



The provisions on the moral rights and economic rights of music creators in the event of privacy violations according to law no. 28 of 2014 on copyright

Rahmat Darmawan Tahar¹, Hery Firmansyah²

¹ Master's of Notary, Faculty of Law, Tarumanagara University, Jakarta, Indonesia

² Faculty of Law, Tarumanagara University, Jakarta, Indonesia

Abstract

This study examines the violation of moral and economic rights in musical works, especially when the creator's privacy is infringed. Moral rights protect the creator's integrity and identity, while economic rights provide exclusive privileges for commercial exploitation of the work. In cases of infringement, such as unauthorized commercial use, creators can file legal claims under Law Number 28 of 2014 on Copyright. Legal sanctions, both criminal and civil, are detailed to protect creators, including compensation and cessation of infringement activities. The research employs an empirical juridical approach to analyze the application of law in society. Data were collected through literature studies, observations, and interviews, then qualitatively analyzed. Results indicate that copyright infringements, especially in the digital realm such as on YouTube, often occur due to public ignorance of copyright laws, leading to harm to creators' moral and economic rights. Law Number 28 of 2014 mandates royalty payments as protection for economic rights. Violations, including unauthorized duplication or claims over others' works, may result in penalties of up to IDR 4 billion or imprisonment of up to 10 years. Furthermore, creators' moral rights, such as credit attribution and prohibitions on modifying works without consent, are strictly protected. Infringements on creators' privacy are considered additional violations, particularly in the digital domain. Creators may pursue legal actions, including invoking the Electronic Information and Transactions (ITE) Law. Public education on respecting copyright is crucial to reducing future violations. This study concludes that respect for creators' moral and economic rights is essential to ensuring fairness in the use of musical works. A combination of legal protections, royalty payments, and public education can prevent violations and promote a fair and ethical music industry.

Keywords: Copyright, moral rights, economic rights, copyright infringement

Introduction

Violations of creators' moral rights, such as claiming someone else's work or uploading without permission, constitute illegal acts under Law Number 28 of 2014 on Copyright. Moral rights safeguard the creator's integrity against false claims or unauthorized use that may result in legal violations.

A notable case of copyright infringement is the Surabaya District Court Decision No. 7/Pdt.Sus-HKI/Cipta/2019/PN Niaga Surabaya, where PT. Kastari Sentra Media sued CV. Kharisma Mitra Semesta and Toko Metro. The court found the defendants guilty of copyright infringement for using songs without permission, qualifying as unlawful acts.

Infringements frequently occur in commercial contexts, such as re-uploading works to platforms like YouTube without crediting the original source or obtaining the creator's written consent. This contravenes Article 12(1) of the Copyright Law, which prohibits commercial use of works without the creator's or their heir's consent.

Ignorance about copyright violations is prevalent. Claiming others' works without the creator's knowledge infringes both moral and economic rights, especially when done for unauthorized commercial purposes.

This research, titled "Provisions of Moral and Economic Rights of Musical Works When Privacy is Violated," delves deeper into this issue.

Research Methodology

The study uses an empirical juridical approach to explore how laws operate within society, evaluating their effectiveness, compliance, and the influence of social issues on legal regulations. Data sources include literature reviews,

observations, and interviews with respondents and informants from field studies. Data were qualitatively analyzed to produce descriptive-analytical insights from written and oral responses, examined as a cohesive whole.

Research Findings

When a creative work takes tangible form, it becomes highly vulnerable to infringement. An act is deemed a copyright violation when it infringes upon the exclusive rights of the creator or copyright holder. One legal remedy is reporting the infringement. Under Article 96(1) of Law Number 28 of 2014 on Copyright, creators suffering economic losses are entitled to compensation. Civil lawsuits for damages can be filed in the Commercial Court under Article 100(1). Compensation may include revenue derived from the work, either partially or fully, as per Article 99(2). In addition to compensation claims, copyright holders may request seizure of the infringing work and cessation of activities like distribution, duplication, or public announcement through interlocutory decisions as stipulated in Article 99(3). Creators may also pursue criminal charges under Article 105 if the infringement involves unauthorized uploads for commercial purposes.

In accordance with Article 105 of Law Number 28 of 2014 on Copyright, creators also have the right to pursue criminal charges. Uploaders who upload videos without the creator's permission for commercial purposes can face criminal sanctions under Article 113(3) of Law Number 28 of 2014 on Copyright, which stipulates a maximum imprisonment of 3 years and/or a maximum fine of IDR 500,000,000.00 (five hundred million rupiahs).

The penalties for violating economic rights are outlined in Chapter XVII (Criminal Provisions) of Law Number 28 of 2014, starting from Article 112 to Article 120. For instance:

1. Any person who, without authorization, commits a violation of economic rights as referred to in Article 9 paragraph (1) letter i for commercial use shall be subject to imprisonment for a maximum of 1 (one) year and/or a fine of up to IDR 100,000,000 (one hundred million rupiahs).
2. Any person who, without authorization and/or without the consent of the creator or copyright holder, commits a violation of the creator's economic rights as referred to in Article 9 paragraph (1) letters c, d, f, and/or h for commercial use shall be subject to imprisonment for a maximum of 3 (three) years and/or a fine of up to IDR 500,000,000 (five hundred million rupiahs).
3. Any person who, without authorization and/or without the consent of the creator or copyright holder, commits a violation of the creator's economic rights as referred to in Article 9 paragraph (1) letters a, b, e, and/or g for commercial use shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of up to IDR 1,000,000,000 (one billion rupiahs).
4. Any person who fulfills the criteria as referred to in paragraph (3) in the form of piracy shall be subject to imprisonment for a maximum of 10 (ten) years and/or a fine of up to IDR 4,000,000,000 (four billion rupiah).

Meanwhile, Article 116 stipulates sanctions for the unauthorized commercial use of copyrighted works in the context of performers, as follows:

1. Any person who, without authorization, commits a violation of economic rights as referred to in Article 23 paragraph (2) letter e for commercial use shall be subject to imprisonment for a maximum of 1 (one) year and/or a fine of up to IDR 100,000,000 (one hundred million rupiahs).
2. Any person who, without authorization, commits a violation of economic rights as referred to in Article 23 paragraph (2) letters a, b, and/or f for commercial use shall be subject to imprisonment for a maximum of 3 (three) years and/or a fine of up to IDR 500,000,000 (five hundred million rupiahs).
3. Any person who, without authorization, commits a violation of economic rights as referred to in Article 23 paragraph (2) letters c and/or d for commercial use shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of up to IDR 1,000,000,000 (one billion rupiahs).
4. Any person who fulfills the criteria as referred to in paragraph (3) and engages in piracy shall be subject to imprisonment for a maximum of 10 (ten) years and/or a fine of up to IDR 4,000,000,000 (four billion rupiahs).

To exercise the economic rights of the copyright holder or creator under Article 9 paragraph (2) of Law Number 28 of 2014 on Copyright, permission from the creator is required. Furthermore, when the work is used for commercial purposes, users are obligated not only to obtain permission but also to pay royalties or compensation to the creator, as stipulated in Article 80 paragraph (3) of Law Number 28 of 2014 on Copyright. The amount of royalties is determined based on the licensing agreement and must adhere to principles of fairness. Royalty payments to the creator constitute part of the economic rights held by the creator.

Under the Copyright Law, musical works or songs are among the creations protected. Copyright includes economic rights, as outlined in Law Number 28 of 2014 on Copyright, which defines copyright (for music or songs) as an exclusive right granted solely to the creator or copyright holder to exploit their work for profit. As an exclusive right, any individual seeking to use a musical work or song for commercial purposes or activities related to commerce must seek permission from the creator or copyright holder. If a musical work or song is used commercially without the creator's or copyright holder's consent, the user is obligated to pay royalties. Royalty payments are mandatory as they involve utilizing a creation protected by law. Failure to comply with these obligations is considered a violation of the law, and individuals who use music or songs commercially without authorization are deemed to have committed an unlawful act and will face legal consequences. In cases of copyright infringement where an individual claims ownership of someone else's song on their platform without the creator's permission for commercial purposes, this act causes harm to both the moral and economic rights of the copyright holder. Such cases are subject to two types of sanctions: civil and criminal penalties.

In addition to the economic rights outlined above, a creator also holds moral rights. These rights are specified in Chapter II (Scope of Copyright), Part Seven (Moral Rights). Article 24 of Chapter II, Part Seven, details the moral rights of every creator, including songwriters, as follows:

1. The creator or their heirs have the right to demand that the copyright holder ensures the creator's name is included in their work (Article 24, paragraph 1).
2. A work may not be altered, even if its copyright has been transferred to another party, unless the creator or their heirs (if the creator has passed away) provide consent (Article 24, paragraph 2).
3. The provisions outlined in paragraph (2) also apply to changes in the title, subtitle, or the inclusion and alteration of the creator's name or pseudonym (Article 24, paragraph 3).
4. The creator retains the right to make changes to their work, provided it aligns with societal norms (Article 24, paragraph 4).

Based on the above, the rights of a songwriter to their compositions include:

1. **Rights as a copyright holder:** This is an exclusive right to publish or reproduce their song. According to the explanatory notes, this includes activities such as translating, adapting, arranging, transforming, selling, renting, lending, importing, displaying, publicly performing, broadcasting, recording, and communicating the work to the public through any medium.
2. **Moral rights** (Chapter II: Scope of Copyright, Part Seven: Moral Rights), which, as outlined in Article 24, include: (a) The right of the creator or their heirs to demand that the copyright holder ensures the creator's name is credited in the work. (b) The prohibition against altering a work, even if its copyright has been transferred, without the consent of the creator or their heirs. (c) The prohibition also extends to changes in the title, subtitle, or inclusion/alteration of the creator's name or pseudonym (Article 24, paragraph 3). (d) The creator retains the right to make changes to their work, provided such changes adhere to societal norms.

3. **The right to file a lawsuit**, as stipulated in Article 55 (Chapter X: Dispute Resolution). It is stated that the transfer of copyright over the entire work to another party does not diminish the creator's or their heirs' right to file a lawsuit if, without their consent: (a) The creator's name is omitted from the work. (b) The creator's name is falsely attributed to the work. (c) The title of the work is changed or altered. (d) The content of the work is modified.
This right to file a lawsuit is closely related to the moral rights mentioned in Chapter II, Part Seven.
4. **The right to transfer copyright**, as stated in Article 3, which stipulates that copyright can be transferred, either entirely or partially, through: (a) Inheritance; (b) Grants; (c) Wills; (d) Written agreements; or (e) Other causes permitted under prevailing laws and regulations.
5. **The right for their work to be protected under criminal provisions**, as outlined in Article 72 of Law Number 28 of 2014 on Copyright.

If the privacy of a music creator is violated, it can be considered an additional offense beyond copyright infringement. Creators have the right to protect their privacy through various legal channels, depending on the jurisdiction and context. In Indonesia, the Electronic Information and Transactions (ITE) Law can also be used to address privacy violations, particularly in cases occurring in the digital realm.

In summary, both moral and economic rights are closely related to respect for the privacy and works of creators. If a privacy violation leads to copyright infringement, the creator can pursue claims both morally and economically to seek appropriate remedies and compensation.

According to Article 9 Paragraph (2) of Law Number 28 of 2014, anyone exercising economic rights must obtain permission from the Creator or Copyright Holder. For commercial use, in addition to requiring permission, users are obligated to pay royalties or compensation to the Creator or Copyright Holder, as stipulated in Article 80 Paragraph (3) of Law Number 28 of 2014 on Copyright. The determination of royalty amounts and the procedures for royalty payment are based on licensing agreements between the Copyright Holder or related rights owner and the licensee.

Trio Yusandy, an academic, emphasized the importance of education and public awareness campaigns to enhance public knowledge and understanding of copyright. This is expected to reduce copyright violations in society. Evidence of this need is seen in the significant number of people who lack understanding of copyright laws and the frequent occurrence of individuals claiming or uploading others' musical works for commercial purposes without realizing it constitutes a violation.

Conclusion

The conclusions of this study indicate that violations of moral and economic rights in musical works are serious issues requiring legal attention. Such violations, including the unauthorized use of works for commercial purposes or claiming ownership of another's work, contravene Law Number 28 of 2014 on Copyright. Moral rights safeguard

the creator's integrity, while economic rights grant creators exclusive privileges to profit from their works.

This study also underscores the importance of legal enforcement, both through civil and criminal actions. The law imposes strict sanctions, including compensation, confiscation of the work, imprisonment, and substantial fines, to deter offenders. Additionally, the obligation to pay royalties serves as a crucial mechanism to protect creators' economic rights.

In the digital era, copyright infringements are increasingly prevalent, especially on online platforms. This highlights the need for stronger protections for creators' privacy, which may also be addressed through the Electronic Information and Transactions (ITE) Law to tackle digital violations. Public education on copyright is essential to reduce infringements stemming from a lack of understanding.

Overall, this study emphasizes the importance of respecting creators' moral and economic rights and calls for collective efforts to safeguard creative works through legal enforcement, public education, and fair royalty payments. These measures are expected to foster an environment that supports justice and ethics in the music industry.

References

1. Amiruddin dan Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Matarram: Divisi Buku Perguruan Tinggi Raja Grafindo, 2003, 19.
2. Salim Dan Erlies Septiana Nurbani. *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*, Jakarta: Rajagrafindo Persada, 2017, 20.
3. Amiruddin dan Zainal Asikin. *Pengantar Metode Penelitian Hukum*, Depok, cetakan ke10: Raja Grafindo Persada, 2018, 82.
4. Bambang Sunggono. *Metode Penelitian Hukum*, Jember: Rajawali Pers, 1996, 145.
5. Soerjono Soekanto. *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia, 2014, 32.
6. Ronna Sasuwuk. "Suatu Tinjauan Tentang Hak Pencipta Lagu Menurut Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta", *Jurnal Lex Privatum*, 2015:3(3):111.
7. Law Number 28 of 2014 on Copyright
8. Law Number 1 of 2024, which is the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions.