



## COPYRIGHT PROTECTION OF SONG WORKS DIGITALIZED THROUGH THE INTERNET

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**Abstract :** The purpose of this research is to find out and analyze the application of copyright protection to songs that are digitized based on Law Number 28 of 2014 concerning Copyrights. The research method uses normative legal research that uses primary and secondary legal materials. The processing of legal materials is basically a series of activities to systematize or classify written legal materials to facilitate the analysis of primary legal materials. The results of the study found that technology protection for digital creations is an important thing, as an effort to protect digital creations from acts of copyright infringement. Copyright is a part of intellectual property rights. The concept of copyright protection itself concerns: in the form of what objects are protected, how the protection occurs, and the extent to which the protection is given. Suggestions for research The government should conduct socialization, by inculcating habits to the wider community to understand the existing norms. The socialization is nothing but to raise public awareness that uploading a file that is at work on the internet without permission is not justified and violates the law.

**Keywords:** Copyright Protection. Song Work. Digitalized. Internet

### 1. Introduction

Song or music copyrighted works, films, software are the most serious targets of piracy in the last twenty years<sup>1</sup>. The benefits of information and communication technology in addition to having a positive impact are also realized that they provide opportunities to be used as a means to commit new crimes so that protection efforts are needed. So it can be said that information and communication technology is like a double-edged sword<sup>2</sup>.

Through information technology and telecommunications, intellectual works in the form of computer programs and copyrighted objects in communication media can very easily be violated, modified and duplicated. One of them is the number of voice (radio) advertisements and the act of announcing copyrighted works in the digital music era which is very difficult to monitor. The copyright of the song must be protected from parties who have no good faith, such as reproducing or announcing that it is used for commercial purposes, and without the author.

The internet with various advantages and conveniences turns out to not only provide benefits to business actors, but also causes losses that have an impact on unlawful acts such as data security and privacy as well as legal protection for the human rights of every netter. With the

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<sup>1</sup> Kajono, 2012, *Perjanjian Lisensi Pengalihan Hak Cipta Program Komputer Transaksi Elektronik*, PT. Alumni, Bandung, p. 66

<sup>2</sup> Hendry Soelistyo, 2011, *Hak Cipta Tanpa Hak Moral*, Rajawali Pers, Jakarta, p. 46



advancement of digital technology, it turns out that nowadays it has an impact on increasing copyright infringement in Indonesia. Especially for digital copyrighted works in the form of computer software, digital music, digital films, digital books (e-books), and others.

The development of the internet is indeed unexpected, a few years ago the internet was only known by a small number of people, namely those who have an interest in the computer field. However, in recent years the use of internet services has increased very rapidly. Armed with its advantages, namely in the form of a network that can reach all corners of the world, the internet has also succeeded in penetrating all sectors of human life, from education, trade, health, advertising, to the entertainment sector<sup>3</sup>.

Inevitably, with the internet, many attitudes and human behavior have changed. Something that was not possible in the real world, now it is happening. For example, in terms of freedom of expression, with the internet everyone is able to exercise freedom of expression without any fear of being banned and accused of violating the law. One form of freedom of expression that exists on the internet is the freedom to store, use, produce, distribute, and transmit data. Therefore, it is not surprising that freedom of expression often in reality causes harm to some people, especially copyright holders.

Indonesian music archiving is done through digitization. Digitization or in English called digitizing is a term to describe the process of transferring media from print, audio, or video to digital form. Digitization is carried out to create document archives in digital form<sup>4</sup>. Currently, several recording studios are distributing a collection of songs through the internet. The collection of songs that have been digitized into a digital format can be enjoyed by the public by streaming via Android or iPhone using the Joox, Spotify, Deezer, I-Tunes applications and others.

There are still many copyright violations against songs nowadays, one of which is the violation of song copyrights through internet media, namely in the form of downloading songs through sites without paying on the internet. The act of downloading songs through sites without paying on the internet is not included in the copyright restrictions as stated in Article 44 paragraph (1) of the Copyright Law.

According to data from the NGO that saves the Indonesian music world, Heal Our Music, as many as 160 million people visit one of the free online storage sites and there are 80 million free download activities for a month, Of course, this number does not include free download activities on other sites. Overall, there were 104 million free music downloads on 15 sites that

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<sup>3</sup> H. OK. Saidin, 2004, *Aspek Hukum Hak Kekayaan Intelektual Intellectual Property Rights*), Rajawali Pers, , p. 519

<sup>4</sup> Lailan Azizah, 2012. "Penerapan Digitalisasi Untuk Perpustakaan", *Jurnal Iqra*", Volume 06 No. 02. Oktober



Indonesians frequented for a month. In fact, it is estimated that there are 200 million downloads every month<sup>5</sup>.

Article 9 paragraph (3) of the Copyright Law states: "Everyone, without the permission of the creator or copyright holder is prohibited from duplicating and/or using commercially." The act of downloading songs through sites without paying on the internet is one example of piracy because the perpetrators obtain a work for free or do not pay a certain amount of money to the owner of the song, this is certainly detrimental to the economic rights of the owner of the copyright of the song".

## **2. Method**

The type of research in this writing is the normative legal research. Normative legal research is research that examines document studies, using various secondary data such as laws and regulations, court decisions, legal theory, and can be in the form of opinions of scholars. The things studied in normative legal research include several things such as legal principles, legal systematics, the level of legal synchronization, legal comparisons and legal history.

## **3. Findings And Discussion**

### **a. Copyright Protection for Song Works digitized via the internet based on Law Number 28 of 2014 concerning Copyrights**

Rapid changes in technology towards the advancement of globalization have an impact on almost all aspects of people's lives. If the use of technology is not regulated properly, then there is a tendency for the use of the technology to become out of control which results in a violation of the law. The current era of globalization has become very dependent on technological advances that can create efficiency with a wide area reach without being hindered by national boundaries. One form of technology that has succeeded in answering these needs is internet technology<sup>6</sup>.

Seeing the phenomenon of digital copyright infringement cases that occur in Indonesia today, the Copyright Law Number 28 of 2014 has not fully covered and provided legal solutions for technology-based cases. Downloading songs through free sites on the internet is detrimental to the creator and/or copyright holder. Downloading comes from the word download which means to take, hold something and then be brought, pick up, pick up or quote.

In the case of illegal downloading itself, if we trace whether it is a copyright infringement, we need to first see what the form of illegal downloading is. If the illegal downloading is carried out in large quantities and then used for commercial purposes, it is clear that this is a copyright

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<sup>5</sup> <http://www.bengkelmusik.com/vbfeb14/showthread.php?t=18393>, diakses pada tanggal 20 Mei 2019,

<sup>6</sup> Soerjono Soekanto, 2007, *Pengantar Laporan Hukum*, Cet. 3 Jakarta: UI Press, p. 144.



infringement. If the illegal downloading is carried out only for personal collections and in small amounts it is also included in copyright infringement because it is tantamount to taking other people's work without the permission and knowledge of the owner of the right, even though it is not commercialized<sup>7</sup>. The phenomenon of current technological developments makes the emergence of sites that provide free songs on the internet such as mp3s and others which are objects that must obtain copyright protection based on Law Number 28 of 2014 concerning Copyright because it includes the definition of Copyright. Copyright and the provisions of the laws and regulations. And there are also violations of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

An act can be said to be a copyright infringement if the act violates the exclusive rights of the creator or copyright holder. Copyright is an exclusive right which consists of moral rights and economic rights. In the Elucidation of Article 4 of the Copyright Law it is explained :

“What is meant by "exclusive rights" are rights that are only reserved to the Author, so that no other party can take advantage of such rights without the Author's permission. Copyright holders who are not creators only have part of the exclusive rights in the form of economic rights”

Sites that provide free downloads of songs have violated Article 9 paragraph (1) letter h which states: "the creator or copyright holder as referred to in Article 8 has the economic right to: communicate the work." Against copyright infringement on the internet for sites that provide free song download services that are contrary to Article 9 paragraph (1) letter h which should be punished with imprisonment for a maximum of 3 (three) years and/or a maximum sentence of RP. 500,000,000.00 (five hundred million rupiah).

The process of downloading songs on the internet is a retrieval activity, where song downloads take and move the song files into their cellphones or hard disks without losing the original files that are on the download site, from the process it is known that downloading songs also includes a copying process. Because it has added the number of songs from one file to the internet site for two including the download results. And in fact, the illegal site that is not paid for distributing songs does not contain complete information, only the title of the song and the name of the singer is mentioned, without mentioning the author, record label, and other information.

Song and/or music is one of the protected creations as described in Article 40 paragraph (1) letter d of the Copyright Law. Copyright protection for works in the form of songs or music with or without text is valid for the life of the creator and continues for 70 (seventy) years after the author's death, starting on January 1 of the following year. Meanwhile, copyright protection for works in the form of songs or music owned or held by a legal entity is valid for 50 (fifty) years

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<sup>7</sup> <https://www.kompasiana.com/rifqy-tazkiyyaturrohman/558d7e388f7a61570bb7646a/illegal-downloading-adalah-pencurian?page=all> diakses 25 November 2021



from the first announcement (Article 58 paragraph (3) of the Copyright Law). The basic philosophy of the application of copyright is in accordance with the conception of immaterial property rights which are material rights. Material rights that have the nature of dirt the suit, always follow where the object is located, so that the owner may take any legal action against his rights. Based on the theory of legal protection by Fitzgerald, that the protection of certain interests can be done by limiting various interests on the other hand. The legal interest is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. The need for technology protection for digital creations is an important thing, as an effort to protect digital creations from acts of copyright infringement. Copyright is a part of intellectual property rights.

The basic thing about Copyright as a concept of ownership is that it allows protection for someone's work. Where these works are expressions of ideas that are introduced to the public. Therefore, Copyright provides a guarantee that the creators not only keep their work under supervision, by preventing unauthorized copying or reproduction, but also guarantees that the creators can benefit from the intellectual work. This is an incentive to publish his work. Copyright also works as a compensation for the financial risk of accepting the Copyright owner by publishing his work. Without copyright protection, an author may refuse to publish his work, which in the end the public will not be able to enjoy the work.

From various international copyright literature and the provisions of copyright law in various countries, including Indonesia, it can be seen that the basic concept of copyright protection is<sup>8</sup> :

1. What is copyright protected is an idea that has been tangible and original  
It can be emphasized that the existence of a tangible and tangible form (expression) and something tangible that is original or not the result of plagiarism is a mandatory requirement or must be met to be able to enjoy copyright law protection.
2. Copyright arises by itself (automatically)  
A copyright exists when a creator embodies his idea in a tangible form
3. A work does not need or does not always have to be announced in order to obtain or obtain a copyright.  
With the existence of an idea, a creation is born. Creations that are born can be announced (to make public) and cannot be announced. Both published and unpublished works can get copyright protection
4. Copyright of a work is a right that is recognized by law (legal right) which must be separated and must be distinguished from physical control of a work.

To break the law is to violate the subjective rights of others. Downloading songs through the internet can be said to violate the economic rights of the creator or copyright holder who has the exclusive right to exploit the economic rights contained in a copyright. Article 1365 of the Civil Code, which regulates unlawful acts is a general article and everyone can use this article to sue

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<sup>8</sup> Otto Hasibuan, 2008, *Hak Cipta di Indonesia (tinjauan khusus hak cipta lagu, neihbouring right dan collecting society)*, PT.Alumni, Bandung, p 67.



someone who is considered to have committed an unlawful act. It should be noted that every person exercising economic rights (in this case copying) must obtain permission from the Author or Copyright Holder. Then everyone is prohibited from duplicating and/or commercially using the work without the permission of the creator or copyright holder. A site on the internet is filled with artistic works, plays, musicals, cinematography, photography, and works that are also protected by the traditional principles of the Copyright Act.

The question that is often raised by experts in the field of intellectual property rights is whether the traditional principles contained in the Copyright Law are able to solve all the problems of copyright protection on the internet network. The question that is often raised by experts in the field of intellectual property rights is whether the traditional principles contained in the Copyright Law are able to solve all the problems of copyright protection on the internet network. As a consequence, the issue of copying works, the problem of announcing a copyrighted work to the public and other copyright issues are becoming increasingly important to discuss.

Regarding downloading activities, the definition of downloading is not explicitly regulated in the Copyright Law, but if we refer to the Big Indonesian Language Dictionary, which can be accessed through the Language Development and Development Agency, Ministry of Education and Culture of the Republic of Indonesia, it is explained as :

1. Harvest (fruit);
2. Copy files from online information, services or from another computer to the computer you are using

Then the act of downloading (downloading) mp3-formatted songs from the internet can of course be categorized as a violation in terms of duplicating a creation. Here's the explanation: Reproduction is the process, act, or method of duplicating one or more copies of a work and/or phonogram in any way and in any form, permanently or temporarily.

In the Copyright Law, the provisions contained in Article 44 paragraph (1) of the Copyright Law are as follows:

The use, retrieval, reproduction, and/or modification of a Work and/or Related Rights product in whole or in substantial part is not considered a Copyright infringement if the source is mentioned or fully stated for the purposes of:

- a). Education, research, writing scientific papers, compiling reports, writing criticism or reviewing a problem without prejudice to the reasonable interests of the Author or Copyright Holder
- b). Security and administration of government, legislative and judiciary;
- c). Lectures for educational and scientific purposes only; and
- d). Performances or performances that are free of charge provided that they do not harm the legitimate interests of the

Regarding the "reasonable interest" of the creator, based on the Elucidation of Article 44



paragraph (1) letter a of the Copyright Law, what is meant by "reasonable interest of the Creator or Copyright Holder" is the interest based on a balance in enjoying the economic benefits of a Work<sup>9</sup>. Brian A. Prastyo, Director of the Institute for the Study of Technology Law, Faculty of Law, University of Indonesia has explained the same thing in his article entitled song piracy:

"That within the scope of copyright law, the question is not only whether the purpose is commercial or not, but whether it harms the legitimate interests of the copyright holder or not. Thus, even though you reproduce not to seek profit, but if the action is detrimental to the legitimate interests (of course the economic interests) of the copyright holder; then you can be considered a copyright infringement."

Meanwhile, in the United States, a fair interest or fair use, as contained in the Copyright Law of the United States, determines the criteria for using a work to be said to be fair use, namely: a) The purpose of using the work, whether it is for commercial purposes or for educational purposes; b) The nature of the creation itself; c) How much and how substantially the part of the work is used; and d) The impact of the use of the work on the relevant market and the value of the work.

Based on the things above, it can be seen that what is meant by "reasonable interests" are interests related to the economic interests of the creator or copyright holder, profits that are naturally received by the creator or copyright holder for his creation. Downloading music with MP3 extensions and movies, for example, which are used for educational and training purposes that are not paid and do not harm the creators, for example, is an act that does not constitute an infringement as regulated by the Copyright Law. It's a different matter if later the files that are owned are reproduced (copy-pasted) to other computers, shared (shared) with other friends, then here the contact with copyright law

## **5. CONCLUSION**

Technology protection for digital creations is an important thing, as an effort to protect digital creations from acts of copyright infringement. Copyright is a part of intellectual property rights. The basic concept of copyright protection (The Basic Concepts of Copy Right Protection) is universally applicable in every country, including Indonesia. The concept of copyright protection itself concerns: in the form of what objects are protected,

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<sup>9</sup> <https://www.hukumonline.com/klinik/detail/ulasan/lt4f1523ec723aa/arti-kepentingan-yang-wajar-dalam-uu-hak-cipta> diakses tanggal 25 November 2021



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