

# Legal Study of Music Piracy in Investment Perspective in Indonesia

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This study aims to scrutinize the factors that cause of music piracy in Indonesia and to find out legal solutions to overcome this problem. The method used in this study is qualitative legal method. Data required for this study were obtained from library research by analyzing all relevant literatures and documents. All collected data were analyzed by using qualitative analysis. The results show that music creation has been protected through the Law number 28 year 2014 on Copyrights. However, the facts show that music piracy in Indonesia still frequently occurs everywhere. This piracy is committed to gain massive benefits for personal interest of music hackers by violating the rights of music composers. These unlawful actions have resulted in huge losses faced by the music owners. Seen from investment point of view this illegal work may discourage investors to invest their capital in music sector in Indonesia. The factors that cause music piracy among others are lack of law enforcement, lack of legal understanding and low cost of illegal music production committed by music hackers. It is suggested to the government of Indonesia to apply a maximum penalty to the music hackers who have violated intellectual work of music composers to avoid worse condition in the future.

**Key words:** *Music, piracy, investment, Law.*

## Introduction

Indonesia has as a new Copyright Law Number 28 year 2014 to replace the previous Copyright Law Number 19 year 2002. The new Copyright Law is enacted to solve all copyright issues that become the barriers for investors in investing their capital in Indonesia (Kusumawati, 2014). Under new copyright law the protection of music creation as an intellectual property rights has been extended up to 70 years after the death of copyright

owner (Setiyono, 2020). This law sounds very exciting for investors and it may encourage them to invest their capital in music sector in Indonesia.

Article 9 paragraph (2) Law Number 28 year 2014 stipulates that “every person who exercises the economic rights as referred to in section (1) is obligated to obtain permission from the Author or the Copyright Holder”. It means that any person without having legal permission from copyright owner has no rights to use or produce music for commercial purpose (Adermon & Liang, 2014). In other words, economic rights of intellectual property rights including music remain in the hand of copyright owner until the end of protection period and none can violate it (Gan, 2019).

However, the facts show that music piracy in Indonesia still frequently occurs which is committed by music hackers (Hamdi, 2020). In line with Hamdi, Arifin (2020) says that there is still found that many music in the market is produced illegally by music hackers. This condition may discourage motivation of investors to invest their capital in music sector by which this condition may harm economic growth in Indonesia (Dewi, 2014). In addition, music piracy may also jeopardize the motivation of music composer to create new music and this condition at the end may also decline music production in Indonesia (Kusumawati, 2015).

The victims who are suffering from this music piracy are mainly local music producers because they are unable to protect their product from music hackers due to lack of technology. For instance, Vizta Pratama Limited Company, the holding company of singing house becomes a suspect over the case of music piracy versus Nagaswara Limited Company as the plaintiff. This company considers Vizta Pratama Limited Company has infringed copyright of Nagaswara Limited Company by passing and copying songs without paying royalty to Nagaswara Limited Company as the music owner (Abirama, 2020; Merdekawan, 2020). The other case is that the case of piracy song '*Cari Jodoh*' [looking for a partner] committed by *Wali Band*. This band group is suspected as a defendant by Nagaswara Limited Company because the defendant has infringed copyright of Nagaswara Limited company (Tribunnews, 2020).

Similarly the song of “*Butiran Debu*” [dot of dust] which was sing by the Rumors Band has also become a piracy case. In this matter, Farhat Abbas has claimed that he is a copyright owner of this song. Rumor Band has been alleged that this band has infringed copyright of Farhat Abbas as a music producer by singing a song without having legal authority from copyright owner (Puspitasari, 2020). The other music piracy case also occurred with Chrisye’s concert called '*Kidung Abadi*'. In this case Chrisye’s live music promoters did not ask legal permission from legendary song writer Yockie Suryo Prayogo and Debby Nasution who composed *Kidung Abadi* song. The live concert never asked permission from copyright

holder to sing the song in the concert (Puspitasari, 2020). These are only some examples of music piracy cases among other thousand cases that occur in Indonesia. These cases have resulted in huge losses faced by music composers in Indonesia (Kompas, 2020). Not only that these cases have also caused huge economic losses faced by investors who invest their capital in music sector in Indonesia. This is the issue that will be scrutinized in this paper.

## **Methodology**

This study applies qualitative legal methods by using legal approach. Data required for this study were mainly obtained from library research by analyzing primary and secondary resources. Primary resources were collected by scrutinizing current national laws, local regulations and government documents. Secondary resources were obtained by reviewing current literatures, journal articles, research reports, and case studies related to this study. Then, all collected data were classified and mapped based on the issues discussed in this study. After classifying and mapping process were completed then all data were analyzed by using qualitative analysis.

## **Result and Discussion**

### ***The Nature of Copyright***

Article 1 paragraph (1) of Copyright Law Number 28 year 2014 stipulates that “copyright is an exclusive right of the creator that arises automatically based on the principle of declarative after an invention is embodied in a tangible form without prejudice to the restrictions in accordance with the provisions of the legislation”. This Article obviously highlights that copyright is owned by the creator after the work is completed. Copyright include two sets of rights, namely economic right and moral right. Economic right is the right to get some benefits from the work including the right to approve or to deny permission to copy, license, show, play or perform, broadcast, or adapt any work (Meese, 2010). In other words, economic right is the exclusive right of the creator or copyright holder to gain economic benefits from his creation. Unlike moral right, economic right can be assigned to another person or organization under specific contractual conditions between both parties (Koh, Hann, & Raghunathan, 2019).

Moral right is the right which is inherently owned by the creator and this right cannot be assigned or sold to other persons (Eisend, 2015). In Indonesian legal system as stipulated in Article 5 of the Law Number 28 year 2014 moral right is eternally inherent right to self-creator. Moral right cannot be transferred during the creator is still alive, but the exercise of this right can be transferred by will or other cause in accordance with the provision of legislation after his death (Herings, Peeters, Yang, 2018; Woolley, 2015). In the event of a transfer of moral right the receiver can release or reject the implementation of his right on the

condition that the release or rejection of the right is stated in writing (Borja, Dieringer & Daw, 2015).

Historically copyright protection in Indonesia has been known since 1912 through *Auteursvlet* 1912 which was enforced by the Dutch Colony based on Bern Convention 1886. Then, after independence era Indonesia was enacted the Act Number 6 year 1982 on Copyright as a legal tool to protect the rights of copyright owner or copyright holder (Ardiansyah, 2019). Seen from the historical point of view there are two major concepts of copyright that ultimately influence each other, namely the concept of copyright developed in the United Kingdom known as a Common Law system and the concept of *Droit d'Auteur* developed in France and its alliances which is known as a Civil Law System (Saidin, 2015).

As a country that follows Civil Law system, Indonesia is obliged to protect the rights of copyright owner or copyright holder in any kind of intellectual work including music (Dewi, 2014). Current concept of copyright protection includes exclusive rights of the creator to announce or reproduce the work without violating the provisions of applicable law (Arifin, 2020). Basically the protection of copyright comes under five areas, namely the expansion of copyright protection object, the duration of copyright protection, the amendment of criminal offenses against copyright, and the right to sue for any offenses (Moon, 2015).

A copyright creation including music is obtained without a need for registration. When the idea of creation has been materialized in a particular form such as painting, song, and photograph the creator is entitled to the copyright protection (Aguilar & Martens, 2016). Then, in order to be easy to notice the creation of music, the creation shall contain a copyright notice. The notice or message consists of a letter "C" in the circle (copyright symbol, ©), or the word "copyright", followed by the copyright year and the name of copyright holder. If the creation has been modified (eg with the issuance of a new edition) and the copyright is re-registered. The copyright notice is intended to notify the created user that the work is "copyrighted". Similarly, for the creation of music work, in any music event is played or displayed, it must mention or display the title of the song along with the name of the creator (Akulavicius & Bartkus, 2015). This is the function of the "performing rights" in copyright jurisdiction.

### ***Music Piracy***

Music or song is a creation that is not less important within copyright protection context (Appleyard, 2015). The importance of adequate protection of music and song can be attributed to aspects of cultural development and aspects of economic potential. The human tendency not only has desire to create a work of creation, but also to imitate and master the creation of the others (Adermon & Liang, 2014). Therefore, for people who have talent in

the music will keep going on to create music for the betterment of their lives. Therefore, a creative work that will enrich human life takes years to complete; for example film making and music composing (Brown & Nagy, 2015).

Legally somebody who wants to sing a song that belongs to somebody else for commercial use must obtain legal permission first from the music owner (Aguiar, 2017). There is a right of music composer to grant permission or license to a third party to reproduce that music for commercial use (Angelopoulos, 2015). The grant a license by the song writer or copyright holder to the user shall be accompanied by paying a proper compensation to be paid by the user to the copyright owner or copyright holder (Aguiar & Martens, 2016). In a work of music or song, licensing a song to the third party is generally set forth in the form of a License Agreement (Sang, 2015). This License Agreement relates to economic rights owned by the song composer to obtain a maximum economic benefit for the result of his creation (Borja & Dieringer, 2016).

As applied to the other copyright owner, a song composer also has economic rights that must be fully protected by the law. These economic rights consist of two rights, namely the right to the announcement of a song (performing rights) and the right to copy a song (mechanical rights). Performing rights include the rights to play a live song, play a recorded song, and broadcast a recorded song for commercial use. Then, mechanical rights include the rights to reproduce songs performed mechanically and diverted in the form of cassette tapes, digital, and reproduce songs in the movie recording (Brown & Nagy, 2015). More over economic rights of the music owner include reproduction rights, adaptation rights, distribution rights, performance rights, broadcast rights, cablecasting rights, and public lending rights (Brown, 2016).

As an Intellectual Property Rights, music has significantly contributed to the state's revenue. Due to high contribution to the state's revenue, this music needs to be given adequate legal protection by the state (Yang, Wang & Mourali, 2015). Protection shall be constructed as an action in the form of guarantee of prosperity from any danger or threatening risk (Myrthianos, 2020). Protection shall not only be based on written law, but also based on unwritten law.

In this case, the Law Number 28 year 2014 has legally provided proper protection to music creation. Unfortunately, even though this law has provided proper protection to music creation, but music piracy still frequently occurs in Indonesia. This piracy is committed in many forms of piracy such as cassettes, CDs and VCDs. According the Association of Indonesian Recording Industry music piracy in Indonesia has achieved 95.7%. This condition has resulted in significant loss to the government's revenue that achieves around 4,000,000,000,000 IDR every year (Sihombing, 2020). Moreover, this condition has resulted

in less motivation of music composers and investors to investment their capital in music in music sector due to high potential loss.

Music piracy can be done in various forms, for example making a similar record or change the format of CD album into MP3 form without having official permission from the music owner (Broucek, Turner, & Frings, 2005). Most music hackers believe that changing the format of recorded music from CD into MP3 audio format is considered not a copyright infringement. This condition happens because they do not fully understand the nature of copyright infringement. When a particular music is on high demand by the public, it is often reproduced such as cassette hijacking and video compact disc hijacking without having official license from the music owner (Jauhar, 2011).

There are many factors that cause music piracy among others are as follows:

a. Lack of Law Enforcement

Lack of law enforcement to be applied on copyright protection becomes serious problem in protecting music creation (Miraja, 2019). This condition can be noticed from the number of music piracy cases that have been reported in the market (Alleyne & Harris, 2015). It has been understood that there are huge number of music piracy cases every year and these cases have caused significant loss faced by the music composers and music investors who invest their money in music sector (Koh, Murthi & Raghunathan, 2014). Even though there are many music piracy cases that occur every year, very few of them are taken into the court due to less responsiveness from legal apparatus toward music piracy cases (Danaher, 2014).

This matter occurs because music piracy case in Indonesian legal system is still considered as an initial criminal case. It means that there is no any legal action can be taken into the court by legal apparatus toward music piracy case without having official claim from the music owner (Tabalujan, 2002). In this regards, Indonesian law still follows “passive legal system” in responding toward music piracy case. The system says that no legal action can be taken into the court without having legal report form the concern party (Bedner, 2013). As a result, there are very few cases about music piracy are taken into the court by music the owners and most cases are abandoned without having legal justice.

b. Lack of Legal Understanding

Not all music owners have the same understanding and legal attitude toward music piracy cases due to lack of legal understanding about intellectual property rights law. There are also very few music composers who have sufficient legal understanding about copyright law. This condition occurs because not all of them have legal basis education or insufficient knowledge about the law (Dey, Kim & Lahiri, 2019). It is undeniable that most of music composers have been given legal basic education about copyright law by legal apparatus when they register

their music in the Ministry of Law and Human Rights of Indonesia to get copyright ID (Susanti, 2014). However, this basic legal education is not sufficient enough to make them aware about their rights and obligations related to copyright law especially related to music creation.

Insufficient knowledge about legal protection of music creation owned by music creator has led to less action taken by the music composers when their rights are infringed by music hackers (Eisend, (2015). As a result, less legal action are taken by music owners to take music piracy cases to the court when their rights are violated. Moreover, some of them also consider that to take legal action toward music piracy cases to the court takes a long procedure, consumes a lot of times and spent a lot of money as well (Gans, 2015). Moreover, they assume that the remedy that can be obtained after their cases settled by the court is not equal enough compared to the money that had been spent to settle these cases.

Therefore, there are very few music owners want to take legal action toward music piracy cases. In addition, many music composers also do not fully understand about the important of copyright protection. On the other side, most music consumers also do not really care about the appreciation of music composer's rights (Cesareo & Pastore, 2014). The main target for them is that how to get low cost music to fulfill their need by ignoring intellectual property rights of music owner. This condition has resulted in less motivation of music composers to compose new music (Hampton-Sosa, 2017). Subsequently, the contribution to state revenue from music sector becomes low. The fact show that state revenue from music sector in Indonesia is quite low compared to that in other countries such as United States of America, the United Kingdom, European Countries, Australia and India.

### c. Low cost of Music Piracy

The other factor that causes music piracy is low cost of music piracy. In this matter, most of music hackers do not need to spend a lot of money to reproduce illegal music (Shah, 2019). In the case of Indonesia, music hackers just buy a piece of original music and then copy it by using certain software. After having huge copies of illegal music then they sell them into black markets with very low price just around 10,000 IDR (US\$0.6) per copy. Even though selling price is very cheap they still can make a lot of money because the cost of illegal production is very cheap and number of copies sold in the market is a lot. These practices now become common activities in their lives and they do not feel guilty anymore. On the other side, music consumers who always enjoy music everyday also feel fortunate because they can enjoy good music with very cheap price and this illegal music can be found anywhere in the black market. Moreover, music consumers also feel reluctant to buy the original music because the price is very expensive (Kompas, 2020). This consumer behavior occurs because they can find easily illegal music in the black market with very cheap price. This behavior now also becomes common practices in daily life of music consumers.

In terms of investment this kind of illegal practices may jeopardize the growth of investment in music sector in Indonesia because investors feel reluctant to invest their money in high risk sector. Theoretically when investors invest their capital in any sector of investment they want to get higher return within certain period of time so that more profit can be earned (Brown & Brown, 2006). Unlikely when high risk occurs in their investment in certain country they prefer to stop their investment in that country and move to other country which is safe for investment (Fox & Bruce, 2001). In this matter Dunning (2009) highlights that “risk” is one out of many variables which is used by investors to be considered as a location determinant before a final decision for an investment is made. Referred to the case of music piracy, it clearly shows that investment in music sector in Indonesia is mostly high risk. Therefore, it is fair enough if the number of investors who invest in music sector in Indonesia is relatively low compared to other countries (Peukert & Kretschmer, 2017). Subsequently, gross national product earned from music sector in Indonesia is also relatively low.

### ***The Way Forward***

The legal effort that could be done by the music owners to protect their creation is that to sue the music hacker to seek full compensation. However, before this legal action is taken the music owners they should take a preventive effort first by sending a warning to the music hackers to stop their illegal works. If this preventive action does not work, then repressive legal actions can be taken into the court (Aguiar & Waldfoegel, 2018). In Indonesian case, the music owner can use the Article 1365 of the Civil Code to sue music hacker which says that every act that violates the law that brings harm to the others obliges the person who has done wrongful action to pay a proper compensation. This article is appropriate enough to be enforced to compensate such loss (Alliance of International Intellectual Property, 2016). Referring to the Article 1365 of the Civil Code, the penalties that are applicable to be enforced for music hacker are as follows: (a) apply full compensation to the music owner; (b) stop selling pirated music in the market, (c) confiscation and destruction of illegal work as a result of copyright infringement.

The other option that can be taken toward this copyright infringement is that to solve the problem through Alternative Dispute Resolution by using a third party as a mediator (see Article 95 of the Law Number 28 Year 2014). Criminal law efforts may be taken by the music creator to resolve the cases if the previous actions have no result. In this case, Article 112 of the Law Number 28 year 2014 stipulates that any person without having legal rights commits an act as referred to Article 7 paragraph (3) and/or Article 52 for commercial use shall be liable to a maximum imprisonment of 2 (two) years and/or a fine of at most 300,000,000 IDR. In case this matter is settled, the victim of music piracy may still have the





rights to request confiscation of the works by announcing to the public to generate music creation; and discontinue all activities resulted in from illegal music piracy.

The affirmative action that has been taken by the government to anticipate a violation of music creation is that to provide preventative legal efforts through Copyright Law to avoid infringement of copyrighted work (Cesareo & Pastore, 2014). In the case of music, the music composer as a main copyright owner becomes the most important person that needs to be protected by the law because he deserves for his intellectual work. This affirmative action really needs to be taken into account by the government to protect the rights of music creator as well as to show to the world that the government of Indonesia is serious to protect the copyright of music composer (Dewi, 2014).

In terms of investment this affirmative action may also become an interesting determinant for investors to invest their capital in music sector (Kraus & White-Schwoch, 2014). In this matter, Dunning & Narula (2003) said that good government policy becomes an important investment determinant that may attract investors to invest their capital in the host country. Moreover, by having better government policy on music protection may also create better legal certainty (Thomas, 2016). This legal certainty also becomes one of determinants that are taken into account by investors before making a final decision on such investment project (Galan, & Gonzalez-Benito, 2001).

Due to the case of music piracy is included into civil law jurisdiction, thus law enforcement to handle this case must be done based on civil law system. In this system the party who can take the case of music piracy to the court is the music owner himself (Soerodjo, 2016). It means that no one else can take this case to the court except the music owner himself. If the settlement of music piracy case through civil law procedure does not work then intervention of criminal law cannot be avoided (Morton & Koufteros, 2008). Criminal sanction for music piracy can be punished by applying fine and imprisonment. A maximum fine and imprisonment that can be applied is 4,000,000,000 IDR and/or punishment of 10 years imprisonment (Article 118 Paragraph (2) of Law Number 28 year 2014).

In order to be legal to apply criminal punishment toward music piracy case, the case at least must fulfill three essential elements, namely (a) the action committed by a user of intellectual property rights is prohibited and threatened with penalty; (b) the use of intellectual property rights is exercised without a consent from music copyright owner or music copyright holder; (c) the use of intellectual property rights exceeds the limits stipulated by law (see Article 112-119 of the Act Number 28 year 2014). However, Article 43 of the Law Number 28 year 2014 says that it cannot be considered as an infringement of copyright toward the following actions:

- a. Announcement, distribution, communication, and/or replication of the state symbol and nationality song by its true nature;
- b. Announcement, distribution, communication, and/or replication of all things executed by or on behalf of the government, unless declared as protected by law.
- c. Actual news retrieval, either wholly or partly from news agencies, broadcasting institutions, and newspapers or other similar sources with the provisions of the source should be mentioned in full; or
- d. Creation and dissemination of copyright content through a medium of information and communication technology which is non-commercial and/or profitable to the creator or any related party or such creator states no objection to such manufacture and dissemination.
- e. Duplication, announcement, and/or distribution of the President, Vice President, former Portrait President, former Vice President, national hero, leader of state institution, leadership ministries / non-ministerial government institutions, and / or regional heads with due regard dignity and fairness in accordance with the provisions of legislation.

Therefore, due to music piracy toward a song created by a song writer is excluded from the Article 43 above, then any action committed by music hacker can be prosecuted to be applied criminal punishment as long as the original music owner has objection about that and take it to the court to get a proper compensation. This legal certainty needs to be applied regularly to ensure full protection of the music copyright owned by a music composer (Saidin, 2016). In terms of investment this legal action may stimulate a positive trigger to investors to invest their capital in music sector in Indonesia (Djulus, 2017). Without this legal certainty it may discourage them to spend their financial resources by which at the end this action may also discourage economic growth in this country. In this matter, a study conducted by Djulus (2017) shows that investment may stimulate certain influential rate on economic growth in the host country. Therefore, music as one of investment sector in the host country that becomes a stimulus for economic development needs to be fully protected.

## **Conclusion**

The government of Indonesia has provided legal norm to protect the rights of music creator through the Law Number 28 year 2014. This law opens an opportunity to the music copyright owners or copyright holders to protect their rights through various legal measures. In this case a music owner is given legal rights to sue anyone who has infringed his rights through a legal mechanism. Due to this matter is included into civil law, the main party that has to be active in taking a case to the court is copyright owner himself, not somebody else. Therefore, a punishment which is applied into this case is that to pay a proper compensation to the victim of music piracy. However, to certain condition criminal punishment also can be applied to settle this case when civil mechanism does not work at all. This legal curative action needs to be taken to keep full protection of intellectual rights of music creator.



It is suggested that the government of Indonesia through Department of Law and Human Rights to take affirmative actions to socialize this intellectual property rights to music composers, copyright owners or copyright holders to educate them about their rights so that they know how to get full legal protection about their creation. In addition, legal apparatus should also take a maximum effort to apply a maximum penalty to the person who has infringed the intellectual work of music creation to eliminate new possibility of music piracy that might be done by somebody else in the future.

Finally, it is also suggested that music composers, music copyright owners or copyright holders should obtain sufficient knowledge about intellectual property rights especially about legal rights so that they can defend their rights whenever their rights are infringed by a third party. Moreover, it is highly recommended to the music composers, music copyright owners or music copyright holder not to be hesitating to take any legal action to sue music hackers to the court whenever and wherever the case occurs. It is expected that their rights as the owners of copyright can be fully protected. In terms of investment this action really needs to be taken promptly to ensure that investment in music sector is safe for investors and this condition may lead to better economic development in the future.

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