

## Legal Analysis of Performers' Rights and Obligations Regarding Permits and Royalties in Performing Songs Owned by Other Creators (Case Study of Ahmad Dhani from Dewa 19 Versus Once Mekel)

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**ABSTRACT:** Musical works are objects of Copyright which have legal protection regulated by Law Number 28 of 2014 concerning Copyright. One of the copyright conflicts that exists in the music industry is the conflict between Ahmad Dhani and Once Mekel where Ahmad Dhani, Once Mekel's teacher, performed a song from the Dewa 19 Band while Dewa 19 was on tour, Once Mekel also did not pay royalties to Ahmad Dhani as the owner of the song, the song Dewa 19 sung by Once Mekel. This research aims to determine the relevance of the contents of the copyright law articles and the obligations of performers to songwriters. This research uses a normative juridical method with an analytical approach. The research results showed that Once had violated the provisions because it did not have a license agreement. Then perpetrators who do not pay royalties to creators through LMKN are subject to fines and sanctions. Based on the research results, it shows that legal protection for song copyright holders is accommodated in Law No. 28 of 2014 concerning Copyright. Legal protection of song copyright is an effort to guarantee the certainty of the rights of song copyright holders, whether in the form of moral rights or economic rights. Song copyright protection can be carried out in preventive and repressive ways. Regarding the settlement of Ahmad Dhani and Once Mekel, it was ultimately resolved through a non-litigation settlement through mediation.

**KEYWORDS:** Copyright, Songs, Intellectual Property, and Royalties.

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### I. INTRODUCTION

Globalization era and along with the development of the era from time to time, humans have diverse needs, especially needs that include aspects of technology, this has become something that is developing rapidly where the need for technology has become a primary need that is needed in every level of society including in Indonesia. Indonesian society, which has been accustomed to the presence of technology and its development since early on, so that access to technology and digital platforms is increasingly unstoppable, especially access to digital platforms that currently often and almost every day interact in the midst of Indonesian society, namely music

Connecting about technology and music, humans in essence also have the mind to create creative ideas to produce a creative work, including music. The creative work produced

by humans must be given appreciation and respect which will then give birth to what is called Intellectual Property Rights (IPR).

Intellectual Property Rights (IPR) are private rights that a person has when producing or creating intellectual works. Simply put, intellectual property rights are the rights of an owner or creator to reap the economic benefits of his intellectual creations. In Indonesia, there is one type of intellectual property rights known, namely Copyright, which arises through human creativity and therefore must be protected, both morally and economically. Copyright here of course gives exclusive rights to its owner to control the use, copying, and distribution of his creations, including works of art, music, and so on.

According to Munir Fuady, Intellectual Property Rights (IPR) are material freedoms that are considered and legitimized by the regulation of immaterial goods as protected innovations or manifestations. Intellectual property rights are wealth for every insight result such as technological innovation, information, workmanship, writing, melodic arrangements, compositions and others.

The purpose of copyright is to protect the creator's rights to distribute, sell, or create derivatives of the work created. The exclusive rights contained in copyright create two rights, namely moral rights and economic rights. Moral rights protect the integrity of the creator as the owner of the idea, while economic rights regulate how the work can be used for commercial purposes, including licensing and royalties. In practice, these rights often overlap, especially when a song is used by a performer

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(singer or musician) who is different from the original creator. Songwriters who create songs therefore require appreciation, respect, and legal protection for the results of their song creations. Legal protection for songwriters is regulated in Law Number 28 of 2014 concerning Copyright (Copyright Law).

Law Number 28 of 2014 concerning Copyright has established a mechanism for managing copyright and the obligations of related parties. However, implementation in the field often causes problems, either due to a lack of legal understanding or negligence in implementing the rights and obligations that have been regulated. Although there is a legal protection mechanism for song creations in music, it is also possible that there will be a dispute or violation of song copyright because songs have economic potential and can provide benefits and are supported by technological advances.

Along with this, it can certainly have positive and negative impacts on its development. When viewed from the positive impact, songwriters can gain economic benefits and become famous and the ease of everyone in creating works can easily publish their songs. While the negative impact is that songs that can be used as a means of seeking profit makes many people misuse it for personal gain by duplicating songs, changing song lyrics, covering songs as they please, and publishing songs without the permission of the songwriter and many people do not know about the regulations regarding song copyright.

Copyright infringement of song works by re-singing songs at concerts or music stages is one of the problematic topics in copyright infringement in Indonesia. Copyright infringement occurs when a singer without permission from the songwriter sings a song at a commercial music concert that violates moral rights and economic rights. This phenomenon is what causes disputes between songwriters and singers.

Entering the construction of arguments about the music industry in Indonesia, recently there has been a lot of news about a case about two famous Indonesian musicians who played the main role in the conflict over the ban on the performance of Dewa 19 songs, namely Ahmad Dhani as the creator of Dewa 19 songs and Once Mekel as the vocalist of Dewa 19. Ahmad Dhani is currently widely known to the public as a singer, songwriter, and even music producer for famous Indonesian artists. In his career, he was once part of an Indonesian music group/band called Dewa 19. Likewise with Once Mekel, whose real name is Bernardus Ari Sandjaya is a former vocalist of the music group/band Dewa 19.

Together with Dewa 19, Ahmad Dhani has created a number of songs that can be said to be quite popular in Indonesia and Once Mekel also managed to sing them well as a vocalist, such as "Cukup Siti Nurbaya", "Pangeran Cinta", "Aku Milikmu", "Roman Picisan" and many others. However, it is very unfortunate that after several years passed, there was a conflict between the two regarding the Copyright of the songs, which then resulted in the emergence of a dispute case, namely the prohibition of the performance of Dewa19 songs by one of the parties. The conflict between Ahmad Dhani and Once Mekel began when Ahmad Dhani strictly prohibited Dewa19 songs from being performed by Once on one occasion when Once performed his solo stage performance without the permission of Ahmad Dhani as the creator. Ahmad Dhani demanded that Once respect the copyright by asking for permission and giving royalties as a form of appreciation for his work.

Through the conflict of the ban on the performance of Dewa19 songs by Ahmad Dhani to Once Mekel has a major interest related to Copyright in the Indonesian music industry. The conflict that occurred between the two illustrates how important Copyright enforcement is in the journey of the Indonesian music industry. The existence of this conflict can also be a concrete example of the complexity and importance of the existence of Copyright in the Indonesian music industry. As is known, in the dispute involving Ahmad Dhani regarding the ban on the performance of Dewa 19 songs by Once Mekel at his solo stage event, it has become a major issue by considering the existence of Copyright as a legal principle that recognizes the exclusive rights of a creator over his creations. Therefore, the act of performing Dewa19 songs without permission and without giving royalties by Once Mekel is suspected of being a violation of Copyright.

Based on the above problems, it is interesting to further study and provide limitations on the problem regarding the Copyright case that occurred between Ahmad Dhani and Once Mekel which will then be reviewed based on the rights and obligations inherent in a performer related to permits and royalties and the rights inherent in a person to a creation including a song, in order to understand the legal regulations of intellectual property rights themselves, especially in the case as a whole through writing a journal entitled "*Legal Analysis of the Rights and Obligations of Performers Related to Permits and Royalties in Performing Songs Belonging to Other Creators (Case Study of Ahmad Dhani from Dewa 19 Versus Once Mekel)*".

## **II. RESEARCH METHOD**

The research method used by the author is normative legal research. Research using normative legal research is based on the approach and analysis of legislation. This approach is used by the author in this study is by means of literature study (library research). The data collected comes from scientific works such as scientific journals, books, dictionaries and so on. The writing that has been analyzed will be described to see the relationship between variables.

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## III. DISCUSSION

### Regulations Concerning the Rights and Obligations of Performers Regarding Permits and Royalties

Performers or performers based on the definition of "Article 1 number 6 of Law No. 28 of 2014 concerning Copyright states that Performers are a person or several people who individually or together display and demonstrate a creation." Royalties act as one source of income or money that is considered a form of appreciation for a work of art and is included in the economic rights of the creator. The payment of royalties is intended to provide compensation to authors, copyright holders or owners of related rights for the creative results created, or a work that has the right to be considered a copyright commercially. If the performers use it for their financial interests or commercial purposes, they must provide compensation in the form of royalties to the creator for the benefits they get.

Performers, in their activities of displaying or showing a work belonging to the creator, especially in performing songs, need to pay attention to several rights, namely:

- 1) Obtaining moral rights in the form of "listing the name as a performer unless agreed otherwise; not to distort the creation, mutilate the creation, modify the creation, or things that are detrimental to their honor or reputation unless agreed otherwise."
- 2) Performers also have economic rights including "the right to carry out themselves, give permission, or prohibit other parties from carrying out: Broadcasting or communication of the performer's performance, fixation of their performance that has not been fixed, duplication of fixation of their performance in any way or form, distribution of fixation of the performance or copies thereof, rental of fixation of the performance or copies thereof to the public, and provision of fixation of the performance that can be accessed by the public

Performers, in their activities of displaying or showing a work owned by a creator, especially in performing songs, need to pay attention to several obligations, namely:

- 1) "Request permission from the Creator or Copyright Holder to procure or use a work commercially."
- 2) "Provide royalties to the Creator for the benefits they get from the commercial use of a work through the National Collective Management Institute (NCMI)."
- 3) "May not rearrange the creator's work/song"

In "Article 9 of Law No. 28 of 2014 concerning Copyright, any person or other party prohibited by this law is a person/party who takes advantage of a musical work and song without permission from the creator or copyright holder". What is meant by another party is a party who uses a copyrighted musical work for commercial purposes and/or commercial interests, including using it in public places such as hotels, restaurants, cafes, karaoke, cinemas, single-use events, and other places that can provide benefits to the creator. Therefore, a license agreement is needed as a grantor of permission to users who perform the copyrighted songs and music mentioned earlier. The license itself is an agreement that includes certain conditions, in granting permission to use the economic rights of the musical creation owned by the creator. Regarding the amount of payment made by the recipient of the music license to the copyright holder of the music, it is determined fairly by law. In the use of music performed for commercial purposes, it is not enough to just include the identity of the creator. Therefore, a license (written permission) from the creator or copyright owner is required so as not to violate the copyright of others when carrying out commercial activities.

Royalty payments to creators or copyright holders certainly have positive impacts, including:

- 1) Fulfillment of the creator's economic rights;
- 2) Providing justice for creators because they feel appreciated for the work they have created;
- 3) Providing protection for copyright;
- 4) Providing incentives to continue producing work;
- 5) Supporting the development of the music industry.

However, in practice, many performers do not make royalty payments to creators or even ask for permission first. This is certainly very detrimental to creators, especially their moral rights and economic rights. The following are the impacts that creators get when performers do not pay royalties:

- 1) Creators do not receive compensation for the use of their intellectual work;
- 2) Creators do not receive economic benefits from their creations;
- 3) Creators do not receive financial compensation for the use of their musical works. Performers who do not pay royalties to creators through LMKK can be subject to criminal sanctions as well as civil sanctions, such as fines, imprisonment or both. In relation to civil sanctions, performers can also receive compensation claims from creators or copyright holders.

### Dispute Resolution in the Ahmad Dhani and Once Mekel Cases in Order to Realize the Enforcement of Legal Protection and Justice

Disputes can arise or occur between any party, from between individuals or groups, a combination of both, to between companies,

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companies and countries, even between countries, and so on. Disputes that occur can be public or civil in nature and can occur in local or international scopes. A dispute is something that causes differences of opinion, quarrels, arguments, disputes, disagreements because of differences in interests between two or more parties. Disputes can also occur between songwriters and singers. The dispute arises because the singer does not ask the songwriter's permission to sing the song he created and the singer also sings it for commercial purposes.

This is like an example of a dispute case between Ahmad Dhani and Once Mekel. The dispute falls into the realm of copyright disputes, especially disputes regarding songs. Based on Article 95 paragraph (1) of the Copyright Law, it states that the resolution of copyright disputes can be done through alternative dispute resolution, arbitration, or the courts. The resolution of copyright disputes between songwriters and singers in the case of Ahmad Dhani and Once Mekel, reviewed from the Copyright Law, can be done through non-litigation and litigation.

Settlement of copyright disputes through non-litigation is often referred to as out-of-court settlement of copyright disputes. The existence of this out-of-court dispute settlement is a breakthrough because many cases are piling up in court that have not been resolved. Settlement of disputes through non-litigation is commonly known as alternative dispute resolution. Based on Article 1 number 10 of Law Number 30 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 dispute resolution outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment. Non-litigation dispute resolution has many advantages, namely informal settlement, which resolves the disputes of the parties themselves, the dispute resolution period is not long, the costs are low, the relationship between the parties is cooperative, the results are mutually beneficial.

Furthermore, the resolution of copyright disputes through litigation can be done by filing a lawsuit for damages with the commercial court if there is a violation of copyright. Because the court that has the authority to try or decide on copyright disputes is only the commercial court. However, copyright holders can also file criminal charges against their work that violates economic rights in order to provide a deterrent effect on copyright violators. The procedure for filing a lawsuit in resolving copyright disputes through litigation, copyright holders can take legal steps to file a lawsuit as regulated in Article 100 of the Copyright Law. Article 101 of the Copyright Law concerning decisions on copyright lawsuits.

Decisions on copyright lawsuits must be pronounced no later than 90 (ninety) days since the lawsuit was registered. If the time period is not met, with the approval of the Chief Justice of the Supreme Court, the time period can be extended for 30 (thirty) days. The decision must be pronounced in a public hearing. Commercial court decisions must be delivered by the bailiff to the party no later than 14 (fourteen) days from the date the decision is pronounced.<sup>19</sup> Legal remedies against commercial court decisions concerning copyright disputes are limited to only being able to submit cassation legal remedies, which means that there is no appeal process as in civil cases in general.

The dispute between Ahmad Dhani and Once Mekel arose because of Ahmad Dhani's statement that Once Mekel was not allowed to sing Dewa 19 band songs at his concert. The statement arose because the Dewa 19 band would be touring several cities in Indonesia. Ahmad Dhani as the songwriter also made a statement regarding the payment of royalties for his songs that had never been paid by Once Mekel. Since 2010 Once Mekel left the Dewa 19 band and often held concerts singing Dewa 19 band songs. Once Mekel never paid royalties. Basically, the dispute arose because of differences of opinion between the two parties. Ahmad Dhani's party argued that Once Mekel had never fulfilled his obligation to pay royalties when singing Dewa 19 band songs created by Ahmad Dhani during an off-air music concert. Meanwhile, Once Mekel argued that he was not entitled to pay the royalties, because it had been paid by the organizer (event organizer) who invited him. So he no longer needed to personally pay royalties to Ahmad Dhani. The dispute between Ahmad Dhani and Once Mekel was finally resolved using alternative dispute resolution through mediation. The mediation was carried out on April 18, 2023, at the Office of the Ministry of Law and Human Rights, South Jakarta. During the mediation, the mediator was the Minister of Law and Human Rights Yasonna H. Laoly. Finally, both parties reached an agreement. The agreement was that Once Mekel would no longer sing Dewa 19 songs until an unspecified time.

Furthermore, when reviewed based on the Copyright Law, the dispute resolution between Ahmad Dhani and Once Mekel was resolved through alternative dispute resolution by means of mediation. Mediation is indeed more often carried out to resolve civil disputes. Because mediation has many advantages, the dispute resolution process is more effective, efficient, does not take a long time, and does not cost much. The existence of this mediation is in accordance with Article 95 of the Copyright Law which states that in addition to copyright infringement and/or related rights in the form of piracy, as long as the parties to the dispute are known to exist and/or are in the territory of the Unitary State of the Republic of Indonesia, they must first resolve the dispute through mediation before bringing criminal charges.

#### **IV. CONCLUSION**

That in terms of law enforcement regarding Copyright, the legal basis underlying the implementation of the provisions regarding Copyright is Law Number 28 of 2014 concerning Copyright, in addition to the Berne Convention which is adopted from

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international legal provisions regarding copyright of the song, the copyright of this song automatically, even without registering, the concept of legal protection for the creator should be attached and constitute an essence that is a unity and cannot be separated from each other.

That in the case involving Ahmad Dhani from the band Dewa 19 and Once Mekel regarding the royalty payment that should have been made when performing a musical work belonging to someone else, it started with Ahmad Dhani forbidding Once from performing his own songs while his band's concert tour was in progress, in addition to that, he has not received any royalty payment from Once since he left Dewa 19 in 2010 even though he often performed songs created by Ahmad Dhani when invited by Event Organizers (EO).

In "Article 9 paragraph (2) and (3) of Law Number 28 of 2014 concerning Copyright" explains the license agreement (permission) in the use of songs and Once is considered to have violated it because it does not have the license agreement. Then in Article 23 paragraph (5) explains the payment of compensation through LMK (Collective Management Institution) as a replacement for the license agreement. Performers who do not pay royalties to creators through LMK can be subject to criminal sanctions as well as civil sanctions, such as fines, imprisonment or both. In addition to providing protection for creators, royalty payments can have a positive impact, including: Fulfillment of the creator's economic rights, Providing justice for creators as a form of appreciation; and Supporting the development of the music industry.

The resolution of the copyright dispute between the songwriter and singer in the case of Ahmad Dhani and Once Mekel was resolved through mediation which resulted in an agreement between the two parties. The agreement was that Once Mekel would no longer sing Dewa 19 songs until an unspecified time. Based on Article 95 paragraph (1) of the Copyright Law, the resolution of the Ahmad Dhani and Once Mekel case was resolved through an alternative dispute resolution, namely through mediation, because dispute resolution through mediation focuses on deliberation between the parties concerned so that the results are beneficial to the parties to the dispute.

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