosecuted in this case is the payment for the product works, not over copyright, so it's not related to royalties. In addition, the purchase of a work or a song is in product purchase that song alone, not a copyright on the song.

Copyright violators may be subject to criminal proceedings under article 113 paragraph 1 Copyright ACT, namely the

longest imprisonment of one year and/or a maximum fine of one hundred million dollars.

In article 32 paragraph 1 of the ACT ITE, set restrictions for any person who deliberately and without rights or against the law in any way alter, add, subtract, do a transmission, damage, remove, move, hide an electronic information and/or electronic documents belonging to other persons or property of the public. Article 32 paragraph 2 of the ACT governing the prohibition of ITE for every person who deliberately and without rights or against the law in any way move or transfer information Electronically and electronic document or an electronic system to another person who is not entitled.

In article 25 of law No. 11 of 2008 of the information and electronic transactions (ITE), namely electronic information and electronic document drawn up or become intellectual works, internet sites, and intellectual works that exist therein are protected as intellectual property rights based on the provisions of the legislation. So it is evident that the copyright in the form of information already protected by legislation.

The development of information technology is increasing from day to day. Developing information exchange faster because information technology is

increasingly sophisticated, the technology such as the internet. With the internet, the user can easily obtain information. Currently, the internet has become the human needs and interests of the community against other media besides the internet decreased drastically.

The Internet brings many benefits to its users, but the internet is also having a negative impact. A common phenomenon that occurs indonesia is the large number of copyright infringement no longer through the piracy of CDs, VCDs, but along with the development of technology, piracy can be done via the internet. Internet users can take a song or download songs for free in the download providers and sites is kept in digital form⁴⁵.

View of the phenomenon, the specifications of the digital copyright in the work is the idea that is obtained is poured with the help of digital technology. The resulting copyright works in digital media, it does not pass through the process of the transfer form or conversion.

Along with the progress of the era of digitization, digital piracy is in principle reproduce a product without the express permission of the copyright holder. The

⁴⁵ Angriawan Cahyo Pawenang, , "Indonesia Terlalu 'dibajak'", from http://www.kompasiana.com/angripawenang/indonesia-terlalu-dibajak_54f381e2745513902b6c784b Accessed, March 21th 2016, 15.12.

problem nowadays is that digital products can be copied or reproduced very easily. For example, an audio data that is stored in other formats require the space of 50 megabytes, whereas when using the MP3 format, the space that it takes only seperlimanya, which is about 5 megabytes⁴⁶. Once established in MP3 format, and then convert it into a CD so it could be copied and sold at low prices. An average CD contains eleven to twelve tracks with a total of 650 MB of data.

After going through the process of conversion into MP3, big data of each song ranges from five to six megabytes. After reaching a magnitude of the compressed data, this data can be easily distributed over the internet⁴⁷. Things that are a factor why piracy languid occurred in Indonesia. Because only with the quality of internet network, someone can get a song and use for the benefit of the economy.

The phenomenon of piracy and memperjual traded songs already languid, many persons who sell pirated CDs or VCDS in shops or malls in Indonesia, for example, the investigators in 1988, Directorate General of intellectual

⁴⁶ Eric Berger, "The Legal Problems of MP3", Temple Environmental Law and Technology Journal (Fall, 2004), page 2.

⁴⁷ Lori A. Morea, "The Future of Music In a Digital Age: The Ongoing Conflict Between Copyright Law and Peer-to-peer Technology", Campbell Law Review (Spring, 2006) page 195.

property rights along with the BSA (Business Software Association) and the police carry out a Penindakan infringement of copyright over the Software in 2 places in Jakarta, namely Mall Ambassador and Queens Plaza on Thursday (5/4). Penindakan in Mall Ambassador and Queens Plaza led by IR. Johno Supriyanto, m. Hum and Salmon Archanam1989, sh. M.Si, and 11 people in 1988, HKI. Penindakan this was done due to the existence of a report from the BSA (Business Software Association) on 10 February 2012 to the offices of the Directorate General of intellectual property rights that the presence of CD Pirated Software being sold freely in the Mall Ambassador and Queens Plaza in Jakarta. In this activity successfully in sita CD Software as much as 10000 copies of 2 different places. CD software is regularly sold by the vendors that are in the Mall Ambassador and Queens Plaza for Rp. 50,000-IDR 60,000 while the original price of this software could reach Rp. 1,000,000 per software⁴⁸.

In the activities of piracy and memperjual traded songs for free, will give rise to advantages and disadvantages against the creator. The advantage against the creator is the creator-owned track can

⁴⁸ Humas Ditjen HKI, Penindakan hak cipta atas software, from <http://www.dgip.go.id/penindakan-hak-cipta-atas-software> ., Accessed, March 21th 2016, 14.52.

be heard by the community easily though not a few communities that acquire it by downloading or ploughing songs illegally through the internet or buy in store or kerb is selling a lot of CDs or pirated VCD. The losses experienced by the creator is economic loss, songs created by its creator to be enjoyed by anyone who hears it. So has the economic rights of copyright works, the person in the form of the song is mandatory. Easy it is to access these sites the advantages obtained against internet users who like to have the song without buying for his own interests rather than to its creator who has the rights to royalties.

According to Angela Bowne (1997-141) as quoted by Ok. Saidin, a through the internet violates copyrights if the people that download the contents of the site are open and then save it to your computer's hard disc⁴⁹. This has resulted in economic losses against the holder of the copyright or the owner of the song because the song belongs to the creator but the creator did not receive any benefit or royalties from such activities.

Until now there has never been a proven abuser copyright infringement via the internet are arrested and processed through the court process. Whereas

⁴⁹ Ok. Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, (Jakarta: PT. RAJAGRAFINDO PERSADA,2010), page 521-522

according to the recording industry association of Indonesia (ASIRI). This Association had conducted a study in 2013, which says that there are 430 thousand people per month visited to 10 pirated music website, and they downloaded 6 million music files illegally⁵⁰. Of course this raises concern over Indonesia's activities against piracy of songs, this proves that the still weak law enforcement efforts against piracy in Indonesia chiefly through the medium of internet piracy.

When we look at the relationship among musicians, the internet, and consumers. In today's internet era, there are advantages and disadvantages against the sale of music through media platforms. The upside is the consumer can easily find songs it wants through paid media platform. Track content sales via the internet also requires costs are very cheap and fast to conventional sales dibandingkan. Digital content is also more easily reproduced.

The losses brought about by the current track in the sale of digital content leads to the musician or songwriter itself, because the piracy of content in the digital

⁵⁰ Hani Nur Fajrina, *Berapa lagu yang dibajak orang Indonesia setiap harinya?*, from <http://www.cnnindonesia.com/teknologi/20151123170001-185-93542/berapa-lagu-yang-dibajak-orang-indonesia-setiap-harinya/> Accessed, March 21th 2016, 15.08.

age was further increased, in this case, the copyright will increasingly lose its power in the community⁵¹. The musicians must be more creative in producing digital content, because on the one hand, musicians can easily promote their copyrighted works, on the other hand musicians will lose their economic rights over their copyrighted works because they can be downloaded for free on the internet. The intention of the musicians to promote their music copyright works to be enjoyed by the consumer without infringing copyright⁵². Measures of innovation for the dramatic works to promote musicians by utilizing social media to promoted their copyright works. The musicians making the private accounts with social media, they share copyrighted works the song into the social media accounts. So if consumers want to enjoy the work of their copyright, the consumer must open the link to the official social media belong to the musicians. Automatically, this can be called because it has legal permission from the creator or musician.

⁵¹ Ario Tamat, (Music Monday) Membangun Ekosistem Musik Digital Baru, from <https://dailysocial.id/post/music-monday-membangun-ekosistem-musik-digital-baru/> Accessed, March 21th 2016, 15.10.

⁵² Windra Putranto, Musik digital : Ancaman mematikan pada industri musik Indonesia, from http://www.kompasiana.com/dierga130/musik-digital-ancaman-mematikan-pada-industri-musik-indonesia_551f8108a33311a740b65b88 Accessed, March 21th 2016, 15.14.

ANALYSIS

The issue related to the piracy of online music and the copyright infringement can be seen through the perspective of ASIRI (Asosiasi Industri Rekaman Indonesia). ASIRI is an association which consists of 69 record company located throughout Indonesia where these companies are companies that produce even distribute music production of Indonesia and foreign music. 95 percent record companies active in Indonesia is a member of ASIRI. Many of the services provided by ASIRI to its members, namely:

1. Piracy prevention efforts inside and outside the Court
2. Build, develop, promote, and defend the interests of the recording industry
3. Collective efforts of royalty for the rights owned by the record company
4. Organize the settlement of disputes among the members in a container of deliberation to reach a mufakat.

ASIRI actively providing education as well as campaigns to love music Indonesia and anti-piracy campaigns that protect the uplifting music of Indonesia. ASIRI also supports the development of creativity in the music industry by

providing annual music awards like gift of music Indonesia.

In addition, ASIRI has affiliate companies, namely PT ASIRINDO which at all times strive to represent the Member of ASIRI license collectively so that by becoming a member of ASIRI, they at once benefit is received income paid by the whole user music throughout Indonesia to PT ASIRINDO⁵³.

Accoding to Mr. Ventha Lesmana as General Manager of ASIRI, piracy in Indonesia is an issue because piracy is increasing every year. Every effort is made to eliminate piracy turns out to have not been fully effective. But Mr. Ventha very optimistic it can eliminate piracy depends on his will alone. If there is a political will from the Government, piracy will surely be lost, trade places any pirated CDS could be closed and lost. As an example of real events that exist in Indonesia, in the past when launching busway in Jakarta. The Governor of Jakarta when it confirms to shut down all trading in future market Glodok. A week before and after the launching of the busway, all such trade is really close. This proves that if there is political will from the Government, everything can happen.

The following data related to legal product ASIRI and pirated products sold⁵⁴ :

Table 1

Tahun	Legal Product (on million copy)	Pirated Product (on million copy)
1996	77,55	23,06
1997	67,35	112,83
1998	41,65	137,2
1999	64,46	181,5
2000	52,5	240,1
2001	44,03	290,81
2002	34,27	363,51

Source : ASIRI

At 2013, request a PPN sticker ASIRI stickers have is 12,051,110. In 2014 is 8,973,650. The year 2015 is just 5,167,400. chip PPN sticker requested.

In terms of the number of pirated CD sellers in Indonesia, Mr. Ventha stated that any such activities very influential towards the record industry in Indonesia. This is because the record company in Indonesia that memproduksi original CD for sale to the public so that the public can enjoy the work of music musician Indonesia and the company benefit from the results of the sale of the CD. But due to

⁵³ ASIRI, Pengertian ASIRI, from www.asiri.co.id Accessed April 20th, 2016, 17.58

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http://library.binus.ac.id/eColls/eThesisdDoc/Bab1/Bab%201_10-25.pdf Accessed April 20th 2016. 18.08

piracy, the majority community opted to buy pirated CD because the price is very affordable compared to the price of the original CD. According to Mr. Ventha, the websites of the provider free download should be questioned are totally free and get a license from the creator or copyright holder of the song itself, because in point of fact, the download activity by some of the sites are not free, remain unpaid, due to legal sites that provide free download service has been working closely with the parties record label incorporated in Member of ASIRI.

These sites say free just for their marketing strategy to attract internet users to visit the site and get the song from that site. That becomes a problem when there is an illegal sites that don't get the license, means those sites already breaching copyright because disseminate songs without permission from the copyright holder, of course there is also the element of commercial interests therein.

Copyright ACT No. 28 by 2014 are already better than the previous law, he said, because in the Act, legal protection of the creator more detail, the period of the economic rights of creators are also extended. Moral rights and economic rights of the creator more cared for. In the Act Government also set about trading of pirated CD, and also stated that the song is the intangible things move so that it could

be the object of a fiduciary guarantee by the bank. This is the form of the Government's efforts to tackle piracy even though there hasn't been a real implementation in the field. In terms of the producer, the recognition in the new Act are more powerful because it is set on license from collective management institutions in terms of broadcast performance on the internet, the old Act have not set about it.

The form of a contribution to overcome the hijacking ASIRI ASIRI is doing in collaboration with the police for trading pirated CD place mengrazia, but it didn't last long because a few months later, the place of trade that return to activity. For digital format, ASIRI teamed up with DIRJEN HAKI and KEMENKOMINFO to block illegal sites that exist on the internet. By 2015 and then there are 22 illegal site that is blocked, it will become a regular activity of the Government to continue to memblikir illegal sites on the internet.

On February 11, yesterday, ASIRI and GAPERINDO (Gabungan Perusahaan Rekaman Indonesia) are working with PIMRI (Perkumpulan Industri Media Replika Indonesia) to produce a CD of songs that are economical, physical release original sold at IDR 5000.0 per kepingnya. The event was held in Glodok are indeed historically known as one of the central

selling pirated recordings of physical product assortments. PIMRI, containing five factories which during the printing and duplicating CD, VCD, and pirated DVD to sell traded in the country. the factory is given permission to trade physical release with some specific terms, such as the price has been set, the limitation amount of songs in one package.

In terms of the Division of royalties, all the copyright holders (songwriter) will get their royalty rights in accordance with the agreement of the industry. As for royalty related rights (performers) are given depending on the magnitude of royalties on a record deal each record company.

The constraints experienced by our country at this time in tackling piracy was political from the Government itself. The beginning of 2014 managed to ask for time to meet with Mr. Jokowi, ASIRI was accompanied by Assistant suggests why piracy is on the rise and the Government like semkin not serious in addressing piracy, after that meeting took place at 10 am, 2 pm President Mr. Jokowi directly ordered to do massive raids. From the beginning of the real effort from the Government to tackle piracy, evident since the incident, there are a few shops that closed a pirated CD sellers for 6 months.

Not yet rated Governments effective because the Government does not

see this piracy is something that urgency. Sellers of pirated CD that absolutely no pay from the main activity, whereas from the industry, in making 1 copies must pay taxes first before it is marketed. Until recently the music world could survive without government assistance.

Solutions to prevent hijacking is strengthening law enforcement to persons- persons who are not responsible for giving rise to effect deterrent, because the Act is already strong in his implementation of the regulations, in any field should be strong. Currently, distribution of music has changed the trend, because official sales outlets CD Disc Tarra already officially closed, currently the community prefer the digital format, so music didistribukan through digital media such as applications, sportify, soundcloud joox because such applications are applications that are legal to distribute the music because those applications are already working together and obtain the license from the label-record label that existed in Indonesia.

CONCLUSION

The Government granted legal protection to the creator or the copyright holder is the legal protection of preventive and repressive legal protection. In preventive, creator or copyright holder is protected by moral rights and economic rights. The economic rights in the form of

the publication creation, duplication, pengadaptasian, announcement of creation. Copyright can be used as an object of fiduciary guarantee. A period of economic rights remain in the hands of the creator or copyright holder as long as the creator is still alive and will last for 70 years after the creator's death. In the agreement, copyright automatically back in creator after reaching a period of 25 years. Moral rights will be attached permanently to the creator, but moral rights can be transferred by a will or other reasons in accordance with the legislation after the creator's death. In terms of royalties, the Government has made the collective management institutions to set up provisions regarding the receipt of royalties against the creator or copyright holder.

The Government has tried to tackle piracy by blocking illegal sites download free service providers, Government and also perform raids on pirated CD trade site. The Government has also been disseminating to the public campaign to buy the original product so that piracy can be eliminated. Socialization is also done to the creator or copyright holder about the importance of registering creations, as well as on the community of culture to appreciate the work of the nation's children so that the enforcement of intellectual

property rights can be implemented properly.

In the repressive, legal protection is granted to the Government of the creator or copyright holder is dispute resolution can be done through the alternative dispute resolution, arbitration, the Court of Commerce. Creator who felt wronged could also ask for a temporary assignment to the Court of Commerce. Provisions of criminal copyright infringement has arranged everything in UUHC 2014.

The Government has not effective in implementing the regulations that are in 2014 UUHC because up to now there are still many pirated CD sellers look are free to sell pirated products without any strict and cruel actions of the Government. In digital form, until today there are still many illegal sites have sprung up that provide services free download although the Government is already trying to block other illegal sites. It can be concluded that the implementation of UUHC 2014 in society have not been effective because it is still the large number of violations that occur in the community and there has been no decisive action from the Government to tackle the problem of piracy.

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