The Seybold Report

ISSN 1533-9211

DOI 10.17605/OSF.IO/C9RX3

REVIEWING THE IMPOSITION OF CRIMINAL SANCTIONS FOR VIOLATIONS OF DOWNLOADING SONGS IN TERMS OF COPYRIGHT LAW ASPECTS

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Abstract

Sunardi, "Review the imposition of criminal sanctions for violations of downloading songs (download) in terms of copyright law aspects. The purpose of this study is to examine: (1) the imposition of criminal sanctions for violations of downloading songs (download) in terms of copyright law aspects. (2) Legal protection of copyright against the creator of songs downloaded via the internet. The research method used is normative juridical research with a statutory approach and a concept approach. The results showed that (1) the imposition of criminal sanctions for violations of downloading songs (download) in terms of copyright law aspects, namely Criminal Provisions in Law Number 28 of 2014 concerning Copyright, based on Chapter XVII, there are about 8 articles regulating criminal provisions. Regulated in Article 112 to Article 119. In the 8 (eight) Articles regulated about Imprisonment and Fines. Imprisonment for a maximum of 10 (ten) years. Criminal Fine maximum IDR 4,000,000,000.00 (four billion rupiah). (2) Copyright legal protection of the creators of songs downloaded via the internet is carried out with state administrative law, criminal law and civil law. State administrative law is by registering the copyright of the song based on the Regulation of the Minister of Justice of the Republic of Indonesia Number M.01-HC.03.01 of 1987 concerning Registration of Creations and Decree of the Directorate General of IPR Number H01. PR.07.06 of 2004 concerning Guidelines for the Implementation of Acceptance of Intellectual Property Rights Applications, through criminal law instruments, namely perpetrators of downloading songs on the internet can be criminally charged according to Article 113 Paragraph (3) of the UUHC and civil lawsuits against perpetrators against songs used for commercial activities based on article 99 Paragraph (1) of the Law on Civil Rights.

Keywords: Imposition, Sanctions, Criminal, Infringement, Songs, Downloads, Copyright

1. INTRODUCTION

Intellectual Property Rights are material rights derived from the work of the brain by reasoning where the results of work are in the form of intangible objects. This intellectual property right must be protected because, in making a work of the creator or inventor requires energy, cost, time, and thought. Protection of Intellectual Property Rights is held for the purpose of giving an award to someone who has poured his ideas and ideas into a work. Insan Budi Maulana in Supasti Dharmawan said, Intellectual Property Rights consist of two major parts, namely industrial property rights related to industrial activities and copyright.[1]

Intellectual Property Rights (IPR) have benefits for everyone with their intellectual power to create works protected by IPR, for example in the field of Copyright.[2] Copyright is a special right owned by the creator to produce his work or give permission to other parties to do so but within the limits of applicable law.[3]

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ISSN 1533-9211
DOI 10.17605/OSF.IO/C9RX3

One of the objects of copyright is the song. A song is a musical unity consisting of a successive arrangement of various notes.[4] Songs are one of the works of art protected in Law Number 28 of 2014 concerning Copyright in Article 58 letter d, currently songs are used in various occasions in life everyday such as for entertainment or even to gain economic benefits.

In the current era of globalization with the rapid development of technology, media to listen, show or spread a song and music not only through television or radio but can also be done through the internet. The development of technology related to the means to enjoy a song and music certainly has a positive impact and a negative impact.

The positive impact is that people can enjoy music more easily besides that the development of this technology will make it easier for creators to promote their songs. While the negative impact of this technological development is to make more and more people who actually misuse technology for personal interests such as piracy and get benefits from other people's songs.

In the midst of piracy, music business activities continue with various genres of music and with their own characteristics. The creation of new songs supported by various marketing systems further opens up business opportunities in this business which is a promising source of income from an economic perspective.

One of the new concepts in the music business is the presence of programs launched by cellular phone providers. New innovations are created to reach customers in the midst of increasingly fierce telecommunications business competition which is part of the marketing tricks of cellular phone provider companies. One of the new innovations is the existence of Ring Back Tone (RBT) or Personal Connection Tone (NSP) using music or songs to become a new trend. Both provide fresh air for the music industry in the country because a new form of marketing has emerged that no longer uses conventional networks but already uses virtual access.

New problems arise that are no less severe than the issue of piracy in this business segment. The demand for the use of RBT and NSP that has occurred a lot lately is an indication of the misalignment of copyright application in this virtual business. Songs as a result of creation are one part regulated in Intellectual Property Rights. Substantively, the definition of IPR can be described as property rights arising or born from human intellectual abilities.[5]

Various interpretations of the position of copyright have been developed through justifications that are 'forced' to meet targets in their respective interests. To position this RBT issue comprehensively, it is necessary to study from the limitations of law and legislation as a formal reference, namely Law Number 28 of 2014 concerning Copyright. The use of copyrighted works is in accordance with the agreed format and packaging, of course, there is no problem.

Likewise, other rights of the creator that must be considered and even respected include moral rights and propriety in dividing their economic rights. In general, the exploitation of copyrighted works used as RBT or NSP is carried out by producers or label owners without any clear agreement in the agreement, especially for songs that have been released before this RBT era. This is what often causes problems.

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ISSN 1533-9211
DOI 10.17605/OSF.IO/C9RX3

The ownership rights of fixation (master) and multi-interpretation agreements, make the producers (labels) 'daring' to make RBT transactions with telcos and they do not feel that they have violated the rules and this is 'amini' by these telcos who do not understand much about copyright, and even the moral rights of the songwriter are not fulfilled.

Some users argue that RBT is a new form of business whose use is accessed through virtual media so that it is impossible to include the name of the creator, which is very different from conventional forms such as cassettes, CDs or DVDs that can be seen in real form. The inclusion of the name of the creator or singer has been replaced through certain initial codes to facilitate access to consumers,

This is an unfounded argument, whatever the reason for the technical change in marketing or exploitation of the song is not justified if it is not done in accordance with the rules. For example, the beheading of a song that only part of it must have the permission of the creator. All of that will not be a problem if the change of the creator's name into certain codes and the act of mutilating the copyrighted work has received written consent from the creator or has actually been contained in the contract (license).

Based on the case, it is interesting to study academically about the Judge's balance in deciding the case. Is it true that downloading songs used for phone dial tones violates copyright law? Therefore, researchers are interested in a study entitled **"Reviewing the Imposition of Criminal Sanctions for Downloading Song Violations in Terms of Copyright Law"**

2. RESEARCH METHODS

The research in this dissertation is normative juridical research with a statutory approach and a concept approach.[6]

3. RESEARCH RESULTS AND DISCUSSION

1. The Act of Downloading Songs through the Website for the Benefit of Personal Connection Tone (RBT) in the Provisions of Copyright Law

The music industry is currently very developed in Indonesia. No less telecommunications industry. Since mid-2004, began to be known as a personal dial tone (Ring Back Tone) which was enthusiastically welcomed by the community of cellular phone owners.[7]

The sale of Ring Back Tone is carried out by cellular operators who previously had to make licensing agreements with record producers to be able to use songs that will be used as RBT. After the license agreement is agreed, the record producer will provide a master copy of the processed recording to the cellular operator, because the song on RBT comes from the master recording.

However, the use of song creation as RBT does not escape confusion whether it is included in the category of announcement (Performing) or reproduction (mechanical). Some say that the use of songs as RBT is a form of announcement, there are those who argue that it is a form of propagation. James F. Sundah, one of the leading Indonesian musicians explained that;[8]

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"Some say, how not to multiply, wong from one master is copied to the next masters and then uploaded. Well, if you have talked about uploading, it is the same as the transmission or transmission event. Enter there broadcast, so it performs right. Both exist. It was in that confusion that we at PAPRI conducted our research. As a result, there are economic rights that arise there, because there are people sucked into pulses. All over the world the practice is the same."

Furthermore, James F. Sundah explained that in the study, RBT was more like a radio broadcast. It is not the listener who pays to be able to listen to the song, but instead, the RBT user who pays for someone else (who calls) who can listen to the song used as RBT. Thus, not necessarily the listener likes the song. This is different from the characteristics of mechanical rights, because in mechanical rights, the listener of the song can choose the song he likes.

So, looking at the process of using RBT, according to James F. Sundah, the use of RBT can be said to be a form of announcement and not a propagation, because the song listened to also comes from one master copy of the recording contained on the mobile operator's machine, not by transferring or duplicating the song to each cellphone.

Thus, the agreement made between the record producer and the mobile operator should not be justified. Because the cellular operator should make a license agreement directly with the songwriter as the copyright owner who can give the right to announce. Because based on Article 49 of the UUHC, record producers only have related rights, namely the right to give permission or prohibit other parties who without their consent reproduce and/or rent sound recording works.

2. Regulation of Intellectual Property Rights on Song Copyrights as Ring Back Tone and Personal Connection Tone

Indonesia's participation as a member in the Agreement Establishing the World Trade Organization (WTO) which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) requires Indonesia to ratify the provisions of IPR in the national legislation system, namely through Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization (Agreement on the Establishment of the Trade Organization World). With this ratification, Indonesia bears the consequences of TRIPs (Agreement on Trade Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods) which is based on the principle of full compliance.[9]

Thus, Indonesia is obliged to establish national regulations on related matters. One of the protected IPR fields is regarding Copyright which is currently regulated in Law Number 28 of 2014 concerning Copyright is the result of changes from Law Number 7 of 1987. Meanwhile, Law Number 7 of 1987 is a replacement for Law Number 6 of 1982 concerning Copyright. Law Number 6 of 1962 replaced the Copyright Law of 1912, namely the copyright law left by the Dutch colonial government which during the Japanese colonial period was declared still in effect.

Article 1 (1) requires Member States to comply with TRIPs but provides freedom to determine

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the means in which they are applied in accordance with Member State practices and legal systems. Furthermore, Article 14 TRIPs generally lays down a series of rights for performers, producers of phonograms, and broadcast organizations, which must form part of the regulation in Indonesian national law.[10]

Legal reforms that occur in Indonesia are in line with the development and needs of the community, there is also a legal update in the field of Copyright with the existence of Law No. 28 of 2014. Article 1 of Law No.28 of 2014 states that:

"Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations."

Furthermore, in Article 1 (2), it states that the Creator is one or several people who individually or jointly produce a creation that is distinctive and personal. And regarding Creation is regulated in Article 1 (3) which is any work of creation in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in tangible form. The basic idea of the copyright system is to protect the form of human work born because of its intellectual abilities.

This legal protection applies only to creations that have come into being so distinctively that they can be seen, heard or read. The protection given to the results of creation and its creator, not only as a respect and appreciation for one's creative work in the fields of science, art and literature, but also expected to arouse greater enthusiasm and interest to give birth to new creations in the fields of science, art and literature. So that people will not feel afraid to work because the copyrighted works produced later do not get legal protection. This copyright legal protection adheres to a declarative system, namely since it was announced without having to register which provides protection to the creator or first holder of IPR.

The first holder of IPR, as stipulated in Article 7 which contains the Phonogram Producer is the person or legal entity who first recorded and has the responsibility to carry out sound recording or sound recording, both performance recording and sound or sound recording. The phonogram itself as stipulated in Article 1 (14) is the fixation of performance sound or other sound, or representation of sound, which does not include the form of fixation incorporated in cinematography or other audiovisual works.

Explicitly, Article 40 (1) regulates protected works including works in the fields of science, art, and literature, consisting of: [11]

1. Books, pamphlets, faces, published papers, and all other written works:
2. Lectures, lectures, speeches, and other similar Creations;
3. Teaching aids made for the benefit of education and science;
4. Songs and/or music with or without captions;
5. Drama, musical, dance, choreography, puppetry, and mime;

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DOI 10.17605/OSF.IO/C9RX3

6. Works of fine art in all forms such as drawings, engravings, calligraphy, sculptures, sculptures, or collages; works of applied art; architectural works; map; batik artwork or other motif art; photographic works; Portrait;
7. Cinematogratic works;
8. Translations, interpretations, interpretations, potpourri, databases, adaptations, arrangements, modifications and other works of transformation.

One of the protected copyrighted works in the field of art is a song or music with or without text stated in Article 12 Paragraph (1) letter d. Songs are created by their creators to be enjoyed by anyone who hears them. So it has moral rights and economic rights. Songs or music with or without text are intended as a complete work (constitute a single copyrighted work) even if they consist of elements of songs or melodies, verses or lyrics, and arrangements including notations are copyrighted works.[12]

Conventionally, songs can be enjoyed by everyone through cassettes, VCD chips, CDs, or DVDs which certainly have moral and economic values. So that someone's copyrighted work in the form of this song must be protected. Despite the fact that the work of this song creator is prone to piracy, where copyright piracy of this song can be found everywhere such as the sale of pirated VCD tapes, CDs or DVDs that are easy to find in the market or on the sidewalks of the street at prices that are much cheaper than the original or original.

3. Protection of music copyright holder's aspects of State administrative law

In the latest adjustment to the law, namely Law of the Republic of Indonesia No. 28 of 2014, copyright (music) is an exclusive right in the sense of rights that are solely intended for the creator and / or copyright holder to announce and or reproduce his work and therefore no other party can use it without prior permission from the creator and or from the copyright holder.

Hendra Tanu Atmadja suggests that copyright consists of a set of exclusive rights for copyright owners to allow other parties to use their copyrighted work, while also prohibiting other parties from using their copyrighted work. Those exclusive rights are the essence of copyright ownership.[13]

In this connection, Suyud Margono suggests that copyright law provides an understanding of copyright as a special right, this means that the understanding of the law stems from attaching a special nature to the creator or owner of the right associated with the thought of the need for recognition and respect for the creator's hard work for all the power, effort and sacrifice that has been born a work or a creation. He further stated that in an economic perspective, if the benefits obtained or felt from the results of the creator's hard work are greater, then the greater the value produced.[14]

The activity of reproducing and/or announcing the work or giving permission to other parties to participate in reproducing and/or announcing the work, is an action based on commercial or economic considerations. That is, the activity of reproducing or other forms of exploitation of copyrighted works, is also the right of the creator.

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CJT. Simorangkir said the definition of special rights means that no other person or entity can exercise the copyright, for example to announce or reproduce it, except with the permission of the creator. The author's permission for another person or entity to exercise the copyright may be in the form of or through:

a) Inheritance;

b) Grants;

c) Wills;

d) Made state property;

e) Agreement with the deed.[15]

Meanwhile, H. OK. Saidin pointed out that "the word "no other party" contained in Article 2 of the UUHC has the same meaning as a single right which indicates that the creator alone may obtain such a right. This is the so-called exclusive right. Exclusive means special, specification, unique. Its uniqueness is in accordance with the nature and way of giving birth to these rights.[16]

As a consequence of the definition of copyright as an exclusive right, every person / business entity that uses song copyright works and / or for a commercial activity and / or interests related to commercial activities such as hotels, restaurants, pubs, karaoke, and so on, must ask permission in advance to the creator and / or to the copyright holder who the creator is authorized to do so. In other words, to take advantage of the creator's economic rights, you must seek permission from the creator or legal copyright holder.

Through Article 9 paragraph (2) of the UUHC, it is stated that everyone who exercises economic rights as referred to in paragraph (1) must obtain the permission of the creator or copyright holder. Furthermore, in paragraph (3) it is explained that any person without the permission of the creator or copyright holder is prohibited from copying and/or commercial use of the work.[17]

In the sense of "announcing or reproducing", including the activities of translating, adapting, arranging, transferring, selling, renting, lending, importing, exhibiting, performing to the public, broadcasting, recording and communicating the work to the public through any means.

The next issue is who is meant by "any person" or "other party" in Article 9 of the UUHC which by law is prohibited from benefiting from the copyrighted works of music and songs without the permission of the creator and or copyright holder. Other parties in question are those who use music copyrights for a commercial activity and / or interests related to commercial activities, such as hotels, hospitals, malls, shops, retail business, salons, spa &; fitness, restaurants, pubs and cafes, karaoke and discotheque, transportation, terminals, digital transmission, cinema, broadcaster, one off event, selling background music tickets, and so on.

Granting permission in the use of music and song copyrighted works by users as described above is done with a license agreement. The license itself is a permission given by the copyright holder (music) to another party to exercise economic rights to his work under certain conditions. Music announcement licenses are granted based on a license agreement with an

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obligation to pay royalties to the copyright holder. Royalty is a form of payment made to the copyright holder (music) because they cannot take advantage of their own ownership. The amount of royalties payable to music copyright holders by licensees in accordance with the law is determined based on the norm in applicable practice by fulfilling the element of fairness.

It can be seen how UUHC provides protection to private music copyright holders through the establishment of commercial courts as authorized institutions other than arbitration and alternative dispute resolution to decide disputes or copyright infringement with various rights as described above and determine the period for resolving cases.

With the establishment of the commercial court as the institution authorized to decide copyright disputes, the principle of speedy trial and legal certainty can be realized immediately, considering the stipulation of a time limit for resolving and deciding the claim for compensation for 90 (ninety) days since the lawsuit is registered and can be extended for a maximum of 30 (thirty) days with the approval of the supreme court. Against the decision of the commercial court, only cassation legal remedies are available which within 90 (ninety) days after the cassation application is received, the Supreme Court must give a decision on the cassation application.

4. Legal Protection from Performing Right Song and/or Music Copyrights Civil Law Aspects

Performing rights of song and/or music copyright as an economic right of the creators are inseparable from other legal aspects, especially civil law aspects. From a civil perspective, the performing right can be reviewed in terms of granting licenses to users (users) carried out in the form of licensing agreements. This is in line with copyright as an exclusive right and economic right, where the creator / copyright holder has the right to give permission to other parties to publish his work and the granting of permission cannot be separated from the problem of profit from the use of copyright. Granting permission from the creator / copyright holder to others is called a license.[18]

Gunawan Wijaya stated that a license is a form of granting permission to utilize an intellectual property right, which can be given by the licensor to the licensee so that the licensee can carry out a form of business activities, either in the form of technology or knowhow that can be used to produce, produce, sell or market certain (tangible) goods, using the intellectual property rights licensed aforementioned.[19]

For this purpose, licensees are required to provide counter-performance in the form of royalty payments known as license fees. Jay Dratler as quoted by Hendra Tanu Atmadja stated that a license is the granting of rights to ownership (property) without transferring ownership.[20]

Article 1 point (20) of Law No. 28 of 2014 formulates, a license is a written permission given by a Copyright Holder or Related Rights Owner to another party to exercise economic rights to his Work and / or Related Rights products with certain conditions.[21] In accordance with the definition of license as described above, it can be concluded that the license is always associated with authority in the form of privilege to do something by a person or a certain party.

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Rooseno Harjowidigdo, stated that in order for the intellectual property rights license to be effective, it is necessary to pay attention to the following: [22]

1. The person must have ownership of the intellectual property rights or the owner's authority to grant the license.
2. Intellectual property rights must be protected by law, at least eligible (eligible) for legal protection.
3. The license must be specific to the rights relating to intellectual property rights granted to the licensee (lisensee) by the licensor (licensor).

In relation to the license agreement for a song and/or music copyright, the following benefits will be obtained:

1. For the licensor, it will allow the licensor to benefit from the licensee's expertise, capital and capabilities as a business partner developing the business owned by the licensor.
2. Licensees can take advantage of the licensor's big name and their musical and song works.

Gatot Supramono suggested that licensing is also an effort in the context of copyright piracy, because there can be limited ability of creators used by other parties to imitate works in the same form.[23]

In relation to song and/or music copyright, the term license as a transfer of rights to other parties, constitutionally has only been found in copyright regulations in Indonesia since 1997 through Article 38 A of Law No. 12 of 1997, which specifies that copyright holders have the right to grant licenses to other parties based on a license agreement letter to carry out actions as referred to in Article 2. This licensing provision is intended to provide a regulatory basis for licensing practices that take place in the field of copyright.

This license is related to the basic principles adopted by Indonesian copyright law, namely the principle or principle of national economic interest. Copyrighted works belonging to citizen creators

Indonesia should be enjoyed by the people of Indonesia. This can stimulate Indonesia's economic growth in the sense of improving the standard of living and quality of the Indonesian people. Therefore, the granting of licenses to other parties is prohibited from containing provisions that directly or indirectly can have adverse consequences on the Indonesian economy. It is also intended to prevent market monopoly.

There are two types of licenses in the transfer of copyright, namely:

1. Voluntary licensing, which is a license agreement between the creator or copyright holder and the person or legal entity who will be the recipient of copyright, which is carried out voluntarily. 2. Compulsary licensing, i.e. if the state deems it necessary or judges that a work is very important for the life of society, the state may require the copyright holder concerned to translate or reproduce his work or grant permission / license to other parties for it.[24]

Article 84 of Law No. 28 of 2014 stipulates, a compulsory license is a license to carry out

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DOI 10.17605/OSF.IO/C9RX3

translation and/or reproduction of Creations in the fields of science and literature granted based on a ministerial decree on the basis of a request for the benefit of education and/or science as well as research and development activities.

The procedures and mechanisms for obtaining compulsory licenses must be passed through an application to the Minister of Law and Human Rights of the Republic of Indonesia. Anyone may apply for such an application, which by law is defined as "any person". For compulsory license applications as referred to above, the Minister of Law and Human Rights of the Republic of Indonesia may: [25]

1. Require Copyright Holders to carry out their own translation and/or reproduction of Works in the territory of the Republic of Indonesia within the specified time.
2. Require the Copyright Holder concerned to give permission to other parties to carry out translation and/or reproduction of Works in the territory of the Republic of Indonesia within the specified time in the event that the Copyright Holder concerned does not carry out it himself; or
3. Appoint other parties to translate and/or duplicate the Work in the event that the Copyright Holder does not carry out the obligations as referred to in letter (b).

The obligation to carry out the translation as referred to in letter (a) above is carried out after a period of 3 (three) years has passed since the Creation in the field of science and literature is made Announcement as long as the work has never been translated into Indonesian. Meanwhile, the obligation to do Doubling as referred to in letter (b) above is carried out after the expiration of the period of:

1. 3 (three) years since the book in the field of mathematics and natural sciences was made Announcement and the book has never been duplicated in the territory of the Unitary State of the Republic of Indonesia;
2. 3 (three) years since the book in the field of social sciences was made Announcement and the book has never been duplicated in the territory of the Unitary State of the Republic of Indonesia;
3. 3 (three) years since the book in the field of art and literature was made Announcement and the book has never been duplicated in the territory of the Unitary State of the Republic of Indonesia;

It is also stipulated that translation or duplication as an objective of the compulsory license is only used in the territory of the Unitary State of the Republic of Indonesia.

In terms of civil law, it can be stated that a license is an agreement between the licensor and the licensee for a certain period of time and contains certain rights and obligations, so it is a legal act that gives rise to rights and obligations for the parties, and therefore, the granting of a license from the copyright holder of songs and / or music to the licensee is subject to the law of agreement as stipulated in Book III of the Civil Code concerning verbintennis as general provisions and UUHC as special provisions (lex specialis). So in this connection the principle

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of lex specialis derogat legi generalis applies, which means provision Specific laws override general legal provisions.

5. Legal Protection against Illegally Downloading Songs Criminal Aspects

An act can be considered a copyright infringement if it violates the exclusive rights of the creator or copyright holder. Copyright is an exclusive right consisting of moral rights and economic rights. [26]In the Explanation to Article 4 of the Copyright Law, it is explained: What is meant by "exclusive rights" is a right that is only intended for the Creator, so that no other party can take advantage of these rights without the Creator's permission. Copyright holders who are not Creators only have part of the exclusive rights in the form of economic rights.

Songs and/or music are one of the protected creations as described in Article 40 paragraph (1) letter d of the Copyright Law. Copyright protection for works in the form of songs or music with or without text applies for the life of the creator and continues for 70 (seventy) years after the creator dies, starting from January 1 of the following year. [27]Meanwhile, copyright protection for works in the form of songs or music owned or held by legal entities is valid for 50 (fifty) years from the first time the Announcement is made.[28]

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

1. Harvesting (fruit);
2. Copy files from an online information service or from another computer to the computer in use.

Then the act of downloading mp3 format songs from the internet can certainly be categorized as a violation in terms of doubling a creation.

Here's the explanation: Reproduction is the process, deed, or way of duplicating one or more copies of a work and/or phonogram in any way and in any form, permanently or temporarily. Please note that everyone who exercises economic rights (in this case doing duplication) must obtain the permission of the Creator or Copyright Holder. Then everyone is prohibited from copying and/or commercial use of the work without the permission of the creator or copyright holder.[29]

Therefore, the act of downloading mp3 format songs from the internet can certainly be categorized as an infringement in terms of copying a work if it meets the elements in Article 113 paragraph (3) of the Copyright Law as follows:

Any person who without rights and/or without permission of the Creator or Copyright holder violates the economic rights of the Creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

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DOI 10.17605/OSF.IO/C9RX3

Article 9 paragraph (1) point b regulates the economic rights of creators or copyright holders to duplicate works in all their forms. In addition, the act of downloading mp3 format songs via the internet if the purpose is to be disseminated or for commercial purposes, then it includes copyright infringement as stipulated in Article 113 paragraph (4) of the Copyright Law which regulates piracy as follows:

Any person who fulfills the elements as referred to in paragraph (3) committed in the form of piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah).

Similarly, if the act of downloading mp3 songs for the purpose is to be enjoyed/own interests, then the act can also be categorized as copyright infringement if it is "contrary to the reasonable economic interests" of the creator or copyright holder.[30]

The elements of copyright infringement in Article 113 paragraph (4) of the Copyright Law are as follows:

1. Everyone here means anyone, so it can be addressed to anyone, in this case it is a downloader. Downloaders that have been held accountable and cannot be subject to excuses of forgiveness or criminal erasure fulfill the element of "everyone".
2. Fulfilling the elements referred to in paragraph (3) Paragraph (3) refers to Article 113 paragraph (3) of the Copyright Law which is an act of infringement of the economic rights of the creator, in this case is duplication for commercial use.
    1. which is carried out in the form of piracy Piracy itself is defined as unauthorized reproduction of creations and/or related rights products and the widespread distribution of the duplicated goods to obtain economic benefits.[31]
    2. The downloader can be said to have committed copyright infringement if it meets the elements of copyright infringement as mentioned above by downloading songs through internet facilities. If it does not meet only one element, it cannot be said that the perpetrator has committed copyright infringement.

Related to your third question, whether violators of economic rights (duplication of songs by downloading songs) can be charged royalties. Royalties are rewards for the utilization of economic rights of a work or related rights product received by the creator or owner of related rights.[32] Users who are required to ask permission and pay royalties are those who listen to songs and perform songs in the form of commercial public services.[33]

Such royalties are paid to the Creator, Copyright Holder, or Related Rights owner, through the Collective Management Institute.[34] If a copyrighted work is used for its own use, there is no obligation to pay royalties. Sueable in this case is payment for the product of the work, not on copyright, so it is not related to royalties.

The act of downloading songs as a violation of the creator's economic rights can be sued civilly for unlawful acts. Unlawful acts are regulated in Article 1365 of the Civil Code ("Civil Code").

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The elements of unlawful acts are:

1. The presence of deeds;
2. The act is against the law; the presence of losses;
3. The presence of errors;
4. And there is a causal relationship between unlawful acts and the consequences / losses caused.

Against the law is infringing on the subjective rights of others. Downloading songs over the internet can be said to violate the economic rights of creators or copyright holders who have exclusive rights to exploit economic rights contained in a copyright. Article 1365 of the Civil Code that regulates unlawful acts is a general article and anyone can use this article to sue someone who is considered to have committed unlawful acts and caused harm to himself, including the act of downloading songs committed by the downloader.

However, the Copyright Law has regulated claims for compensation for copyright infringement. Claims for compensation can be filed by the creator or copyright holder to the Commercial Court for infringement of copyright or related rights products, based on the provisions of Article 99 paragraph (1) of the Copyright Law.

As described above, copyright violators can be criminally charged under Article 113 paragraph (3) of the Copyright Law, namely with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1 billion or based on Article 113 paragraph (4) of the Copyright Law with a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 4 billion.

4. CONCLUSION

The imposition of criminal sanctions for downloading songs (download) in terms of copyright law aspects, namely the Criminal Provisions in Law Number 28 of 2014 concerning Copyright, based on Chapter XVII, there are about 8 articles regulating criminal provisions. Regulated in Article 112 to Article 119. In the 8 (eight) Articles regulated about Imprisonment and Fines. Imprisonment for a maximum of 10 (ten) years. Criminal Fine maximum IDR 4,000,000,000.00 (four billion rupiah).

Copyright legal protection of the creators of songs downloaded via the internet is carried out with state administrative law, criminal law and civil law. State administrative law is by registering the copyright of the song based on the Regulation of the Minister of Justice of the Republic of Indonesia Number M.01-HC.03.01 of 1987 concerning Registration of Creations and Decree of the Directorate General of IPR Number H01. PR.07.06 of 2004 concerning Guidelines for the Implementation of Acceptance of Intellectual Property Rights Applications, through criminal law instruments, namely perpetrators of downloading songs on the internet can be criminally charged according to Article 113 Paragraph (3) of the UUHC and civil lawsuits against perpetrators against songs used for commercial activities based on article 99 Paragraph (1) of the Law on Civil Rights

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/C9RX3

Bibliography

1. Ali, Zainuddin. Metode Penelitian Hukum. Sinar Grafika, 2021.
2. Almusawir Nansa, S H, and S H Baso Madiong. Hukum Hak Kekayaan Intelektual: Hak Ekonom Pemegang Indikasi Geografis: Intellectual Property Rights Law: The Right of an Economist to Hold a Geographical Indication (IND SUB). Vol. 1. CELEBES MEDIA PERKASA, n.d.
3. Asikin, Zainal. "Pengantar Metode Penelitian Hukum," 2016.
4. Atsar, Abdul. Mengenal Lebih Dekat Hukum Hak Kekayaan Intelektual. Deepublish, 2018.
5. Banindro, Baskoro Suryo. Implementasi Hak Kekayaan Intelektual (Hak Cipta, Merek, Paten, Desain Industri) Seni Rupa, Kriya Dan Desain. BP ISI Yogyakarta, 2015.
6. Chazawi, Adami. Tindak Pidana Hak Atas Kekayaan Intelektual (HaKI): Penyerangan Terhadap Kepentingan Hukum Kepemilikan Dan Penggunaan Hak Atas Kekayaan Intelektual. Media Nusa Creative (MNC Publishing), 2019.
7. CIPTA, Pelanggaran H A K. "Penegakan Hukum Terhadap." Problematika Penegakan Hukum, 2021, 91.
8. Djanggih, Hardianto. "Urgency Legal Aspects Of Growth Information Technology In Indonesia," 2018.
9. Endang, Purwaningsih. "Perkembangan Hukum Intellectual Property Right Kajian Hukum Terhadap Hak Atas Kekayaan Intelektual Dan Kajian Komparatif Hukum Paten." Bogor: Ghalia Indonesia, 2005.
10. Friedmann, W. "Legal Teori. Terj. Muhammad Arifin." Teori Dan Filsafat Hukum: Idealisme Filosofis Dan Problem Keadilan, n.d.
11. Hakim, Dani Amran. "Perjanjian Lisensi Sebagai Bentuk Pengalihan Hak Kekayaan Intelektual." Yurisprudentia: Jurnal Hukum Ekonomi 7, no. 1 (2021): 17–34.
12. Hery Firmansyah, S H. Perlindungan Hukum Terhadap Merek. MediaPressindo, 2013.
13. Ibrahim, Jhonny. "Teori Dan Metode Penelitian Hukum Normatif Bayu Media." Surabaya, 2015.
14. Ibrahim, Johnny. Teori Dan Metodologi Penelitian Hukum Normatif. Malang: Banyumedia Publishing, 2006.
15. Jened, Rahmi. "Hukum Hak Cipta (Copyright Law)." PT. Citra Aditya Bakti, 2014.
16. Maulana, Insan Budi, and L L M SH. Sukses Bisnis Melalui Merek, Paten Dan Hak Cipta. Citra Aditya Bakti, 2020.
17. Muhadjir, Noeng. "Metodologi Penelitian Kualitatif, Rake Sarasin." Yogyakarta, 2002.
18. Munandar, Haris, and Sally Sitanggang. "Mengenal HAKI Hak Kekayaan Intelektual Hak Cipta." Paten, Merek, Dan Seluk Beluknya, Erlangga, Jakarta, 2008.
19. Nasution, Bahder Johan. "Metode Penelitian Ilmu Hukum, Cetakan Kedua." Mandar Maju, Bandung, 2016.
20. Nola, Luthvi Febryka. "Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia." Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan 2, no. 1 (2016): 75–101.
21. Purwati, Ani. "Metode Penelitian Hukum Teori & Praktek." Jakad Media Publishing, 2020.
22. Qamar, Nurul, Muhammad Syarif, Dachran S Busthami, M Kamal Hidjaz, Aan Aswari, Hardianto Djanggih, and Farah Syah Rezah. Metode Penelitian Hukum (Legal Research Methods). CV. Social Politic Genius (SIGn), 2017.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/C9RX3

23. Rahayu, Derita Prapti, M SH, and Sesi Ke. “Metode Penelitian Hukum.” Yogyakarta: Thafa Media, 2020.
24. Risawandi, Budi Agus. “Hak Kekayaan Intelektual Dan Budaya Hukum.,” 2005.
25. Riswandi, Budi Agus, and M SH. Pembatasan Dan Pengecualian Hak Cipta Di Era Digital. Citra Aditya Bakti, 2017.
26. Soewardi, Bagus Artiadi. “Perlunya Pembangunan Sistem Pertahanan Siber (Cyber Defense) Yang Tangguh Bagi Indonesia.” Potensi Pertahanan, 2013, 31–35.
27. Yoyo Arifardhani, S H, and L L M MM. Hukum Hak Atas Kekayaan Intelektual: Suatu Pengantar. Prenada Media, 2020.
28. N. K. S. Dharmawan, et al, Intellectual Property Rights (IPR), Cet.2, (Deepublish, Yogyakarta, 2017), p. 20.
29. M. R. A. Pawitram, N. K. S. Dharmawan, and A. K. S. Indrawati, "Arrangement of Collective Management Institutions Relating to Royalty Withdrawal Based on Law Number 28 of 2014 concerning Copyright", Vol. 5, No. 1, Scientific Journal of Legal Science Kertha Semaya, Faculty of Law, Udayana University, Bali, 2017..
30. Endang Purwaningsih, Legal Development of Intellectual Property Rights Legal Studies on Intellectual Property Rights and Comparative Studies of Patent Law, (Ghalia Indonesia, Bogor, 2005,) p.2.
31. Otto Hasibuan, Copyright in Indonesia, Special Review of Song Copyright, Neighbouring Rights, and Collecting Society, (PT Alumni, Bandung, 2014), p.139.
32. Suyud Margono &; Amir Angkasa, Commercialization of Intellectual Assets Aspects of Business Law, (Gramedia Widia Sarana Indonesia, Jakarta, 2002), p. 3.
33. Peter Mahmud Marzuki, Penelitian Hukum, (Jakarta: Kencana Prenada Media Group, 2008), hlm. 95.
34. Theodore KS, Copyright Challenged Ring Tone, http://www.studiohp.com/
35. News: James F. Sundah: As long as his work is used, songwriters can sue, http://www.hukumonline.com/berita/baca/hol18774/james-f-sundah-selama-karyanya-dipakaipencipta-lagu-bisa-menggugat,
36. Rahmi Jened, Copyright Law, (Citra Aditya Bakti, Bandung 2014), p. 32.
37. Rahmi Jened, Op.cit, hlm. 34
38. Law Number 28 of 2014 concerning Copyright, Article 40 paragraph (1)
39. Rahmi Jened, Op.cit, hlm. 94. & Elyta Ras Ginting, Op.cit, hlm.147
40. Hendra Tanu Atmadja, Copyright of Music or Song, Jakarta (Faculty of Law, University of Indonesia, 2003), p. 293.
41. Suyud Margono, Copyright Protection Law, (Jakarta: CV. Novindo Pustaka Mandiri, 2003), p. 28.
42. JCT. Simorangkir, Copyright Law 1982, (Jakarta: Djambatan,, 1982), p. 123
43. H. OK. Saidin, Legal Aspects of Intellectual Property Rights, (Jakarta: Raja Grafindo Persada, 2003), p. 59.
44. Article 9 paragraph (1) of the UUHC stipulates that the creator or copyright holder as referred to in Article 8 has the economic right to do: a) publishing the work; b) the reproduction of creation; c) translation of the work; d) adapting, arranging or transforming the work; e) distribution of the work or copies thereof; f) the performance of creation; g) the announcement of the creation; h) communication of creation, and; i). rental of creation.
45. Roeslan Saleh, the Practical Ins and Outs of License, (Sinar Grafika, Jakarta, 1991), p. 1.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/C9RX3

46. Gunawan Widjaja, Business Law Series, License (PT. Rajagrafindo Persada, Jakarta, 2003), pp. 10-11.
47. Hendra Tanuadmadja, op. Cit, p. 73.
48. Compare with the formulation of a license according to Article 1 number (14) of Law No. 19 of 2002 which formulates a license is a permission given by a copyright holder or related rights holder to another party to announce and/or reproduce his work or related rights product with certain conditions.
49. Rooseno Harjowidigdo, op. Cit. p. 67.
50. Gatot Supramono, op. Cit, p. 48.
51. Muhammad Djumhana and R. Djubaedillah, Intellectual Property Rights, History, Theory and Practice in Indonesia, (PT. Citra Aditya Bhakti, Bandung, 1997), p. 63.
52. Article 84 of Law No. 28 of 2014 concerning Copyright stipulates, everyone can apply for a compulsory License for Works in the fields of science and literature as referred to in Article 84 for the purposes of education, science and research and development activities to the Minister.
53. Article 4 of the Copyright Law
54. Article 58 paragraph (1) letter d and paragraph (2) of the Copyright Law
55. Article 58 paragraph (3) of the Copyright Law
56. Article 9 paragraphs (2) and (3) of the Copyright Law
57. Article 46 paragraph (2) letter e of the Copyright Law
58. Article 1 number 23 of the Copyright Law
59. Article 1 number 21 of the Copyright Law
60. Article 87 paragraph (1) and paragraph (2) of the Copyright Law
61. Article 87 paragraph (2) of the Copyright Law