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AN INEQUALITY OF MORAL RIGHTS IN APPLE MUSIC PLATFORM AS A DIGITAL COPYRIGHT PROTECTION INFRINGEMENT

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Abstract

In the era of disruption, digitalization has replaced traditional culture due to technological developments. One form is distributing music or songs which was all on cassettes or CDs (compact discs) to digital music platforms. Currently, there are many digital music platforms such as Apple Music. One of the problems outlined in this paper is regarding the moral rights of songwriters on Apple Music, while moral rights are rights inherent in the Creator. This paper aims to: (1) find out the protection of the moral rights of songwriters in Indonesian positive Law; (2) discuss how to protect and fulfill the moral rights of songwriters on the Apple Music digital music platform. Through legal research with a normative juridical approach, research results that there is an imbalance in the moral rights of songwriters in Apple Music where their moral rights are not evenly accommodated for all songwriters and tend only to accommodate certain groups (singers, songs, songwriters, and/or big music labels only).

Keywords: Apple Music, Inequality, Legal Protection, Moral Rights.

Abstrak

Di era disrupsi, budaya konvensional tergantikan dengan digitalisasi dikarenakan perkembangan teknologi, salah satu bentuknya adalah dalam hal pendistribusian musik atau lagu yang semula melalui kaset atau CD (Compact Disc) menjadi melalui digital music platform. Saat ini banyak sekali digital music platform salah satunya Apple Music. Permasalahan dalam penelitian ini yaitu mengenai hak moral pencipta lagu dalam digital music platform Apple Music, menimbang hak moral merupakan hak yang melekat dalam diri pencipta. Tulisan ini bertujuan untuk: (1) mengetahui perlindungan hak moral pencipta lagu dalam hukum positif Indonesia; (2) mengetahui bagaimanakah perlindungan serta pemenuhan hak moral pencipta lagu dalam digital music platform Apple Music. Melalui penelitian hukum dengan pendekatan yuridis normative, dihasilkan penelitian bahwa ada ketimpangan hak moral pencipta lagu dalam Apple Music dimana hak moralnya tidak diakomodir secara merata untuk semua pencipta lagu dan lebih cenderung mengakomodir kalangan tertentu saja (penyanyi, lagu, pencipta lagu dan/atau musik label yang besar saja).

Kata Kunci: Apple Music, Hak Moral, Ketimpangan, Perlindungan Hukum.

INTRODUCTION

Background of Study

Indonesia is one of the countries experiencing technological developments due to globalization. Activities usually carried out by humans today are not limited only to the real world but are increasingly widespread with cyberspace, more commonly known as the internet. The rapid development of technology and digital media today indirectly causes a shift in conventional media and tools towards more modern ones or often called digitalization. Digitalization is a process that has implications for the form of information, including data, words, images, sound, data, and motion which are converted through coding in the form of bits (binary digits) which allow for manipulation and transformation of data (bit streaming),1 which has implications for merging or more practical presentation of information in digital media. One concrete example of digitalization in everyday life is the media for listening to or playing songs that were

¹ Wuryanta, AG. Eka Wenants. (2004). "Digitalisasi Masyarakat: Menilik Kekuatan dan Kelemahan Dinamika Era Informasi Digital dan Masyarakat Informasi". *Jurnal Ilmu Komunikasi*, 1(2), h. 134.

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initially in the form of cassettes or CDs (compact discs), now slowly being replaced and abandoned by the existence of digital music platforms or digital music platforms. The objects in it are generally music and songs.

Talking about music and songs, works or creations, are objects of intellectual property rights. Intellectual property rights or intellectual property rights is a right that is exclusive or special that is owned by the creator/inventor as a logical consequence of the results of intellectual work and creativity involving activities that have a distinctive element and novelty(novelty).² Apart from relating to singers, the legal concept of intellectual property rights is certainly closely related to songwriters. The Creator (in this case, the songwriter) is a person or group of people who individually or collectively produce a copyrighted work that has a unique and personal character³ (in this case, a song). The Law of the Republic of Indonesia Number 28 of 2014 on Copyright (hereinafter referred to as "Copyright Law"), mandates that an author has exclusive rights consisting of moral rights and economic rights.⁴ These economic rights include reproduction rights; distribution rights (distribution rights); adaptation rights (adaptation right) that includes translation rights, administrative rights, film rights; performance rights (performance rights); rights to sound recordings (mechanical rights); rights to broadcast programs (broadcasting rights).5 Then, moral rights are rights inherent in the Creator to always include the author's name in each of his creations and the right to the integrity of his Creation, including changes to the title, content, arrangement, or other parts.⁶ The essence of moral rights is a right that cannot be transferred regarding ownership. In contrast to economic rights, moral rights will always follow the Creation even though the Creation has changed or has changed hands (droit de suite).7 Likewise, songwriters have exclusive rights that include economic rights and moral rights.

Nevertheless, how to protect the exclusive rights of songwriters in electronic/digital media? The Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic Transactions as amended by Law of the Republic of Indonesia Number 19 of 2016 on Amendments to Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic Transactions (after this referred to as "EIT Law") is an umbrella law for activities in electronic media including the internet as a counterweight to the rapid development of technology including intellectual property in digital media. As regulated in Article 25 of the EIT Law which has mandated that electronic information/electronic documents which are an intellectual work on the internet, the intellectual work must be protected according to the provisions of the Law.8 This means

² Hariyani, Iswi. (2010). *Prosedur Mengurus HAKI yang Benar*. Yogyakarta: Penerbit Pustaka Yustisia, h. 16.

³ See Article 1 point 2 of Law Number 28 of 2014 on Copyright.

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

⁵ Djumhana, M. dan Djubaidillah, R. (1997). *Hak Milik Intelektual (Sejarah, Teori dan Prakteknya di Indonesia*). Bandung: Citra Aditya Bakti, h. 51-54.

⁶ Hakim, Guswan. (2017). "Perlindungan Hukum Pencipta yang Dirugikan Haknya atas Tindakan Plagiarisme". *Halu Oleo Law Review*, 2(1), 421.

⁷ Ibid., h. 422.

⁸ See Article 25 of Law of the Republic of Indonesia Number 11 of 2008 on Electronic Information and Transactions as amended by Law of the Republic of Indonesia Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions:

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that this provision indicates that all intellectual property distributed in electronic media (internet), including copyright, must be protected the same as the protection of conventional intellectual works (in the real world) as in the Copyright Law. In the provisions of the Copyright Law, moral rights are one of the rights of songwriters, including the name of the Creator in each of his creations.⁹

In digital music platforms, music is distributed digitally via the internet, smartphones, and other digital media, which contains a collection of songs that are updated daily and contains a collection of music and songs from various singers, bands, genres, and productions that can be accessed easily and with fast mobility. Currently, there are many digital music platforms available such as Apple Music, Spotify, JOOX, Deezer, Youtube Music, and others. Regarding distribution and moral rights, as we know if music or songs are distributed in physical forms such as cassettes or CDs, then it is certain that there is the name of the singer, song title, and songwriter in the visual cover, meaning that the moral rights of the songwriter have been accommodated quite well.

However, the problem is that the very dynamic development of physical to digital technology is certainly testing the existence of copyright protection. Although the digital music platform facilitates practical access, there are other problems, namely the existence of an imbalance in protecting the moral rights of songwriters, especially what the authors found on the digital music platform Apple Music.

Apple Music is a digital music platform or stream music and video services developed by AppleInc.¹¹ Apple Music launched on June 30, 2015, and to enjoy the Apple Music service, a monthly subscription is required. New subscribers get a free trial period of six months before the service requires a monthly subscription. Apple Music quickly gained popularity after its release, crossing the 10 million subscriber milestone in six months. The service has 60 million subscribers worldwide as of June 2019.¹²

The Apple Music service allows users to provide more than 70 million songs and stream to personal devices on demand.¹³ Apple Music subscribers can create profiles to share their music with friends and follow other users to see the music they listen to regularly.¹⁴

[&]quot;Electronic Information and/or Electronic Documents compiled into intellectual works, internet sites, and intellectual works contained in them are protected as Intellectual Property Rights under the provisions of the Laws and Regulations."

⁹ Hakim, Guswan. Op.Cit., h. 421.

David Tilson, Kaile Lyytinen, (et.al). (2013). "Platform Complexity: Lessons from the Music Industry", Confrence Paper, https://www.researchgate.net/publication/261047165_Platform_Complexity_Lessons_from_the_Music_Industry, accessed May 22 2021.

¹¹ Apple Inc. "Apple Music". https://www.apple.com/id/apple-music.com, accessed May 20, 2021.

¹²Billboards. (2018). "Apple Music Now Has 56 Million Users: Report", https://www.billboard.com/articles/business/8487726/apple-music-56-million-users-report, accessed May 18, 2021.

¹³ Apple Inc. "Introducing Apple Music — All The Ways You Love Music. All in One Place". https://www.apple.com/newsroom/2015/06/08Introducing-Apple-Music-All-The-Ways-You-Love-Music-All-in-One-Place-/. accessed May 18, 2021.

 $^{^{14}}$ Singleton, Micah (2017). Apple Music Will Let You Share What You're Listening to With Your Friends. *The Verge* (h. 15). Vox Medi.

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Although very practical, the problem in Apple Music is the protection of moral rights which tends to accommodate the moral rights of songwriters for songs or singers who are famous and/or derived from only big labels music. As for the moral rights of songwriters for new songs or singers and/or not from big music labels, the moral rights of songwriters have not been adequately accommodated. These things will then be explained comprehensively in the following discussion.

Identification of The Problem

Based on the problems above, the author is interested in discussing and researching further regarding the inequality of the moral rights of songwriters in the digital music platform especially in Apple Music through this paper, with the identification of the problems, among other things:

- 1. How is the protection of the moral rights of songwriters in digital music platforms based on the theoretical and positive Indonesian law perspective?
- 2. How is the fulfillment of the moral rights of songwriters in the digital music platform Apple Music?

RESEARCH METHOD

The type of research used by the author is legal research with the nature of collecting techniques library research. As an inseparable part of making this scientific article, legal research makes the author choose to use normative juridical research methods. According to Gijssel and Van Hoecke, the thoughts in line with the study of the legal theory include three aspects in general, namely the teaching of Law, the relationship between Law and logic, and methodology. These aspects show the relationship that arises, especially between legal research methods and legal theory. The author feels that the normative juridical method is appropriate for writing this scientific article. With the suggestions and results of the research in this scientific paper, the authors hope to support ongoing legal development activities, especially in the topics that the authors choose.

The normative juridical research that the author does uses secondary data types in the form of library research by taking an inventory and studying primary legal materials as applicable regulations with secondary legal materials. The primary legal materials reviewed by the author are related to laws and regulations relevant to the discussion in this scientific paper, including Law of the Republic of Indonesia Number 28 of 2014 on Copyright, Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic Transactions as well as amendments to the Law of the Republic of Indonesia Number 19 of 2016 on Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions, and secondary legal materials, namely literature such as journals, scientific articles, papers and other forms of writing as comparison material for the author.

¹⁵ Sidharta, Bernard Arief. (2000). *Refleksi tentang Struktur Ilmu Hukum*. Bandung: Mandar Maju, h. 123.

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DISCUSSION

A. Protecting the Moral Rights of Songwriters in Digital Music Platforms Based on Theoretical Reviews and Positive Indonesian Laws

The term moral rights first appeared in the mid-19th century to solve the practical problems of composers and artisans at the time of the rapid development of publications in France.¹⁶ Moral rights include 2 (two) major things, namely:

a. Integrity Right or also called right of integrity

Integrity rights involve all forms of attitude and treatment related to the integrity or dignity of the Creator. In practice, these rights are expressed in the form of a prohibition to change, reduce, or damage the work that can destroy the integrity of the Creator.

The principle is that the Creation must remain intact under the original Creation, for example, for violations of moral rights, namely changing the lyrics of a song that changes the meaning of the original poem.¹⁷

b. Attribution rights (attribution / right of paternity).

In this case, the Moral Rights require that the identity of the Creator be affixed to the work, either by self-name or pseudonym. In certain cases and based on the consideration of the Creator, the Creator can eliminate his identity and leave his work anonymous.

The regulation of moral rights in the perspective of international Law is contained in Article 6 of the Bern Convention (Bern Convention). Which states that:¹⁸

"....the author shall have the right to claim the authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation, ..."

This provision can mean that the Creator has the right to claim ownership of his work and object to distortions, mutilations or changes, and other violations related to the work that can harm the honor or reputation of the Creator.

Regarding moral rights based on the Universal Declaration of Human Rights ("UDHR") is a form of human rights contained in Article 27 paragraph 2 of the UDHR 1948 that: "everyone has the right to the protection of moral and material interest resulting from any scientific, literary or artistic production of which he is the author". 19 The article mandates that the protection of moral rights from scientific research, literacy, and artistic products is the Creator's right. The concept of moral rights is to appreciate the Creator because the copyrighted work is a personal reflection of the Creator so that it cannot be divided and cannot be changed or modified. A moral right is the right to claim that the author has on his work.

¹⁶ Rajan, Mira Sundara T. (2010). *Moral Rights: Principles, Pratice and New Technology*. New York: Oxford University Press, h. 4.

¹⁷ Soelistyo, Henry. (2011). *Hak Cipta Tanpa Hak Moral*. Jakarta: RajaGrafindo Persada, h. 16.

¹⁸ Article 6 of the Berne Convention (*Berne Convention*).

¹⁹ Article 27 paragraph 2 of the Universal Declaration of Human Rights (UDHR) 1948.

https://ejournal.unisbablitar.ac.id/index.php/supremasi



Then in Copyright Law, moral rights are part of the exclusive rights which are the Creator's rights. This moral right is regulated in Article 5 of the Copyright Law, the provisions relating to plagiarism are as follows:²⁰

"The moral right as referred to in Article 4 is a right that is eternally attached to the Creator to:

- a. continue to include or not include his name on the copy in connection with the use of His creations are public;
- b. using his pseudonym;
- c. change the Creation in accordance with the decency in society;
- d. change the title and sub-title of the Works; and
- e. defend their rights in the event of distortion of Works, mutilation of Works, modification of Works, or things that are detrimental to their honor or reputation."

This article mandates that moral rights must be protected because they are inherent rights with the Creator. In practice, moral rights cannot be transferred like the economic rights of the Creator.

In Copyright Law, it is stated that the Creator is one or several people who individually or jointly produce a unique and personal creation.²¹ A creation referred to in this sense is any copyrighted work in science, art, and literature produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form.²²

One of the creations in this provision is 'art'. If it is related to this discussion, 'song' is a work of 'art', meaning that it includes a creation (work) that is intended and protected in Copyright Law. The protection of the moral rights of songwriters is related to the principle of automatic protection. This principle is that the provision of legal protection for work must be given directly without meeting any conditions (must not be conditional upon compliance with any formality).²³ This principle can be interpreted that a creation automatically getting legal protection when work is born or exists.

So the question is how to protect the moral rights of songwriters in digital media? Indonesia's positive Law has been accommodated through the EIT Law, which is the legal basis that covers activities in electronic media, including the internet, as a counterweight to the rapid development of technology, including intellectual property in digital media. This is explicitly regulated in Article 25 of the EIT Law, which states that:²⁴

"Electronic Information and/or Electronic Documents compiled and registered as intellectual works, copyrights, patents, trademarks, trade secrets, industrial designs, and the like must be protected by this Law. with due observance of the provisions of the Legislation."

²⁰ Article 5 paragraph (1) of Law Number 28 of 2014 on Copyright.

²¹ Article 1 number 2 of Law Number 28 of 2014 on Copyright.

²² Article 1 point 3 of Law Number 28 of 2014 on Copyright.

²³ Rajan, Mira Sundara T. Loc.Cit.

²⁴ Article 25 Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic Transactions as amended by Law of the Republic of Indonesia Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Information and Electronic Transactions.

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These provisions indicate that intellectual works, one of which is copyright, must be protected by the EIT Law by considering the provisions of the relevant laws and regulations, in this case, the Copyright Law. In the provisions of the Copyright Law, moral rights are one of the rights of songwriters, one of which includes always including the author's name in every Creation.²⁵

So based on the provisions of the theoretical review, doctrine, Copyright Law, EIT Law, UDHR, the Berne Convention, and other provisions that have been described previously, it mandates that the moral rights of the Creator, in this case, the work of song creation in digital media must receive the same protection as other intellectual copyrighted works. Although in digital media based on the EIT Law and Copyright Law.

B. Inequality of the Moral Rights of Songwriters in the Digital Music Platform Apple Music

As previously explained, Apple Music is a digital music platform or streaming music and video service developed by Apple Inc. that can be used on a monthly subscription basis. Apple Music quickly gained popularity after its release, crossing the 10 million subscriber milestone in six months. The service has 60 million subscribers worldwide as of June 2019.²⁶

The Apple Music service allows users to provide more than 70 million songs and can be streamed to personal devices on demand.²⁷ One of the features of this Apple Music is that when a song is playing, the lyrics and the Creator of the song being played can be displayed, users can see the direct lyrics of the song being listened to, which displays the lyrics of the song directly in sync with the time when it is played to the user.²⁸

Although Apple Music is considered practical and provides easy access, one of the problems is an imbalance in the protection of moral rights for songwriters in it. In Apple Music, when we play or listen to a song, we can bring up the lyrics and the name of the songwriter, but in fact, the protection of this moral right is not evenly distributed. This can be seen from the inclusion of songwriters who seem to only be listed for singers or songs and/or those from music labels major or well-known. Concretely, it can be seen in the following figure:

²⁵ Hakim, Guswan. *Op.Cit.*, h. 421.

²⁶ Billboards. (2018). "Apple Music Now Has 56 Million Users: Report", https://www.billboard.com/articles/business/8487726/apple-music-56-million-users-report, accessed May 18 2021.

²⁷ Apple Inc. "Introducing Apple Music — All The Ways You Love Music. All in One Place". https://www.apple.com/newsroom/2015/06/08Introducing-Apple-Music-All-The-Ways-You-Love-Music-All-in-One-Place-/, accessed May 18 2021.

²⁸ Writtenhouse, Sandy. (10 Oktober 2019). How to see time-synced lyrics on Apple Music. Apple Inc (h. 20). *AppleToolBox*.

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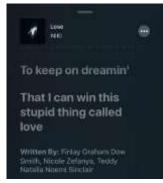






Figure 1 Figure 2 Figure 3

*source Figures 1, 2, and 3: Apple Music (taken via screenshots on Apple Music app/personal documents).

From the image above, it can be seen that Figures 1, 2, and 3 are examples of songs whose composers are included (their moral rights are accommodated). With the following explanation:

- a. For picture 1, NIKI's song "Lose" is a production of the famous music label, 88rising, and she is a well-known solo singer;
- b. Furthermore, in Figure 2, a song is sung by Lyodra entitled "*Tentang Kamu*" was created by Anji Manji, a well-known songwriter and a production work from Universal Music Indonesia, which is a big label and dominates the music market.
- c. Picture 3 is a song entitled "Adu Rayu" sung by Yovie Widianto, Tulus, and Glenn Fredly. The composer of this song is also the singer, Yovie Widianto and Tulus.

However, on the other hand, songwriters have moral rights that are not listed or accommodated by Apple Music. The following are examples of songs whose moral rights are not listed or accommodated:





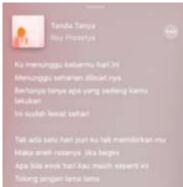


Figure 4 Figure 5 Figure 6

*source Figures 4, 5, and 6: Apple Music (taken via screenshots on Apple Music apple / personal documents).

It can be seen that pictures 4, 5, and 6 are examples of songs whose songwriters are not listed (their moral rights are not accommodated), with the following explanation:

a. Picture 4 is in the song Angel Pieters (feat. Jason) entitled "*Tuhan Yang Bela*" does not the author of the song is listed, and when compared with the previous example, she is a solo singer who is less well known than the singer from the previous example;

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- b. Picture 5 is a song sung by the newcomer Rahmania Astrini entitled "Runaway" composed by her but not listed by the songwriter.
- c. Picture 6 is the song entitled "Tanda Tanya" sung by Ray Prasetya and the songwriter is omitted.

From the six examples, it can be seen that the protection of moral rights for songwriters is not equal for all composers. However, the song is one of the objects of Creation that must be protected, including the Creator.

As the Copyright Law and EIT Law, already mandate that moral rights are eternally attached to the Creator, one of which is to include the name of the Creator, including in electronic media, the protection of the moral rights of songwriters must be upheld.

However, regarding moral rights, it may not be stated at the will of the Creator, but considering the facts as outlined in the previous example, singers, songs, songwriters, and music labels famous and prominent in the music industry influence the inclusion of songwriters or the accommodation of the author's moral rights in Apple Music. So it is a disparity.

CONCLUSION

The implementation of moral rights protection in digital music platforms, especially Apple Music, really needs to be considered. As mandated in Copyright Law, moral rights are rights attached to the Creator. This includes song creations that must protect and accommodate the moral rights of songwriters because songs are objects of Creation that must be protected. In fact, in Apple Music's digital music platform, there is still an imbalance in the moral rights of songwriters in Apple Music, their moral rights are not accommodated equally for all songwriters. This is not under the protection of moral rights that should be regulated in Article 5 of Copyright Law which mandates the inclusion of the Creator's name.

Based on the facts stated in the examples in the discussion, the accommodation of the moral rights of songwriters tends only to accommodate certain groups (singers, songs, songwriters and/or large music labels only). Inequality in the protection of moral rights in Apple Music shows the weak protection from the government. Not only a violation of the right of attribution but the right of integrity is also often ignored by the community so that the Creator is significantly harmed. Therefore, it is necessary to strengthen the protection of moral rights at the level of the Law and the level of the regulations below it.

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