

EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION ON COPYRIGHT PROTECTION IN MUSIC STREAMING APPLICATIONS

Sabrina Putri Wardani¹, Thalla Tsamara Eka², Cheryl Patriana Yuswar³

¹²³Faculty of Law, University of North Sumatra

Email: sabrinaputri.wardani@gmail.com¹

ABSTRACT; *Copyright issues in Indonesia have been ongoing since the promulgation of Law no. 28 of 2014 concerning Copyright of the Republic of Indonesia (UUHC). The use of songs in music streaming applications can cause problems when the song is included without the permission of the songwriter. Therefore, the author wants to know how effective alternative dispute resolution is on copyright protection in music streaming applications. This research uses normative legal research methods, namely legal research that uses legal materials obtained through library materials. The primary legal material in this research is the Copyright Law (UUHC). The results of this research are that legal protection for music creators can be carried out with repressive (settlement) actions effectively in non-litigation dispute resolution.*

Keywords: *Legal Protection, Alternative Dispute Resolution, and Copyright.*

INTRODUCTION

The song streaming platform has many fans because apart from being easy to access, this platform also has many songs that don't need to be downloaded to listen to. Many streaming platforms are emerging now. The music streaming platforms that people commonly use are Joox, Spotify, YouTube and many more.

Copyright contains several rights, namely economic rights and moral rights. Economic rights are the right to obtain economic benefits from works and related rights products. Meanwhile, moral rights are rights inherent in the Creator which cannot be eliminated or erased without any reason, even though the Copyright or Related Rights have been transferred.¹

Music or songs are creations that are no less important in the copyright protection system. As time goes by, the music and song streaming platforms provided are also getting wider. However, there are times when people not only want to own a creative work, but also imitate and master other people's creations. In Indonesia, copyright issues are regulated in the Copyright Law currently in force, namely the Copyright Law of the Republic of Indonesia No. 28 of 2014 (UUHC).²

Copyright dispute resolution can be done through alternative dispute resolution, arbitration or court (Article 95 paragraph 1 of Law Number 28 of 2014 concerning Copyright). The competent court is the Commercial Court, apart from the Commercial Court, it has no authority to handle copyright dispute resolution.

The advantage of resolving disputes using non-litigation channels when compared with resolving disputes using litigation channels is that the trial is closed to the public, the process is fast, namely a maximum of six months, the decision is final and cannot be compared or appealed, the arbitrator is chosen by the parties, an expert in the disputed field, and have high integrity or morals, although the formal costs are more expensive than court costs, but there are no other costs and specifically in Indonesia, the parties can present their case before the Arbitration Panel and the Arbitration Panel can directly ask for clarification from the parties.

Apart from that, when using arbitration, the identities of both parties can be hidden, meaning that no one knows about the issue except the two parties involved in the dispute.

UUHC regulates what rights a person has, when copyright arises, what works are protected by copyright, what protection the creator or copyright owner can receive, and what the penalties are for all copyright violators. There is also a system that regulates royalty payments, each song is counted how many times it is played per month, each institution is required to facilitate research by installing a machine or program that counts the number of times a song is played in a month.

From the provisions above, UUHC must be socialized to the public to ensure legal certainty and increase the income of songwriters and copyright owners. Apart from that, the UUHC also regulates criminal sanctions related to copyright violations, which

¹ Maramis, R. Lendi. 2014. *Perlindungan Hukum Hak Cipta Atas Karya Musik dan Lagu dalam Hubungan dengan Pembayaran Royalti*. Lex Privatum. Vol II. No.2 hlm 118

² Hendra Tanu, *Hak Cipta Musik atau Lagu*, Pascasarjana Fakultas Hukum Universitas Indonesia, (Jakarta: 2009), hlm. 321

are included in article 113 paragraph 2, according to which anyone who, without the rights and/or without the permission of the creator or copyright owner, commits a criminal offense with penalties related to rights violations. create. the author Commercial use based on points c, d, f and/or h of Article 9 paragraph (1) is punishable by imprisonment for a maximum of 3 (three) years and/or a fine of a maximum of Rp. 500,000,000.00 (Five Hundred Million Rupiah).³

PROBLEM

1. When did copyright arise, what works are protected by copyright?
2. What protections can creators or copyright owners receive, and what are the penalties for all copyright violators?

RESEARCH METHODS

This paper uses normative legal research methods because they are obtained from literature studies, by analyzing a legal problem through statutory regulations, literature and other reference materials and by using a statutory approach method by examining laws. Copyright Law Number 28 of 2014 and regulations related to the legal issue being studied, namely how to legally protect song royalties. The legal material search technique uses document study techniques, as well as study analysis using qualitative analysis in order to present all existing problems precisely and as clearly as possible.

DISCUSSION

Alternative Dispute Resolution Regarding Copyright Protection in Music Streaming Applications

Legal Protection is an action to protect a person's rights which is carried out to obtain justice based on applicable law in a preventive and repressive manner.⁴ Basically, legal protection for a creative work has been given protection for the creative work automatically.⁵

However, in other cases, such as ideas or ideas, do not receive copyright protection because the creative work must show authenticity as a form of real creative work and be born based on ability so that the creation can be heard, read or seen.⁶

There is preventive legal protection, namely to prevent disputes regarding copyright, this is done after an infringement is committed on a copyrighted work belonging to the Author. Apart from that, legal protection is provided to find a solution in order to maintain all the rights owned by the creator.

In connection with violations committed that can harm the creator, of course this must be stopped and sanctions or fines are imposed for what is done to the creator's creative work. This is in accordance with the existing regulations in the UUHC which refers to Article 113 paragraph (3) which explains the sanctions and fines that will be

³ Undang-Undang Hak Cipta (UUHC) Pasal 113 ayat (2)

⁴ Abiantoro Prakoso, *Hukum Perlindungan Anak*, (Yogyakarta: LaksBang Pressindo, 2016), hlm.6

⁵ Ni Ketut Supasti Dharmawan, dkk, *Hak Kekayaan Intelektual (HKI)*, Yogyakarta: Deepublish, 2016) hlm.38-39

⁶ Adrian Sutedi, *Hak Atas Kekayaan Intelektual*, (Jakarta: Sinar Grafika, 2009) hlm.115

given if there is a violation of the copyright belonging to the creator or copyright holder for a work they own.

Apart from preventive legal protection, there is also repressive legal protection. This repressive legal protection is provided after legal regulations have been violated or if someone feels their rights have been violated.⁷

This repressive action aims to provide legal protection, namely to resolve conflicts. Repressive actions can be seen from the provisions of articles 95 to 120 UUHC, namely the resolution of arbitration (court) disputes with civil lawsuits and criminal charges being submitted to the District Court.⁸

As is known, efforts to resolve disputes are not always carried out in court (litigation), but there are other efforts that also aim to resolve disputes without using court, namely non-litigation. Basically, efforts to resolve a dispute can be done effectively through several processes, namely through alternative dispute resolution processes, arbitration or the courts.⁹

Resolving copyright disputes through non-litigation is often referred to as resolving copyright disputes carried out outside of court. The existence of dispute resolution outside of court is a breakthrough because many cases have piled up in court that have not been resolved. Dispute resolution through non-litigation is commonly known as alternative dispute resolution.

Based on Article 1 number 10 of Law Number 10 of 1999 concerning Arbitration and Alternative Dispute Resolution, it states that alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely resolving disputes outside the court by means of consultation, negotiation, mediation, conciliation or expert assessment.¹⁰

Non-litigation dispute resolution has many advantages, namely informal resolution, which resolves the parties' own disputes, the dispute resolution period is not long, costs are low. the relationship between the parties is cooperative, the intended result is win-win.¹¹

The advantage of resolving disputes using non-litigation channels when compared with resolving disputes using litigation channels is that the trial is closed to the public, the process is fast, namely a maximum of six months, the decision is final and cannot be compared or appealed, the arbitrator is chosen by the parties, an expert in the disputed field, and have high integrity or morals, although the formal costs are more expensive than court costs, but there are no other costs and specifically in

⁷ Almaida, "Perindungan Hukum Preventif dan Represif bagi Pengguna Uang Elektronik dalam Melakukan Transaksi Non Tunai". Jurnal Repertorium, Volume 6(2)

⁸ Dewi,A.A.M.S.(2017).*Perindungan Hukum Hak Cipta Terhadap Cover Version Lagu Di Youtube*.Jurnal Magister Hukum udayana (Udayana Master Law Journal),6(4),516-518

⁹ UUHC Pasal 95 Ayat (1)

¹⁰ Ni Made Trisna Dewi, "Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata," Jurnal Analisis Hukum 5, no. 1 (2022): 81 89, <https://doi.org/10.38043/jah.v5i1.3223>.

¹¹ Masdari Tasmin, "Urgensi Alternative Dispute Resolution (ADR) Di Negara Indonesia,," Wasaka Hukum 7 (2019)

Indonesia, the parties can present their case before the Arbitration Panel and the Arbitration Panel can directly ask for clarification from the parties.

Apart from that, when using arbitration, the identities of both parties can be hidden, meaning that no one knows about the issue except the two parties involved in the dispute. The WIPO Arbitration and Mediation Center is a non-litigation institution that provides neutral, international dispute resolution and is a non-profit institution that offers options in providing solutions in alternative dispute resolution (alternative dispute resolution). This route saves more time.

By using the WIPO Arbitration and Mediation Center, arbitration can be carried out quickly, and using expert opinion, thereby enabling disputing parties to efficiently resolve issues related to copyright at the national or international level which are carried out outside the courts.

Furthermore, copyright dispute resolution through litigation can be done by filing a lawsuit for compensation in the commercial court if there is a copyright violation. Because the only court that has the authority to hear or decide copyright disputes is the commercial court. However, copyright holders can also bring criminal charges against their works which violate economic rights in order to provide a deterrent effect against copyright violators.¹²

The procedure for filing a lawsuit in resolving copyright disputes through litigation, the copyright holder can take legal steps to file a lawsuit as regulated in Article 100 of the Copyright Law.¹³

In the litigation settlement process, this is a settlement stage where in the alternative settlement process there is no way out, but in this litigation stage it also has disadvantages, including consuming a lot of time, energy and also costs; the number of parties or other people who know; and often creates hostility between related parties, so that work is neglected.

If someone rearranges a song or music and then uses it commercially without permission then this is a violation of the Economic Rights of the Creator or Copyright Holder of the song and/or music.

As based on Article 40 Paragraph (1) letter d UUHC that songs and/or music with or without text are included in works protected by UUHC, then the act of exploiting a song should first ask permission from the creator of the song and/or music. , especially if it is related to the commercial value of a song and/or music.

Referring to the provisions of article 16 paragraph (2) UUHC which states that copyright can not only be transferred or transferred, but can also be licensed. Based on the nature of the copyright in question, it relates to movable objects which can be

¹² Syahputra, Kridasaksana, and Arifin, "*Perlindungan Hukum Bagi Musisi Atas Hak Cipta Dalam Pembayaran Royalti*."

¹³ Sekretariat Kabinet Negara Republik Indonesia "*Undang Undang Nomor 28 Tahun 2014 Tentang Hak Cipta*."(Indonesia, 2014)

transferred through the process of inheritance, gift, endowment, will and written agreement as justified by the provisions of the applicable laws.¹⁴

CONCLUSION

Dispute resolution through non-litigation is commonly known as alternative dispute resolution. Dispute resolution outside of court can be done in several ways, such as arbitration, consultation, negotiation, mediation, conciliation. Or expert assessment. Non-litigation dispute resolution has many advantages, namely informal resolution, which resolves the parties' own disputes, the dispute resolution period is not long, costs are low. The relationship between the parties is cooperative, the goal is a win-win outcome and in this alternative dispute resolution the identities of both parties can be hidden, meaning that no one knows about the problem except the two parties involved in the dispute.

REFERENCES

- Almaida, “*Perlindungan Hukum Preventif dan Represif bagi Pengguna Uang Elektronik dalam Melakukan Transaksi Non Tunai*”. Jurnal Repertorium, Volume 6(2)
- Maramis, L.R. (2014). “*Perlindungan Hukum Hak Cipta Atas Karya Musik dan Lagu dalam Hubungan dengan Pembayaran Royalti*”. Jurnal Lex Privatum. Vol. 2. No. 2
- Dewi,A.A.M.S. (2017). “*Perlindungan Hukum Hak Cipta Terhadap Cover Version Lagu Di Youtube*”. Jurnal Magister Hukum udayana ,6(4),516-518
- Dewi, Ni Made Trisna, “*Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata,*” Jurnal Analisis Hukum 5, no. 1 (2022): 81-89,
- Dharmawan, Ni Ketut Supasti, dkk. *Hak Kekayaan Intelektual (HKI)*. Yogyakarta: Deepublish, 2016) hlm.38-39
- Prakoso, Abiantoro. *Hukum Perlindungan Anak*. (Yogyakarta: LaksBang Pressindo,2016). hlm.6
- Sutedi Adrian. *Hak Atas Kekayaan Intelektual*, (Jakarta: Sinar Grafika,2009) hlm.115
- Syahputra, dkk, “*Perlindungan Hukum Bagi Musisi Atas Hak Cipta Dalam Pembayaran Royalti*.”
- Tanu, Hendra. *Hak Cipta Musik atau Lagu. Pascasarjana Fakultas Hukum Universitas Indonesia*. (Jakarta: 2009). hlm. 321
- Tasmin, Masdari, “*Urgensi Alternative Dispute Resolution (ADR) Di Negara Indonesia,*” Wasaka Hukum 7 (2019)

¹⁴ Ni Ketut Supasti Dharmawan, *Op, Cit* hlm. 40-41

Undang-Undang

Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (UUHC) Pasal 113 ayat (2)

Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (UUHC) Pasal 95 ayat