

LEGAL PROTECTION OF COPYRIGHT HOLDERS SONGS OR MUSIC USED AS RINGTONE ON MOBILE PHONE

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ABSTRACT

Advances in technology, especially in the field of information and telecommunications have driven the flow of modernization in the field of music and song especially in Indonesia. Modern humans tend to progress with the development of technological culture. As a result of this progress, now there is nothing that can be hidden by a person or a country with a specific purpose in order to gain benefits in a dishonorable way that harms other people or countries through the creation that is protected by legal instruments. The development of science and technology will gradually be able to reveal the existence of fraud that has occurred so far for creations of economic value. The development of a new paradigm for the protection of intellectual property rights, actions such as pirating, imitating, falsifying or acknowledging as the rights of one's own creation to the copyrights of others or the permit holders of the works are prohibited acts and can be threatened with legal sanctions. The purpose of this study is to find out the legal protection of copyright to holders of copyrighted songs and music in the form of ringtones on cellular phones in connection with Law No. 28 of 2014 concerning Copyright. This research is analytical descriptive using secondary data obtained from various literatures related to the problems in this study. The results showed that legal protection can be done publicly or privately. A work or copyrighted work that is protected by a copyright is a copyrighted work which must have a distinctive form and show authenticity as a personal creation. Although the protection of a work in the form of a copyright is not caused by registration, registration is still possible, even in certain cases registration is needed to strengthen the evidence.

Key words: Legal Protection, Copyright Holder, Song or Music, Cell Phones.

INTRODUCTION

Substantively, the understanding of Intellectual Property Rights can be described as the right to property that arises or is born due to human intellectual abilities. Basically, works arising out of human intellectual abilities are the core and object of regulation in intellectual property rights. It is said to be the intellectual ability of human works in the fields of science, literary arts, or technology that was born or produced by humans through their intellectual abilities, through their creativity, taste and work.

Intellectual property rights are exclusive rights that only exist and are attached to the owner or holder of the rights, so that other parties if they want to use or use these rights to create or produce material objects in the form of incarnation must obtain a license (permission) from the owner or right-holder. Works like this are important to be distinguished from other types of wealth that can also be owned by humans, but not grown or produced by human intellectuals, for example wealth obtained from nature, such as land and / or plants along with other material rights inherited. From this point of view, it is easy to understand the difference between intellectual property right and real property.

Intellectual works, whether in the fields of science, art, literature, or technology, were born with sacrifice so as to make the presented works worthwhile. Especially with the economic benefits that can be enjoyed, the inherent economic value of growing the concept of wealth (property) to intellectual works for the business world is said to be the company's assets.

To maintain the balance of individual personal interests with the interests of the IPR system, the principles are based on the principles of justice. This principle shows that a person or group of creators of a work or other person who works for him, who produces the results of his intellectual abilities, deserves a reward. These rewards can be material or non-material such as the existence of a sense of security because they are protected and recognized for their work. The law provides such protection for the benefit of the creator in the form of a power to act in the framework of its interests, which is referred to as rights and each right according to the law has a title that is as a particular event that could be the reason for the right to the owner. Related to the field of intellectual property rights, the event that is the reason for the inherent right is the creation based on intellectual ability. This protection is not limited to the inventor's own country. But it can also include protection outside the borders of the country. One area of IPR is that copyright is an exclusive (special) right for the creator or recipient of the right to announce or reproduce his work or give permission for it by not reducing restrictions according to Copyright law No. 28 of 2014.

One of the works protected by copyright under Article 12 of the Copyright Law is the creation of songs or music (letter d). Song or music work is a complete creation consisting of elements of songs or melodies, poems, or lyrics and arrangements, including the notation, in the sense that the song or music constitutes an integrated piece of copyrighted work. The creator of music or song is a person or several people jointly whose inspiration, a musical or song creation is born based on the ability of the mind, imagination, dexterity, skill, or expertise as outlined in a distinctive and personal form which in other terms is known as a composer. Music or songs that have been created by someone with imagination and have been sung by a singer are able to give satisfaction to others in enjoying the strains of the tones or lyrics so that it does not rule out being sung over and over again by people / other singers. Users or listening to songs and music have the opportunity to listen to or play songs or music for commercial purposes, meaning that by playing back songs and music created by someone can benefit himself, for example hotels, discos, restaurants, radio and television, and so on.

Advances in technology, especially in the field of information and telecommunications have driven the flow of modernization in the field of music and song especially in Indonesia. Modern humans tend to progress with the development of technological culture. As a result of this progress, now there is nothing that can be hidden by a person or a country with a specific purpose in order to gain benefits in ways that are not respectful that harms other people or countries through the creation that is protected by legal instruments. The development of science and technology will gradually be able to reveal the existence of fraud that has occurred so far against creations of economic value.

Without realizing changes in trends to digital trends is one of the threats to the sale of physical items. The invention of digital format music players and mobile music players made changes in consumer behavior. Music is easier to get especially with the development of the internet. When MP3 digital format music entered the internet world through Napster's peer-to-peer exchange network. Com in 1999, digital music fans began to mushroom until now. Digital music is defined as the harmonization of sound created through conventional recording and synthetic sound stored on computer technology-based media. Digital music uses digital signals in the process of reproduction of sound. As a process of digitization of the process of recording analog music, songs or digital music has a variety of formats that depend on the type of device, which is commonly used including MP3, WAV, WMA, and AAC.

Do not want to miss the cell phone manufacturer also made a technological transformation, one of them by providing ringtone features in its application. Ringtones in the form of music and songs, can be uploaded freely by the public through the internet in the form of MP3, WAV, WMA, and AAC.

Definition of Song or Music Copyright

The term song and music in daily life tends to be used for the same purpose. Etymologically the song is a musical entity consisting of a series of sequential tones. Each song is determined by the length and height of the notes, besides that the rhythm also gives a certain style to a song. A song consists of several elements, namely:

1. Melody, which is a series of tones that due to the specificity in the arrangement of the distance and height of the tune, obtain a separate character and according to the prevailing music rules round into an organic unity.
2. Lyrics are poetry or words that accompany the melody
3. Arrangement, namely arrangement of melodies
4. Notation is writing melody in the form of musical notes or numeric notes.

Music and songs have different meanings but in the convention there is a mention of the term used to mention a song or music is a musical work. One of the protected works is music compositions with or without words. The Bern Convention does not explain explicit description of musical work, but from the provisions it can be concluded that there are two types of copyrighted songs or music, namely songs or music with words and songs or music without words. Music with words is a song whose elements consist of melody, lyrics, arrangements and notations while music without words is music that only consists of elements of melody, arrangements and notations. Elucidation of Article 12 paragraph (1) letter d of the Copyright Law there is a definition of song or music as follows song or music in this law is interpreted as a work that is intact even though it consists of elements of songs or melodies, poems or lyrics and arrangements including notations. What is meant by intact is that the song or music constitutes an integrated piece of copyrighted work.

According to Van Hoeven that based on the explanation that:

1. Songs or music are considered to be the same
2. Songs or music can be with text, can also without text
3. Song or music is a complete copyrighted work, so the elements of melody, lyrics, arrangements, notations and not an independent creation.

Economic Rights and Exclusive Rights in Song and Music Copyright

Copyright according to the Copyright Law contained in Article 1 is the exclusive right for the creator or recipient of the right to announce or reproduce his work or give permission for it by not reducing restrictions according to applicable laws.

Copyright is a popular term in society. Nevertheless understanding of the scope of understanding is not the same for everyone because of the different levels of understanding of this copyright term. As a result, there is often a misunderstanding in the granting of the meaning of copyright in the community, causing confusion in the use of language that is good and right. In fact, in society, the term copyright is often mixed with other intellectual property rights such as patents and brands. As if the notion of copyright is broad enough to cover the whole of human creation. Though the notion of copyright is limited, it only covers human creations in certain fields, the rest will be categorized in other fields, namely patents, brands and others.

Copyright is part of a set of rights called IPRs whose arrangements are found in jurisprudence and are called IPR laws. The so-called IPR law covers a field of law that deals with juridical rights to the works or creations of human thought if linked to economic and moral interests

The area covered by IPR is very broad because it includes all IPRs, for example consisting of literary, artistic, scientific, invention, brand industrial design, integrated circuit layout design, and others.

According to Van Hoveen, the IPRs law prohibits plagiarism, which is an action with the intention to take advantage of creations which are the intellectual property of others, and stipulates the legal methods governing compensation that must be borne by those who violate them by committing them plagiarism.

The Indonesian state in copyright law also protects the economic and moral rights of a song and music work. As an example of the implementation of moral rights is the inclusion of the name of the creator in a work in the form of song and music even though for example the copyright in the work has been sold to be used by another party, while the economic rights in a copyrighted work are also regulated in the Copyright Act, namely by requiring everyone which exploits a song and music work to provide royalties as an economic right from the creator of the song and music work.

Copyright is part of a set of rights called IPRs whose arrangements are found in jurisprudence and are called IPR laws. The so-called IPR law covers a field of law that deals with juridical rights to the works or creations of human thought if linked to economic and moral interests. The area covered by IPR is very broad because it includes all IPRs, for example consisting of literary, artistic, scientific, invention, brand industrial design, integrated circuit layout design, and others. According to Van Hoveen, the Haki law prohibits plagiarism, which is an action with the intention of profiting from creations which are the intellectual property of others, and stipulates the legal methods governing the compensation that must be borne by those who violate them by committing plagiarism. Copyright in Indonesia recognizes the concept of economic rights and moral rights. Economic rights are the rights to obtain economic benefits for the work, while moral rights are rights inherent in the creator or actor that cannot be removed for any reason, even if copyright or related rights have been transferred.

Royalty as a form of Song and Music Copyright Award

Royalties are payments as a form of appreciation for the use of musical works and songs that are used for commercial purposes. The Copyright Act does not provide a definition of royalties, but Article 45 of the Copyright Act confirms that:

1. The copyright holder has the right to grant a license to another party based on a license agreement to carry out the acts referred to in Article 2
2. Unless otherwise agreed, the scope of the license referred to in paragraph 1 covers all acts referred to in Article 2 for the duration of the license granted and applies to the entire territory of the Republic of Indonesia.
3. Unless otherwise agreed, the executor of the acts referred to in paragraph 1 and paragraph 2 shall be accompanied by an obligation to grant royalties to the copyright holder by the licensee.
4. The amount of royalties that must be paid to the copyright holders by the licensee is based on the agreement of both parties based on the agreement of the professional organization.

Payment of royalties is part of the consequences of using the services / works of others, because in everyday life, song is one of the supporting facilities in business or commercial activities. This is the reason underlying the user's obligation to pay royalties, because the song is a human intellectual work that gets legal protection and for that if another party uses it it is fitting to ask permission from the owner or copyright holder.

Royalties are given to songwriters, musicians, and singers and administration fees are deducted related to the collection of royalties to foundations of Indonesian creative works, the amount of which ranges from 22-28% of the total income earned. Royalties are distributed annually to Indonesian and foreign copyright holders who have given their power to Indonesian copyright foundations, so that in this case the Cipta Karya Indonesia Foundation only deals with the songs that have been registered with it and all musicians or music composers can join the foundation Indonesian copyrighted works.

Royalties are given for songs that have actually been announced and from places that have been licensed by the Karya Cipta Indonesia Foundation. The system used is a system of following the dollar or royalties received from certain business activities (General licensing, broadcasting, concert, cinema) distributed to the songs played at each activity. The amount of royalties received by each authorizer depends on:

1. Is the song registered
2. Whether the song is really played
3. How often the song is played (the more often it is played the more royalties it receives)
4. What is the real royalty income earned by Karya Cipta Indonesia Foundation that year for the category of users who play the song.
5. How much total frequency of songs played by that user category.

The amount of royalties received from a song every year will be different, because this year could be well-known and heard everywhere, but the following year the song was hardly played again. The problem occurs when a song and music composer is not registered as a member of the Karya Cipta Indonesia Foundation, Yayasan Karya Cipta Indonesia does not have the authority to determine the amount of royalties and ask for royalties on the works of the song and music so that an author is encouraged to become a member of the Indonesian copyright foundation so that the economic rights of the creator can be protected.

Copyright Legal Protection for Holders of Song and Music Copyrighted in Ringtone

Legal protection is all efforts that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those taking legal actions. Legal protection can be done by utilizing the legal protection facilities provided by public provisions, such as domestic legislation and international, bilateral and universal agreements. The private protection is by carefully contracting.

One of the characteristics and at the same time is the goal of the law is to provide protection to the community. Therefore, legal protection for the community must be realized in the form of legal certainty.

In relation to the protection of copyright granted to the creator is an attempt to protect the interests of the creator who has the right to enjoy his rights as a person who has created his work that he has made with all the sacrifices of thought, time, high artistic creativity, so with these rights workers has the authority to act to defend his interests if there are other parties who violate their rights or harm them unlawfully.

Law Number 28 Year 2014 concerning Copyright is a regulation that is published to protect the creator from copyright infringement or actions that harm the copyright he owns. To protect the song's copyrighted works from plagiarism and music, the creator must register the copyright for the song's and music's copyrighted works.

Copyright registration under the Copyright Act adheres to a declarative system. Registration of a work does not constitute an endorsement of the content, meaning or form of the registered work. Registration of a work is not an obligation because copyright arises automatically after a work is born, as stated in Article 2 paragraph (1) of the Copyright Act.

In the Explanation of Copyright Act Article 35 paragraph (4) states that registration of a work is not a necessity for the creator or holder of copyright and the emergence of protection of a work begins from the time the work exists or is realized and is not due to registration. This means that a registered or unregistered work is still protected.

Although the protection of copyrighted works is not caused by registration but registration is still possible even in certain cases registration is needed to strengthen evidence. For the purpose of corroboration in the case of cases of copyright infringement brought to legal channels, songwriters can take legal steps in the form of registering copyrights for their copyrighted works.

By taking steps in registering the copyright of the copyrighted work from an creator, they will get maximum protection in terms of proof in the event of dispute and case resolution by using litigation (legal) channels. Proof of copyright can be done using other procedures besides registering copyright.

The ways that are done as an alternative proof of a copyrighted work of the creator concerned can be done among others by:

1. Using written evidence or other forms of expression. This method can be done as an alternative to provide copyright protection for the purposes of proof in court, but this method is not strong enough in the proof.
2. Using copyright notice. Is a sign that is arranged with the format, by, year, which serves to remind that the violation of the copyrighted work that has been marked with a copyright notice is an intentional intent
3. Using a special delivery order.

By inserting photographic images of each copyrighted work in the form of lyrics / writings that he just created into an envelope and sent to his own address by post, then the postmarked envelope should never be opened until the time of proof in court if there is a case involving copyright infringement of the work. The power of proof using this method is stronger and more practical for the creators of a copyrighted work to provide copyright protection for his works.

Songwriters have moral rights and economic rights over a work of creation, where moral rights are rights inherent in the creator or actor that cannot be removed or deleted without any reason even though copyright or related rights are transferred. Economic rights are the rights to obtain economic rights to works and related products. To protect the moral rights of the creator, the Copyright Act Article 24 emphasizes:

The creator or his heir has the right to sue the copyright holder so that the name of the creator is still included in the work.

- a. b. A work may not be changed even if the rights of the work have been handed over to another party, except with the consent of the creator or with the consent of his heirs in the event that the author has died.
- b. The provisions referred to in paragraph (2) also apply to changes in titles and subheadings of the creation, inclusion and changes in the name or pseudonym of the creator.
- c. The creator still has the right to make changes to his creation in accordance with propriety in society.

Article 57 of the Copyright Act aims to protect the copyright of a songwriter from a plagiarist which is clearly detrimental to moral rights and economic rights. Article 57 The Copyright Act confirms the rights of the copyright holders as referred to in Article 56 do not apply to works that are in the party in good faith to obtain the works solely for their own purposes and are not used for a commercial activity and / or interests related to commercial activities..

The Procedure for Transferring Song and Music

Copyright in the Form of Ringtones to the Cellular Stage. The transfer of copyrighted songs and music in the form of ringtones must be seen in the agreement between the songwriter and the record producer. The agreements made are often unclear, so that it harms the songwriter, who actually has the right to royalties, as stipulated in Article 45 paragraph (3) of the Copyright Act. However, the songwriter's right to royalties for his songwriting can only be requested if the agreement made between the songwriter and the record producer is a license agreement. Regarding this License regulated in Article 1 number 14 of the

Copyright Law, that is a license granted by the holder of copyright or related rights to other parties to announce and / or reproduce his work or related product rights under certain conditions.

The activities that can be categorized as announcing and / or reproducing according to the explanation of Article 2 paragraph (1) of the Copyright Law are as follows: 1. Translating 2. Adapting 3. Arranging 4. Change 5. Selling 6. Renting out 7. Lend 8. Import 9. Showing off 10. Show to the public 11. Broadcasting 12. Record 13. Communicating the work to the public through any means

If you look at these provisions, songwriters should be able to benefit economically, in the form of royalties from the sale of their songs by record producers, to cellular phone providers. It's just that the creator of the song does not have the right to royalty for the use of the song by the provider to the cellular phone in the form of ringtones and waiting tones. This is because songwriters do not directly make agreements with cellular phone providers. Cellular telephone providers only enter into agreements with recording procedures.

Thus the royalty or ringtone and ring backtone belong to the record producer, as the copyright holder of the song's creation. In practice, such a situation is possible because of a civil problem between the songwriter and the record producer. There is a songwriter who, because of his ignorance of the law, made an agreement with the record producer on a flat or flat pay agreement.

In this type of agreement, the transfer of rights occurs economically and all rights arising from the creation are the rights of the creator who can be transferred economically.

For some people, the transfer of rights economically is seen as a transfer of rights as a whole, thus eliminating the exclusive rights of songwriters to announce or reproduce their works, or give permission for announcements and reproduction of works, as referred to in Article 1 number 1 of the Copyright Act, because it has been transferred to the record producer. However, the actual rights of songwriters cannot be removed simply because the absolute owner of the copyright in a song's creation is the songwriter, not the record producer. What the songwriter must pay attention to is the civil contract made with the record producer. Songwriters must be careful in defining the economic rights in question so as not to incur loss

CONCLUSION

Legal protection is all efforts that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those who carry out legal actions. Legal protection can be done publicly or privately. A work or copyrighted work that is protected by a copyright is a copyrighted work which must have a distinctive form and show authenticity (original) as a personal creation. Although the protection of a work in the form of a copyright is not caused by registration, registration is still possible, even in certain cases registration is needed to strengthen the evidence. Violation of a copyrighted work is subject to sanctions as stipulated in Article 2 of Law Number 19 of 2002 concerning Copyright, copyright is an exclusive right for the creator or copyright holder to announce or reproduce his work that arises automatically after a work is born without reducing restrictions according to the applicable laws and regulations. Protected creations are creations in the fields of science, art and literature.

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