

Indonesian Legal Protection for Song Commercialization and Music Copyrights in Digital Platforms

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Abstract

The Covid-19 pandemic has accelerated the digital influence on the Indonesian music industry. Music concerts, which are usually held offline with crowds of people, are no longer possible because crowds can make new clusters of Covid-19. The Indonesian music industry needs alternatives to survive the pandemic, and the advance in technology has the solution. Virtual concerts that are broadcasted via digital platforms have started to thrive. They use copyrighted songs and/or music so that royalty payments are made in accordance with the type of use and needs. Unfortunately, the Law Number 28 of 2014 on Copyright and the Government Regulation Number 56 of 2021 on the Management of Song and/or Music Copyright Royalties do not regulate the use in detail and specific manners. Therefore, the industry actors have not found the right payment formula for the economic rights royalties. The absence of regulations certainly does not reduce the user's primary obligation to obtain a songwriter's permission and pay royalties for song and/or music copyrights. The fulfillment of the obligation to pay royalties must still be accomplished with due regard to applicable provisions. This study examined the problems with a normative juridical method. It considered the practices and customs that apply in Indonesia. It also generated some perspectives from relevant stakeholders.

Keywords: live streaming, song or music copyright royalties, virtual concerts.

A. Introduction

The digital era has changed people's behavior in enjoying entertainment services from physical to digital means. People prefer digital entertainment services for some reasons, such as more accessible storage, competitive prices, and almost unlimited choices. The Covid-19 pandemic is a significant blow to the entertainment industry, especially music performance. The Indonesian entertainment industry actors must think hard to adapt to two conditions directly affecting their previous income and performance. The current Covid-19 pandemic also contributes to the shifting of people's behavior in entertainment. People cannot enjoy an offline live performance like before, so they turn into enjoying music through an online digital platform. Artists need to keep their popularity up and make income from their music. They have to adjust their game to this

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customer's behavioral shifting. One of such adjustments is performing their musical works through a digital platform in the form of music live streaming. Then, artists inevitably rely more on streaming on the digital platform to survive.¹ Music streaming is changing the way people play and listen to music. It is increasingly becoming the most popular method of listening to music.²

Music industry players express and earn through live performances. Songwriters get economic benefits through live performance. They need to find a way to be still able to hold a live performance to 'survive' the Covid-19 pandemic. By chance, they have an option. The music performers can maintain a live-streaming virtual music performance through a digital platform.³ The digital platform provides access for many people at the same time to watch the performance. Contextually, live music performance is a shift from physical offline stages to stages on digital platforms.

YouTube is a digital platform used massively by show organizers to broadcast the show. It has easy access and many users around the world. The presence of YouTube means that music can be performed with more audiences. The audiences may reach the whole world. Virtual music performances or concerts are a new thing in Indonesia. There have no detailed regulations regarding the copyright royalties for songs used in virtual concerts. On the other hand, Intellectual Property Rights (IPR) are a human right that the government should protect. It is a fundamental right of all human beings.⁴

To protect the IPR, Indonesia has approved and ratified the Agreement Establishing the World Trade Organization, including Trade-Related Aspects of Intellectual Property Rights through the Law Number 7 of 1994. To protect Copyright as an intellectual property right, Indonesia has also ratified the Berne Convention for the Protection of Artistic and Literary Works through the Presidential Decree Number 18 of 1997. In addition, Indonesia includes the ratification of the World Intellectual Property Organization Copyright Treaty (WIPO Copyright Agreement) through the Presidential Decree Number 19 of 1997 and the World Intellectual Property Organization Performances and Phonograms Treaty

¹ Emily Blake, "Music Streaming is Down in The Time of Social Distancing," *Rolling Stone*, October 13, 2021, <https://au.rollingstone.com/music/music-news/streaming-music-down-coronavirus-8756/>.

² Muhammad Usman Noor and Wihdah Askariyyah, "Improving Music Streaming Services Through Metadata: Case Study from Joox Indonesia," *Record and Library Journal* 7, no. 1 (2020): 126, <https://doi.org/10.20473/rjlj.v7i1.116>.

³ Diana Silfiani, "Penggunaan Sementara (*Ephemeral Recording*) dalam Konser Daring yang Disiarkan secara Live Stream Terkait Penggunaan Hak Cipta Lagu," *Dharmasisya* 1, no. 3 (2021): 1215, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1092&context=dharmasisya>.

⁴ Satya Arinanto, *Hak Asasi Manusia dalam Transisi Politik di Indonesia* (Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, 2018), 52.

(WIPO's Performance and Phonogram Works Agreement) through the Presidential Decree Number 74 of 2004. The Law Number 28 of 2014 on Copyright is the primary regulation. It is an effort to protect the economic and moral rights of creators and related rights owners as an essential element in developing national creativity.⁵ The Law Number 28 of 2014 on Copyright defines Copyright as an exclusive right of the creator and/or copyright holder. The Law accommodates its nature by providing automatic protection since its establishment.

Fundamentally, laws and regulations in Indonesia protect songs and/or music as forms of Copyright. Songs can contain lyrics or only instrumental, but music usually refers to notation only. Griffé says *"that the words song refers to pieces of music that have words, especially popular songs such as those heard on the radio"*.⁶ It means that song is a part of music which contains words or lyrics. Merriam-Webster also defined song in seven ways, but some that might be appropriate are:⁷

- 1) the act or art of singing;
- 2) poetical composition;
- 3) a short musical composition of words and music; or
- 4) a collection of such compositions.

Merriam Webster also defines music in five definitions, and the closest to definitions used in this writing are "(1a) vocal, instrumental, or mechanical sounds having rhythm, melody, or harmony; (1b) the science or art of ordering tones or sounds in succession, in combination, and in temporal relationships to produce a composition having unity and continuity; (2) a distinctive type or category of music; and (3) a musical accompaniment."⁸

The use of copyrights of the song works in online music performance shall be in respect to provisions of economic benefit to the songwriters. In other words, it should earn permission and pay royalties to songwriters. If more than one composer creates and owns a song, the percentage of claims between the lyricist and the notation writers must be documented for orderly administration. Claims appropriately made will provide each songwriter a fair and accurate share and economic benefits.

Legal consequences arise because of the shift in behavior and the use of new technologies that affect the implementation of concerts or musical performances. After all, technology is a tool. Its implementation needs to pay attention to and apply the principles and rules of applicable laws. Technology has caused essential issues related to using copyrighted songs in virtual concerts broadcast live on digital platforms. It converges on two things: performing and

⁵ Sulasi Rongiyati, "Perlindungan Hak Kekayaan Intelektual Pada Produk Ekonomi Kreatif," *Jurnal Negara Hukum* 9, no. 1 (2018): 47, <http://dx.doi.org/10.22212/jnh.v9i1.1001>.

⁶ Dale T. Griffé, *Songs in Action* (New York: Prentice Hall International, 1992), 3.

⁷ Merriam-Webster Dictionary, "Definition of Song," *Merriam-Webster Dictionary*, June 27, 2022, <https://www.merriam-webster.com/dictionary/song>.

⁸ Merriam-Webster Dictionary, "Definition of Music," *Merriam-Webster Dictionary*, June 27, 2022, <https://www.merriam-webster.com/dictionary/music>.

mechanical/reproduction. In practice, the economic rights to song copyrights related to display and make available are often classified as performing rights and the right to communicate to the public. The economic rights to song copyrights as reproduction are usually known as mechanical rights.

In Indonesia, music performance on digital platforms does not only use one type of economic rights. Such commercial use requires written permission from the creator and/or copyright holder. This study examined the Indonesian legal protection for the benefit of copyrighted songs and/or music performances broadcasted on digital platforms to keep being protected and accommodated even though they are monetized in the medium and relatively new ways.

B. Indonesian Protection for Song and/or Music Copyrights on Digital Platforms

The current era of globalization comes along with increasingly intense competition in various fields. It can lead to ambivalence for an organization, a nation, and a state. On the one hand, it can be profitable, and vice versa, it can cause losses. For this reason, Indonesia must actively involve global relations, especially in international trade, to obtain a large portion of the world's economy.⁹

The IPR is material rights to an object that originates from the work of the human brain and rationales.¹⁰ The IPR needs to be protected because the creation takes time, effort, and costs. The IPR owners have devoted their thoughts, energy, and expenses. Therefore, they are entitled to get compensation if their works are used commercially.¹¹ A set of legal provisions is needed for all possible violations by those not entitled to Copyright ownerships.¹² In this case, the protection can guarantee the IPR of the creator or inventor in both economic and non-economic aspects. The non-economic factors will spur creators to be creative, and the financial aspects will provide material benefits from their works. From an economic perspective, intellectual property is a force that can be used to enrich one's life and the future of a nation materially, culturally, and socially.¹³

Since technology has crossed conventional national borders, the regulation of copyrights, which use covers the entire world, is necessary. Traditional rules are only applied on a sectoral basis. They do not regard international provisions related to the copyright of songs performed virtually. Economically, the more viewers, the

⁹ Andriana Krisnawati and Gazalba Saleh, *Perlindungan Hukum Varietas Baru Tanaman (Dalam Perspektif Hak Paten dan Hak Pemulia)* (Jakarta: PT RajaGrafindo Persada, 2003), 1.

¹⁰ Cita Citrawinda, *Hak Kekayaan Intelektual Tantangan Masa Depan* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2003), 17.

¹¹ Budi Santoso, *Pengantar HKI dan Audit HKI untuk Perusahaan* (Semarang: Pustaka Magister, 2009), 3.

¹² Eddy Damian, *Hukum Hak Cipta Edisi Keempat* (Alumni: Bandung, 2014), 9.

¹³ Edy Santoso, *Pengaruh Era Globalisasi Terhadap Hukum Bisnis di Indonesia* (Jakarta: Penerbit Kencana, 2018), 33.

relatively more significant number of creators will get economic and non-economic benefits. Protection of copyright as IPR is necessary to prevent unauthorized use and imitation of creations that may reduce the economic benefits of copyright holders. Eventually, it gets in the way of human creativity and development.

A digital platform as an electronic system is defined by Law 11 of 2008 on the Information and Electronic Transactions as a series of procedures that prepare, collect, process, analyze, store, display, publish, transmit, and/or disseminate Electronic Information.¹⁴ In addition, digital platforms as electronic systems providers must also be registered to comply with the provisions of the Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions. As the provider of the electronic system, the digital platform is responsible for ensuring that it runs and manages a digital platform that is reliable, safe, and can operate correctly. Therefore, it can be concluded that copyrights for songs and music used commercially on digital platforms in Indonesia are regulated by the Law Number 28 of 2014 on Copyright and are also subject to the provisions of the Law Number 11 of 2008 on the Information and Electronic Transactions.

C. The Use of Song and/or Music Copyrights Performed in Live Streaming Concerts Through Digital Platforms in Indonesia

According to Rawls, the spread of intellectual property rights must be based on the principle of equity, namely justice as fairness.¹⁵ Justice must be applied with the principle of fairness, considering equality and each stakeholder in society. Protection by the state in a balanced manner based on the principle of equitability (fair and just) in the dissemination of IPR control, including through various legal and competition law rules. The state must provide optimal protection. It not only protects the rights of creators and copyright holders for the economic benefits of their creations but also gives equal justice to commercial song and music copyright users by establishing a condition and legal system that protects both reasonably.

As Rawls emphasized the legal politics of protecting the rights of citizens as outlined in the form of norms and applicable laws and regulations, the use of song and music copyrights in Indonesia should be regulated clearly and comprehensively. Clear rules will provide legal certainty for the entire song and music copyright ecosystem, not only in Indonesia but also in other states with the same concept of copyrights.

The Law Number 28 of 2014 on Copyright forms the basis for regulations related to the copyright of musical works in Indonesia. Copyright has penetrated conventional national borders for almost seven years since the law was enacted. Indonesia needs adjustments to rule copyright to accommodate technological

¹⁴ Article 1 Number 5 of Law Number 11 of 2008 on the Information and Electronic Transactions.

¹⁵ Rahmi Jened Parinduri Nasution, *Interface Hukum Kekayaan Intelektual dan Hukum Persaingan (Penyalahgunaan HKI)* (Depok: RajaGrafindo Persada, 2017), 47.

advances and human civilization development, although, in principle, the law remains the same.

Copyright is the creator's exclusive right to works born from human intellectual creativity.¹⁶ On the other hand, declarative means that copyright is announced, demonstrated, and communicated to the public so that there is no obligation to, but it is enough to register it. The recording is only to prove that the copyright registrar is the party that legally owns or manages the copyright. It is in line with the provisions in Trade-Related Aspects of Intellectual Property Rights as follows.¹⁷

"Copyright protection shall extend to expressions and not to ideas, procedures, methods of operations or mathematical concepts as such."

Copyright requires authentic expression and not just unrealized concepts or ideas. Everyone can dream or have an idea. However, if it has not been realized in a tangible form, it is not considered to meet the declarative element as a copyright requirement.

From the perspective of song copyright, it can be realized through public announcements/shows and/or fixations. On the fixation, in the withdrawal and distribution of song copyright royalties on digital platforms, identification is usually required in ISRC or International Standard Recording Code. The ISRC has several unique identifier values in the complete code and takes a total of twelve characters¹⁸ that distinguish one record or copy from another. This identification makes difference. It allows digital platforms as users to classify copyrights contained in the content.

Copyright protection of songs includes copyright and related rights. Copyright consists of the moral¹⁹ and economic rights²⁰ of the creator. Other related rights are rights for phonogram producers, performers, and broadcasters.²¹ For the creation of a song, the creator is entitled to royalties, namely compensation for the use of economic rights on a work or Related Rights product received by the Related Rights owner.²² The essence of copyright is to derive economic benefits exclusively

¹⁶ Ni Ketut Supasti Dharmawan, et.al., *Harmonisasi Hukum Kekayaan Intelektual Indonesia* (Bali: Swasta Nulus, 2018), 21.

¹⁷ See the TRIPs Agreement, particularly on Article 9 paragraph (2).

¹⁸ Rob Toulson, et.al., "Embedding ISRC Identifiers in Broadcast Wave Audio Files," *KES Transactions on Innovation in Music* 1, no. 1 (2013): 217, <http://nimbusvault.net/publications/koala/inmusic/papers/im13bk-019.pdf>.

¹⁹ Article 5 paragraph (1) of the Law Number 28 of 2014 on Copyright.

²⁰ Article 9 paragraph (1) of the Law Number 28 of 2014 on Copyright.

²¹ Article 20 of the Law Number 28 of 2014 on Copyright.

²² Article 1 number 21 of the Law Number 28 of 2014 on Copyright.

from the exploitation of the work.²³ In this case, they are royalties for the use of songs and music. Royalties are paid for the use of songs after the performance, announcements, and communication of the works. Communication of results, in general, is the dissemination of works using the electronic transmission. The Law Number 28 of 2014 on Copyright provides exclusive protection for Copyrights belonging to the Creator, both in terms of moral and economic rights.²⁴ The creator and/or the copyright holder are authorized and have the authority and power over the works. The use of the creator's economic rights over the works²⁵ requires written permission from the copyright holder.²⁶

Music and song performances before the public require permission from the creator and the copyright holder.²⁷ The creator's written consent or the copyright holder is embodied in a license. The creator or the copyright holder grants consent to the user. It is regulated in a licensing agreement.

According to *Black Law Dictionary*, a "Licensing agreement" is an "agreement where a person is granted a license to manufacture something or to use something, but not an outright sale."²⁸ The definition is related to licenses of song copyright that are commercialized in virtual performance. The organizers include the copyrighted song in the repertoire of music performed. They only get the right to use and commercialize the copyrighted song under the economic rights agreed upon in the licensing agreement. They do not get the right to use and commercialize the music. In addition, a licensing agreement does not necessarily mean the transfer of the copyright entirety. The term license in transferring copyright to other parties is only found in the 1997 Indonesian Copyright Law. The inclusion of the legal term "license" in the copyright laws and regulations is based on Article 6(1) of the Berne Convention. The provision requires a regulatory basis for copyright licensing practices, as recognized in patents and trademarks.²⁹

Song and/or music creators are the central part of the copyright intellectual property ecosystem that needs protection for moral and economic rights. one form of legal protection is in the form of certainty of royalty payments as a financial benefit. Owners of the rights must have a royalty management mechanism that is transparent, quality, and on target as well as through the means of information

²³ Agus Sardjono, "Hak Cipta Bukan Hanya Copyright," *Jurnal Hukum dan Pembangunan* 40, no. 2 (April-Juni 2010): 256, <http://dx.doi.org/10.21143/jhp.vol40.no2.217>.

²⁴ Article 4 of the Law Number 28 of 2014 on Copyright.

²⁵ Article 9 Paragraph (1) of the Law Number 28 of 2014 on Copyright.

²⁶ Article 9 Paragraph (2) of the Law Number 28 of 2014 on Copyright.

²⁷ Edward James Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu dan/atau Musik," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (November 2020): 556, <http://dx.doi.org/10.30641/kebijakan.2020.V14.553-578>.

²⁸ Henry Campbell Black, *Black Law Dictionary* (St. Paul Minn: West Publishing, Co., 1991), 634.

²⁹ O.K. Saidin, *Aspek Hukum Kekayaan Intelektual (Intellectual Property Rights)* (Depok: Rajagrafindo Perkasa, 2013), 125.

technology to guarantee the protection and legal certainty of the economic rights of creators.³⁰

Commercializing copyrighted songs and/or music on digital platforms must be carried out following the license granted based on user needs with due observance of the applicable provisions. The virtual concert organizers may require more than one economic right to copyright songs, depending on the type of use and what rights are used in the commercial activity. Users must be observant and carefully analyze what licenses they need to commercialize the copyrighted songs. Thus, users can use the economic rights in licenses effectively and efficiently. For instance, a master recording of a song does not only require a license for mechanical/reproduction rights. If the master recording is to be played or performed, it requires a license for performing rights.

Furthermore, if the master recording is a synchronization activity between audio and visual, for example, a video clip of a song, it requires a license for synchronization rights. Then if the master recording is to be stored in the database, it needs permission for database rights. Another example is a company that needs songs and/or music for its product advertisements on television (Television Commercials) but is reluctant to make a master recording. The company can pay for the use of the master recording to the phonogram producer who owns the master recording and a subject to the agreement to use the copyright. The company must obtain a synchronization rights license from the creator or the copyright holder.³¹ For announcement rights, television is considered a broadcasting institution.³² Therefore, the television station will pay the announcement rights royalty to the Creator.

The rights to store in the database and synchronization are not yet contained in Article 9, paragraph 1 of the Law Number 28 of 2014 on Copyright.³³ In international practice, the right of storage in the database and synchronization have been widely recognized. However, the right of storage in the database is

³⁰ General Explanation of the Government Regulation Number 56 of 2021 on The Management of Song and/or Music Copyrights Royalties.

³¹ Article 7 Paragraph (1) letter b Government Regulation Number 56 of 2021 on The Management of Song and/or Music Copyrights Royalties, states that the song and/or music data center must at least contain information about the Copyright Holder, namely the music publisher, the creator's heirs, the party who legally receives the right from the creator; and other parties who further receive rights from parties who legally receive such rights.

³² The Law Number 32 of 2002 on Broadcasting.

³³ As this kind of rights are not regulated in the Law Number 28 of 2014 on Copyrights in Article 9 paragraph (1) but are widely known in international practice. These rights commonly go along with reproduction/mechanical rights. See Agus Sardjono, "The Concept of Copyright Protection and Related Rights in the Practice of Buying and Selling Copyrights, (presented at the National Seminar on The Concept of Protection of Copyright and Related Rights in the Practice of Buying and Selling Copyrights and/or Related Rights, Faculty of Law, Universitas Parahyangan, Bandung, 14 May 2022).

usually attached to the right of copying because the copy results will generally be stored even if the purposes are only for documentation or internal archiving. For this reason, storage rights in databases usually do not require a separate license. The license for the right of synchronization/harmonization is usually regulated separately from the license for copying rights to provide optimal economic benefits for the creator and/or copyright holder because it creates new economic benefits.

There are several exceptions to separating the license of copying rights from the synchronization rights. One of them is the copying rights to the master recording with synchronization rights for music videos or video clips because visualization is required to promote the song. Usually, in an agreement to use the copyright of songs and/or music for the creation of recorded works (phonograms), the copyright holder will license the phonogram, copying rights, and synchronization rights for the producer's non-branded video clips. These video clips do not include elements of advertising or brand endorsement.

In Indonesia, the rights to perform and communicate to the public are managed by the Collective Management Organization (LMK – *Lembaga Manajemen Kolektif*) of Creators as the party with a power of attorney from the songwriter. Furthermore, the LMK is a part of the Creator's National Collective Management Institute, forming the National Collective Management Organization (LMKN – *Lembaga Manajemen Kolektif Nasional*). Definitively, the LMKN lies on the Government Regulation Number 56 of 2021 on the Management of Copyright for Songs and/or Music and the Regulation of the Minister of Law and Human Rights Number 9 of 2022 on the Implementation of the Government Regulation Number 56 of 2021 on the Management of Song and/or Music Copyright. The two regulations are the prominent supporters of the function and role of the LMKN, which are not explained in the Copyright Law.

Article 2 paragraph (4) of the Government Regulation Number 56 of 2021 regulates that commercial use of works on public services can be carried out in analog and digital forms, and Article 3 paragraph (1) confirms the obligation to pay royalties for commercial use of works. Therefore, the commercial use of creations in virtual concerts is required to pay royalties. One of the factors that can affect the amount of royalty value for song copyrights in virtual concerts in use. For example, YouTube has the *geo-lock* feature, which can be adapted to any region. The wider the circulation area, the larger the royalty will be. However, one problem is quite significant in determining the royalty value that must be paid for the commercial use of song and music copyrights, namely the absence of a legal umbrella that regulates the minimum royalty rates for the song and music copyrights on digital platforms.³⁴

³⁴ A.R. Ginting, "Peran Lembaga Manajemen Kolektif Nasional dalam Perkembangan Aplikasi Musik Streaming," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 388, <http://dx.doi.org/10.30641/kebijakan.2019.V13.379-398>.

In relation to managing other economic rights, such as copying and synchronization rights, the creator addresses them directly. The creator can also employ a legally appointed music publisher, providing them a power of attorney. Publishers can manage a live performance with economic uses of copyright and announce it in public (performing rights). The user must obtain permission and obtain a usage license.

Essentially, a virtual concert is a derivative of an offline concert. The difference lies in the venue. However, the use of technology changes the business processes that occur so that there are significant differences in the use of economic rights to copyrighted songs and/or music. The following are the differences in the licensing arrangements for song utilization in physical and virtual concerts in Indonesia.

1. The Use of Copyright of Songs and/or Music in Physical Offline Music Performance

The Indonesian Government introduced the Government Regulation Number 56 of 2021 on March 30, 2021, to clarify the rules regarding the system, procedure, and mechanism for the withdrawal and distribution of royalties for copyrighted songs and/or music in Indonesia. The Government Regulation Number 56 of 2021 states that the commercial use of works in public services includes performances, announcements, and communication of songs and/or music,³⁵ both analog and digital.³⁶

The Government Regulation Number 56 of 2021 also mentions fourteen types of public services that make commercial use of works, including music live performances.³⁷ The commercial use of copyrighted songs and/or music has been mentioned in the letter (c). However, there is no specific mention of live streaming through digital platforms. Nevertheless, it can be concluded that music performances are classified as commercial use of copyrighted songs and/or music as regulated in the Government Regulation Number 56 of 2021. Therefore, a user must pay royalties for the use of such copyrights. Based on the provisions of the Government Regulation Number 56 of 2021, royalties on announcement rights are delivered to the LMKN following the specified rate.

Furthermore, suppose there is a synchronization of creations in audiovisual form. It requires a license for announcement rights and a license for

³⁵ Article 2 Paragraph (1) Government Regulation Number 56 of 2021 on The Management of Song and/or Music Copyrights Royalties.

³⁶ Article 2 Paragraph (4) Government Regulation Number 56 of 2021 on The Management of Song and/or Music Copyrights Royalties.

³⁷ Article 3 Paragraph (2) letter (c) Government Regulation Number 56 of 2021 on Management of Song and/or Music Copyrights.

synchronization rights, where there is a combination of audio or sound with images or visuals. For example, when an offline concert is recorded and then uploaded to a digital platform for the benefit of the owner of the audio-visual recording master, a synchronization or synchronization event occurs. For the use of economic rights on song copyrights, namely synchronization rights, the user must pay royalties to the creator of the copyright holder.

2. The Use of Copyright of Songs and/or Music in Virtual Live Music Performance through Digital Platforms

Virtual music performance, broadcasted through a digital platform, is an alternative to organizing new, previously less popular concerts in Indonesia. Likewise, the regulation on the copyright of songs included in the repertoire of music performed at the show can be non-existent. Therefore, it is necessary to apply legal provisions following the nature and character of the use of copyrighted songs. Thus, this study uses an exploratory typology because the data regarding the subject does not exist or is lacking. Although regulations on virtual concerts broadcast live streaming on digital platforms have been found in many other countries, Indonesia has no regulations that provide clear and comprehensive arrangements on this matter.

The Law Number 28 of 2014 on Copyright does not regulate the mechanism for conducting online concerts, let alone regulate the royalty that should be paid for the use of copyrights of songs and music in virtual live music performance through digital platforms. The absence of this regulation in Indonesia certainly does not result in the loss of obligations the user must fulfil to the creator. Therefore, legal discoveries can be made using the main regulations governing the license to use copyrighted songs and music as the legal umbrella to use copyrights of songs and music in virtual live music performances through digital platforms.

The implementation of online live performance should consider the use of economic rights.³⁸ In its implementation, using economic rights requires the creator's permission.³⁹ The basic rules are evident regardless of the type and media used to commercialize copyrighted songs: written permission and royalty payment obligations. To determine whether there is a multiplication process in the production process of online live performance, it is necessary to study the production process, including the terminology related to live streaming.

Streaming is the process of transferring data or information from one user to another, either directly or through applications, which does not need to be downloaded and will be instantly displayed as data that has been successfully transferred. In today's technology, streaming can be divided into two types, Prerecorded and Live Streaming. Prerecorded Streaming plays previously-recorded

³⁸ Article 9 paragraph (1) of the Law Number 28 of 2014 on Copyright

³⁹ Article 9 paragraph (2) of the Law Number 28 of 2014 on Copyright

video to be broadcasted. It is stored on specific media (online or offline, such as hard disks). Once saved, a host can access the content. Access is freely granted.

Live streaming is slightly different from prerecorded streaming. It is carried out like live broadcasting on television. The content owner records the content and broadcasts it directly on the platform. Later, the host will be able to see instantly every second that the content owner goes through to make a closer engagement.⁴⁰ It can be concluded that the 'recording' event still occurs in online live streaming, and its documentation (archives) needs to be maintained and confirmed for any use in live streaming.

The license required for the use of copyright in virtual live music performance through digital platforms shall be no different from those of license required for recorded physical music performance, which includes:

- 1) performing rights and the right to communication to the public, as this kind of usage involves displaying, making available, and communicating song works to the public;
- 2) reproduction/mechanical rights if the organizer of an offline concert is recording and/or producing a master recording (audio), and this usually happens because the organizer shall need archive and documentation for its show;
- 3) database rights for documentation/archives or other purposes permitted in the licensing agreement; and
- 4) synchronization rights if there is alignment between audio and visual in implementing face-to-face concerts. This alignment usually always happens, considering that in virtual concerts held on digital platforms, there are always synchronization of the song's audio and the performers' visual appearance.

The synchronization of creations in the form of musical works in audiovisual form requires an announcement right license and a synchronization right because there is an element of harmonizing the audio with the image visualization. The online concert is not just to announce or make 'available to the public.' Still, with the appearance of a live streaming platform, the content can already be categorized as synchronization in audiovisual form and therefore requires a synchronization license as follows.

"To incorporate music into an audiovisual work—such as a film, video television program, or video game—the creator of that work must

⁴⁰ Bakti Kominfo, "Pengertian Streaming serta Jenis dan Penerapannya," *Bakti Kominfo*, October 18, 2020, https://www.baktikominfo.id/id/informasi/pengetahuan/pengertian_streaming_serta_jenis_dan_penerapannya-1065.

obtain synchronization licenses from both the owner of the musical work and the sound recording owner.”⁴¹

Virtual music performance bears several consequences. Concerts are held not in a personal domain and do not use their broadcast platform, so the user must follow the terms and conditions of the digital medium. These terms and conditions of use generally use a clickwrap agreement so that the negotiation space is minimal, even almost non-existent.

Using another party's server (digital platform) allows the server to have access to and store data. In this case, there is a process synchronization. There is an alignment between the audio or sound of the copyrighted music song and the concert performance's image or visual. Virtual concert organizers also have recordings of virtual concerts broadcast live streaming for archives/documentation purposes, promotion, *Video on Demand* (VoD), and other services as agreed in the copyright licensing agreement.

In addition to answering the questions regarding such use of copyrights of songs and music, some countries have accommodated technological and business advances so that they can be used as a reference for the implementation of copyright in Indonesia. A comparative approach to the rules that apply in the international world can be a solution to regulate the virtual commercialization of copyrighted songs in Indonesia before this new phenomenon is regulated in Indonesian laws and regulations clearly and comprehensively. In the United States for example, *“a live stream does not require a mechanical license until it is archived and rebroadcast and/or if the stream is recorded and sold/distributed as a stand-alone recording.”⁴²* It can be compared to Indonesia, which has not yet regulated virtual music performance. A mechanical/reproduction rights license is not required unless the concert is archived or documented, rebroadcast, and/or recorded and distributed as a separate recording. In practice, every show is permanently archived, recorded, and stored, even if it is only to document the concert organizers. However, reproduction has occurred, so a mechanical license is required.

YouTube automatically archives virtual concerts broadcast live streaming on its channel under certain conditions.⁴³ Every virtual concert on YouTube requires a mechanical license. Platform usage other digital players in transmitting virtual shows must observe the terms and conditions that apply to the digital platform from time to time. Although it works like television broadcasting, a virtual music

⁴¹ United States Copyrights Office, “Copyrights and Music Marketplace: A Report of the Register of the Copyrights,” *United States Copyrights Office*, November 4, 2020, www.copyright.gov.

⁴² The Alliance for Performing Art Conference, “The Legal landscape of Live Streaming,” *Folk*, October 13, 2021, https://folk.org/wp-content/uploads/2020/05/Legal-Landscape-of-Live-Streaming_NA_April272020.pdf.

⁴³ Youtube Helps, “Archive Live Streams,” *Youtube*, October 14, 2021, <https://support.google.com/YouTube/answer/6247592?hl=en-GB>.

performance cannot be categorized as a broadcast if it is broadcast by a party who is not a broadcasting institution. The Broadcasting Law only regulates broadcasting institutions in the form of television and radio stations and does not regulate broadcasting by digital platforms and/or content filters on digital platforms.

A digital platform that provides a 'venue' for virtual concerts can be considered an electronic system operator as regulated in the Law Number 11 of 2008 on Information and Electronic Transactions and the Government Regulation Number 71 of 2021 on the Implementation. Therefore, duplication or alignment of song copyrights in virtual concert recordings is the use of the copyrighted song by virtual concert organizers. It cannot be included in the category of temporary copying by broadcasters.⁴⁴ It is mandatory to pay a license to the creator or the copyright holder.

Once again, due to the absence of detailed legal regulations, the legal principle is the Law Number 28 of 2014 on Copyright that every use of copyright on a song creation must fulfill the moral and economic rights of the songwriter through a license. The Government Regulation Number 56 of 2021 does not regulate the commercial use and distribution of copyrighted songs and music on digital platforms.⁴⁵ Still, it stipulates that commercial use is not regulated in Article 2 paragraph (2). It is possible to add commercial forms of public services through a Ministerial Regulation. This means getting clarity and legal certainty regarding the use of copyright in virtual concerts. The government can take a policy in issuing a Ministerial Regulation that regulates additions as follows: a form of commercial service that is commercial in nature, including regulating the licenses of any economic rights required for such commercial use. In this case, the ministry given the authority to regulate and administer copyright is the Ministry of Law and Human Rights of the Republic of Indonesia.

As a form of engagement between the creator or the copyright holder and the organizer of a virtual concert as a user, a license must be made in writing and agreed upon by the parties. It can be in a licensing agreement or other written form of engagement. Suppose the license to use songs and/or music is made as an agreement. In that case, the license must meet the legal requirements of the agreement: Article 1320 of the Civil Code on the existence of an agreement for those who bind themselves, the ability of the parties to make an engagement, a

⁴⁴ Article 49 paragraph (2) of the Law Number 28 of 2014 on Copyright.

⁴⁵ Diana Silfiani, "Personal Data Protection in Relation with Data Exchange for the Purpose of Collection and Distribution of Economic Rights of the Copyright of Indonesian Songs in Digital Worldwide", (proceedings of the 2nd International Conference on Law and Human Rights 2021 (ICLHR 2021), Jakarta, November 2021): 148.

specific matter, and a lawful cause. These four conditions must be met to achieve the validity of the licensing agreement.

Later, the use of song copyrights will be carried out, following the mandate of the Government Regulation Number 56 of 2021, by the Song and/or Music Information System (SILM – *Sistem Informasi Lagu dan/atau Musik*). Users must access and maintain licenses for any commercial uses of copyrighted songs and/or music. The LMKD will manage SILM based on the mandate of the Government Regulation Number 56 of 2021. It has the authority to withdraw, collect, and distribute song and/or music copyright royalties.

However, based on the business perspective, industry actors need to work together amid declining incomes and a weakening economy and formulate the best system and pattern to resurrect the economic downturn due to the Covid-19 pandemic. It affects almost every business sector in Indonesia. The government, as a stakeholder, also needs to listen to real problems that occur in the field and contribute to providing solutions, answers, and protection for the community.

D. Conclusion

The economic rights of copyrighted songs performed in virtual concerts need sufficient protection. Therefore, the owners can get maximum financial benefits. Indonesia's prevailing laws on copyrights, including the Law No. 28 Year 2014 on Copyrights, the Government Regulations No. 56 Year 2021, and the Regulations of Ministry of Law and Human Rights do not specifically regulate the use of copyrights of songs and music in virtual live music performance through a digital platform. The existing Indonesian regulations on copyrights only cover the use in conventional ways, such as offline concerts. Since the use of copyrights songs and music now has extended and it is possible to use copyrights songs and music in virtual live music performances through digital platforms, Indonesia needs regulation to accommodate the new usage.

It is necessary to regulate further the use of song and music copyrights that accommodate technological progress and development and the dynamic changes of copyrights in Indonesia. Currently, laws and regulations do not regulate the use of song and music copyrights, especially in virtual live performances broadcasted through digital platforms. Apparently, it confuses both users and copyright owners. Furthermore, users need to understand economic rights before commercializing copyrighted songs in virtual concerts. Understanding the types of rights and the owner of the rights to withdraw, collect, and distribute royalties are needed to optimize the economic benefits for song and music makers. The rights will affect the royalties that can be withdrawn, compiled, and distributed to creators. The economic rights used, and the number of royalties paid by the user depends on the license granted to the user.

Therefore, reasonable and fair regulations shall be enacted for mutually beneficial ecosystems. Dissemination of rules on copyright and related rights is

necessary to increase the understanding and attitude of the public towards the copyright. Furthermore, considering the complexity of the procedures, methods, and types of uses of copyrighted songs and music, proper regulations provide precise and robust instructions for the withdrawal, collection, and distribution of copyright royalties in Indonesia.

The role of legal politics in copyright protection for songs used and/or performed in virtual concerts is significant in regulating and enforcing the protection in Indonesia. The Indonesian government needs to make special regulations or implement regulations related to virtual shows in Indonesia, especially in using copyrighted songs. By the mandate of the Government Regulation Number 56 of 2021, a Ministerial Regulation can be the proper realization to regulate the use of song and music copyrights, including virtual live performances broadcasted through digital platforms. The government and related institutions must strengthen law enforcement to overcome the problem of copyright infringement and related cases. Thus, they can provide optimal protection of the IPR, in this case, the Copyright of the creator. A special regulation that is comprehensive, reliable, and accountable will clarify the implementation of the state's protection of Indonesian copyright of songs and/or music.

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