LEGAL COMPARISON BETWEEN NATIONAL COLLECTIVE MANAGEMENT INSTITUTIONS IN INDONESIA AND UNITED STATES

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ABSTRACT

Purpose: This Study aims to find out about the role of the Indonesian National Collective Management Institution in providing protection for the economic rights of musicians compared to the United States Collective Management Organization on digital era development.

Methods: This research method uses normative and empirical legal research methods by using empirical facts from human behavior, both behavior through direct observation or verbally obtained from interviews. Data collection techniques were carried out by conducting interviews with informants and studying documents from written data.

Results and Conclusion: The results of the study show that in carrying out its duties the National Collective Management Institute has fulfilled the royalty rights of musicians in accordance with what is mandated in the applicable regulations.

Research implications: the development of the Digital world which should have had many positive impacts on Economic Progress and the quality of Human Resources in the Indonesian nation actually had a negative impact due to a lack of understanding which would hinder this process.

Originality/value: The Indonesian government must be encouraged to create regulations regarding copyright in digital media and provide education to the public regarding understanding copyright.

Keywords: Copyright, Collective Management Organization, Intellectual Property Rights, Royalties.

COMPARAÇÃO LEGAL ENTRE INSTITUIÇÕES NACIONAIS DE GESTÃO COLETIVA NA INDONÉSIA E ESTADOS UNIDOS

RESUMO


Métodos: Este método de pesquisa utiliza métodos de pesquisa jurídica normativos e empíricos, utilizando fatos empíricos do comportamento humano, tanto comportamento por meio de observação direta quanto obtido verbalmente em entrevistas. As técnicas de coleta de dados foram realizadas por meio de entrevistas com informantes e estudo de documentos a partir de dados escritos.

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**Resultados e Conclusão:** Os resultados do estudo mostram que no desempenho das suas funções o Instituto Nacional de Gestão Coletiva cumpriu os direitos de royalties dos músicos de acordo com o que é exigido na regulamentação aplicável.

**Implicações da investigação:** o desenvolvimento do mundo digital, que deveria ter tido muitos impactos positivos no progresso económico e na qualidade dos recursos humanos na nação indonésia, teve na verdade um impacto negativo devido à falta de compreensão que dificultaria este processo.

**Originalidade/valor:** O governo indonésio deve ser encorajado a criar regulamentos relativos aos direitos de autor nos meios digitais e a fornecer educação ao público sobre a compreensão dos direitos de autor.

**Palavras-chave:** Direitos Autorais, Organização de Gestão Coletiva, Direitos de Propriedade Intelectual, Royalties.

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**1 INTRODUCTION**

Musicians in producing their works will use all the efforts they had and thoughts to produce creative works that can be enjoyed by many people. This creative work is something that must be respected and appreciated. One way to respect someone's work is not to misuse the copyrighted work (Pujiyono et al., 2020). A copyrighted work is legally protected in Indonesia, the copyrighted work is protected by the Copyright Act as a Regulation which protects copyrighted works which include Songs, Fine Arts, Photography, Books, Architecture and several similar things created by someone who is included in the Copyright.

Intellectual Property Rights (IPRs) are defined as the right to obtain legal protection for intellectual property in accordance with laws and regulations in the field of IPR, such as the Law on Copyright, Patents, Industrial Designs, Trade Secrets, Plant Varieties, Integrated Circuits and Trademarks. Intellectual Property is wealth that arises as a result of human thought which produces a product or process that is useful for human life, (Pujiyono et al., 2017). The reason why IPR receives protection is, among other things, because IPR which is protected by law can control the natural rights of humans. A person who puts effort into creation has a natural right to own and control a creation (Pujiyono & Prihantiwi, 2021).

Intellectual property rights in this case are divided into two things, namely moral rights and economic rights. Moral rights are rights inherent in the Creator for the benefit of his work relating to the inclusion of names, changes to titles and subtitles, modifications, and so on. Then, economic rights are defined as the rights of creators or related rights holders to obtain economic benefits from their creations. Songwriters or musicians have several sources of income, including when they make public appearances and income from selling or using the work they own. The fees paid by musicians are called Royalties. Royalty is basically defined as a payment that can be obtained or paid to the owner of a patent for a creation.

Therefore, in order to fulfill the economic rights of creators and related rights holders (Pujiyono et al., 2021), an institution was established to assist in handling distribution, especially in the field of music, namely the National Collective Management Institute or LMKN. The National Collective Management Institute was established as a solution to the 2014 Copyright Law (UUHC) for creators who experienced problems in collecting the management of the economic rights received by creators from the commercialization of their creations. LMKN is tasked with managing Copyright Royalties in the field of songs which represents the representation of the interests of creators and the interests of related rights owners.
Indonesia and America are member countries of the World Trade Organization, hereinafter referred to as the WTO, which is a continuation of the General Agreement on Tariffs and Trade, known as GATT, discussing international trade, apart from that, it is also a forum for providing legal protection for works that created based on human ideas or thought. Legal protection of copyright is absolutely necessary because without legal protection, it will influence creators to be creative in the intellectual field.

Law Number 28 Indonesian Copyright Law (UUHC) owned by Indonesia which results from the basic principles of international legal provisions that discuss copyright and is a form of protection provided by the government for creators of copyrighted works. In the provision of legal protection, there are various kinds of works of art and works of art that receive protection in which the scope comes from all elements or aspects of science, literature and works of art.

In the 1976 American Copyright Act, Title 17 provides legal protection for creators of copyrighted works which include: works of art, music, drama, pantomime and choreography, photography, graphics, audio-visual, sound recordings and architectural drawings. Based on the basic principles of the Bern Convention, a copyright can be obtained even if it is not registered, because legally there is no regulation regarding an obligation for the creator to first register his creation with the intellectual property rights office, this is because the copyright itself is owned by the creator when the idea or ideas of his creation has been successfully completed with a form of work or creation that already has a form (Cardoso & Bosco, 2023).

One of the copyright violations of song works that occurs in society is related to the exclusive rights of song creators where the song work is used without permission and without including the name of the composer on the song work. Copyright law in Indonesia and copyright law in America are laws that aim to prevent violations of songs. It is of interest to the author to discuss the differences in the way the National Collective Management Institute works with the Collective Management Institute in the United States in fulfilling musicians’ economic rights.

2 METHODS

The type of research used in legal writing is empirical legal research. The nature of the research uses descriptive research and uses a qualitative approach (Pujiyono et al., 2019). The type of research data used is divided into research sources in the form of primary legal materials and secondary legal materials. The technique of collecting legal materials in this research is document study or library research technique. In this technique, a collection of legal materials is carried out to be read, studied, studied and analyzed by adjusting the legal issues being studied. This research uses legal material analysis techniques which are qualitative analysis (Miles, 1992).

3 RESULTS AND DISCUSSION

The world's seriousness in providing protection for IPR, including copyright, has been visible since 1886 when the Bern Convention was passed in Bern, Switzerland. Conventions and other treaties as sources of international law began to emerge along with the spread of IPR violations. As do TRIPs and the WIPO copyright agreement. This international law is the source for the United States, Indonesia and other countries to form national laws that regulate copyright issues (Andiani & Kusniati, 2022).

The Laws and Regulations concerning Intellectual Property Rights in Indonesia itself were born based on the premise of protecting Intellectual Property Rights from the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) included in the WTO (World Trade Organization). On November 2, 1994, Law Number 7 of 1994 was issued concerning
Ratification of the Agreement Establishing the World Trade Organization. IPR Scope Arrangements in Trade Related Aspects of Intellectual Property Rights (TRIPs) include Copyrights, Marks, Geographical Indications, Industrial Designs, Patents, and Layout Designs of Integrated Circuits which have encouraged the improvement of the formation of Laws and Regulations concerning Rights Intellectual Property (Atmadja, 2015).

Indonesia adheres to the concept of the Droid d'Auteur Doctrine which develops in countries that adhere to the Civil Law system, in the concept of Civil Law Copyright is a natural right justification that views Copyright as a basic right given to creators without looking at wider economic and political consequences The purpose of Copyright is to provide rewards for creators and this is a moral argument. This is the author's right system, namely the emphasis on protecting the personality of the creator through his creation rather than protecting the copyrighted work itself (Atmadja, 2017).

This is different from the United States where they adhere to a Common Law system that uses the Concept of Copyrights Doctrine where moral rights are more important than economic rights. Therefore America uses the Fair use method in underlying the regulations regarding Copyright regulated in the American UUHC Article 107 which in the aspect of copyright law in America allows the use of materials that have received copyright protection in other works under existing conditions. The use of fair use makes copyrighted works publicly available as basic legal material without asking the author's permission to use them (Lange, 2013).

A copyright collective organization (copyright association, copyright management agency, licensing agency, or copyright management society) is a non-governmental organization established by copyright law, or a private arrangement licensing copyrighted works on behalf of authors, acting on behalf of authors in the collective management of copyrighted work rights and licenses. Copyright societies keep track of all events and places where copyrighted works are used and ensure that copyright holders appearing in the society are paid for this use. The copyright society has published its own fee system on its website and charges the nominal administrative fee per transaction. Indonesian National Collective Management Agencies use Regulated tariffs that are set by the authorities. Collective rights management is almost as old as copyright law itself. Collective management of rights through a CMOs The collecting society was first created in France in 1777 to use dramatic and literary works in the theatre, Pierre Beaumarchais' first OMC was set up in France in 1850. It arose from the obligation for copyright societies to grant licenses protected by copyright and to have an organized entity for the management of works. Without the copyright society, it would be impossible for users, such as restaurants, shopping malls, and large events, to license and negotiate terms with individual copyright holders. Copyright societies negotiate prices and create fees on behalf of authors who represent and compensate for the power imbalance between users and copyright holders. The lobbying power of copyright societies is especially important in industries such as the music industry, where authors and copyright owners are often at a disadvantage. The music streaming revolution was also launched as an attack on the power imbalance in the music industry. The evolution of technology and the influence of music aggregators such as Spotify, (Pujiyono et al., 2017).

The Indonesian National Collective Management Institution was created by the government through the Copyright Law. In carrying out its duties, LMKN is assisted by the Collective Management Institute (LMK) as a liaison between the National Collective Management Institute and Musicians. This is regulated in Article 17 of Regulation of the Minister of Law and Human Rights Number 56 of 2021 concerning Management of Song Copyright Royalties (Suwadi et al., 2022).

With the United States as the representative of the competitive mode of collective copyright management organizations that regard copyright as something that can be transferred
property, copyright collective management organizations are established in the form of limited liability companies under the Company Law or the Competition Law, which is limited by the Competition Law. And the Government generally does not interfere with the establishment and management of copyright collective management organizations. The government also does not grant monopoly status to collective management organizations nor does it have a special law governing collective copyright management.

Collective management of copyrights and rights made available to various collective management organizations. Collective management organizations act on behalf of their members, who may be authors or performers, and grant copyright licenses to users who authorize the use of the works by their members or by the foreign rights holders they represent. Collective management organizations also negotiate, on behalf of their members and members of foreign collective management organizations, licence agreements, types and conditions, pay gifts on behalf of rightholders, and document data and information on rights management. The local or foreign collective management organization then gives gifts to its members, who, as individual rights holders, are not normally directly involved in the negotiation of the license (Teague, 2012).

One of the main concerns of collective management organizations is the proper management of big data and information about members, works, other creative inputs and uses. Documentation is therefore essential for the proper functioning of collective management organizations at the national, regional and international levels. Collective management organizations should include information on rights holders and works, such as identifiers, first and last names, titles, shares, suggestion and licensing agreements, as well as media use. This information will enable collective management organizations to receive and compare donations and distribute them to rightholders. Many CMOs use ICT solutions to facilitate the day-to-day operations of CMOs and to collaborate with CMOs in other countries (Willis et al., 2022).

In the United States, there are three groups of copyright management organizations in the public performance of musical compositions that compete with each other to prevent monopoly of any one organization, providing more choices for copyright owners and users. Under the mechanism of market competition, all kinds of trading subjects choose the most suitable trading mode through comparison and play, which promotes the efficiency of collective copyright management. This means that musicians in using the services of Collective Management Institutions in America have more choices compared to Indonesia where the duties and roles of LMKN are limited to the regulations provided by the government (Yanto, 2016).

The problem in this digital era is that there are no regulations that specifically regulate copyright protection in digital media. This is a problem because the space for LMKNs to move is limited in fulfilling the rights of musicians. Apart from that, the awareness of the Indonesian people, which is lower than that of America, makes the performance of LMKNs even more difficult, where in the current era these violations occur in digital media that have not been touched by regulations. Regarding copyright infringement which is less common in America, this is also helped by the use of the Fair use doctrine so that the potential for society can be greater because people are allowed to use the idea of a creator as a basis for making new copyrighted songs (Mappong, 2023).

The "Fair Use" doctrine exists where Indonesia does not use this doctrine. Use of fair use, including the use of reproductions in copies or phonorecords or in any other manner specified by that section, for purposes such as criticism, commentary, news reporting, study, scholarship, or research, is not a form of copyright infringement. In determining whether the use made in a particular case is included in Fair Use, the factors that must be considered must include the purpose and character of the use, the use intended for commercial purposes is included in copyright infringement. The number and substance of the parts used (Yulia et al., 2023).
The use of "Fair Use" is allowed that works that are protected by copyright as the basic material for the development of a work which is intended for the government to support community creativity and be able to balance copyright protection. Therefore, in submitting a lawsuit to court, the copyright owner must ensure that the work used or identified as being in violation of whether it is included in Fair Use or not. If the identified copyright work is an infringement but the copyrighted work falls under fair use, then the use of the copyright work identified as an infringement is not a violation but rather an act of fair use and the perpetrator suspected of committing the infringement cannot be sued for compensation or a fine (Depoorter & Parisi, 2002).

One of the similarities in copyright protection between Indonesia and the United States is that both countries recognize the existence of exclusive rights and economic rights. This exclusive right is granted to all fields of science, literary works, and works of art which are embodied in whatever form. The granting of this exclusive right is intended to provide corridors regarding publication, reproduction and making an arrangement. The granting of economic rights is aimed at selling copies of the work, creating a derivative work of the work, and distributing the work. With the existence of regulations granting authority over economic rights, it can provide commercial value to the copyright owner for his or her creative work (Kusmayanti, 2019).

In providing licenses to users, the Indonesian National Collective Management Institute uses the Extended Collective License (ECL) method. ECL is a method created for the use of a Copyright with a mass license, this is done because of the limitations of granting licenses as a result of the geographical constraints of the country of Indonesia which is vast and divided by many islands. With the ECL method, LMKNs can collect royalty rights owned by creators who have been registered as members of an LMK and creators who have not been registered as members of the LMK. This makes it easy for LMKNs to collect royalties because LMKNs do not need to carry out Direct License or direct licensing which will take a lot of time and money to collect royalties. However, in granting the license, each party can also apply for a license to use for commercial purposes. This license can be granted if the user or users wish to apply for a license directly to LMKN (Nainggolan, 2011).

Unlike Indonesia, which uses the ECL method, CMO uses Direct Licensing which also has advantages over the Extended Collective License. Direct Licensing provides economic rights to musicians according to the use of their creative works. This is because Direct Licensing records detailed data on the use of a work. This is different from ECL, where all use of copyrighted works is collected at an even rate, however, the royalty payments are differentiated based on the seniority of the musicians and the popularity of a piece of music that is being widely used among the public. This is considered unfair to musicians who have just entered the world of music (Fitri et al., 2022).

Lack of legal awareness of the protection of creators' rights in society can be a big problem and will cause a lot of harm to various parties. In practice, violations regarding copyright in internet media are like a culture in society, where it already feels like a normal thing that happens everywhere. This is very unfortunate considering that the development of the Digital world which should have had many positive impacts on Economic Progress and the quality of Human Resources in the Indonesian nation actually had a negative impact due to a lack of understanding which would hinder this process.

4 CONCLUSION

The main difference between the National Collective Management Institute in Indonesia and the Collective Management Organization in the United States is the regulations that underlie these institutions. where the regulations used by the United States as a country adhering
to Common Law use the “Fair Use” doctrine which makes it easier for the public to use a copyrighted work. Regarding licensing in the United States, it is also different from Indonesia because in Indonesia the National Collective Management Institute uses a licensing system using the Extended Collective Licensing (ECL) method, while the United States uses the “Direct Licensing” method. This is done because of demographic and geographical differences between the United States and Indonesia. One of the factors causing Indonesia to lag behind in fulfilling the economic rights of musicians is the lack of regulations which is the main obstacle in fulfilling the Economic Rights of Musicians. Therefore, the Indonesian government must be encouraged to create regulations regarding copyright in digital media and provide education to the public regarding understanding copyright.

REFERENCES


