



## Law Enforcement In The Field Of Music In The Spotify Application Program

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### ABSTRACT

Music and songs are one of the areas of Intellectual Property Rights which are protected in Article 58 letter (d) of UUU Number 28 of 2014 about Copyright, namely Copyright Protection for Song or music creations with or without text. In this digital era, there are many ways for us to get the music we want through various platforms on the internet such as *Youtube*, *Joox*, *Spotify*, and others. Because the means to get music are getting easier now, there are more and more copyright violations against music, ranging from piracy to plagiarism. This study aims to discuss how the Copyright law regulates copyright protection in the field of music on the internet and also how the *Spotify* music service platform protects copyright. The research method used is a normative research method; the data analyzed is secondary legal data consisting of primary legal materials, namely Copyright Law and Secondary Law materials, namely literature related to research problems. Based on the results of the study, it is known that *Spotify* as one of the world's famous song streaming applications has the exclusive right as a copyright licensee to exercise exclusive rights as regulated in Article 9 of the Copyright Law. *Spotify* as a streaming service provider must of course have a license for the music or songs provided in the application through a license agreement with the licensor.

**Keywords: Copyright; Music; Spotify Application; law enforcement**



## INTRODUCTION

Music or song is a series of sounds arranged in such a way that in it there are songs, rhythms, harmony, and tones of a sound that comes from various tools that can produce musical rhythms. For some people, music is a necessity that accompanies their days, whether it's while studying, eating, traveling, exercising and even sleeping. There are also many artists around the world who create music that suits the various musical tastes of the wider community, even every year there are many music artists who regenerate in each genre of music<sup>1</sup>. Music has a power that can affect human life. Music as a part of culture cannot be separated from the values that live in the society concerned. Through this music, we can also learn values, both socio-cultural, moral, spiritual, religious, as well as human interaction in the life of a society.

In the old times, our way to get music was by coming directly to music concerts or buying LPs or music CDs in stores which seemed expensive, difficult to get, and also took up space to store LPs or CDs of the music. On the other hand, because the physical goods are clearly visible, copyright protection for music is relatively easy compared to nowadays where protection is quite difficult because the way to get music is also easy because there are so many ways to get music<sup>2</sup>. It is difficult to carry out legal protection of musical works in the current era, because it is influenced by the power of technology. Technology has changed musical works into works that have many derivatives, and makes it very easy for everyone to get musical works freely by violating copyright.

Internet or cyberspace, has presented a new reality of life to the community, namely changing distance and time into something that is not limited. With the internet, everyone can do various activities which in the real world are difficult to do because they are separated by distance. Because of the internet, the distance is not an obstacle anymore. A reality that is very far from where we are can be presented in front of us with the internet media. We can

<sup>1</sup> Lutfi Ulinuha, 'Penggunaan Hak Cipta Sebagai Objek Jaminan Fidusia', *JOURNAL OF PRIVATE AND COMMERCIAL LAW*, 1.1 (2017), 85–110.

<sup>2</sup> Hasbir Paserangi, 'Perlindungan Hukum Hak Cipta Software Program Komputer Di Indonesia', *Jurnal Fakultas Hukum UII*, 18.1 (2011), 20–35.



do business transactions, chat, shop, study and various other activities just like in real life<sup>3</sup>. In addition to bringing many benefits, sometimes the internet also has negative impacts such as the spread of computer viruses through the internet network, criminal acts committed by the community such as online gambling, pornography which can be accessed freely by the public and also to the field of Intellectual Property Rights, especially song copyrights which can be easily downloaded through the internet<sup>4</sup>.

Song is one of the areas of Intellectual Property Rights which are protected in Article 58 letter (d) of UU Number 28 of 2014 about Copyright, namely Copyright Protection for Song or music creations with or without text. As protected by UU No. 28 of 2014 concerning Copyright, songwriters have the right to moral rights as well as economic rights to their creations. Moral rights are rights that are automatically obtained by a creator of his creation. While this economic right is needed as a form of appreciation or value for the creativity of his creation in the form of a song that can be enjoyed by the public or people when listening to it. This means that the creator has the right to moral rights and economic rights from songs that are enjoyed by the community<sup>5</sup>.

In this digital era, there are many ways for us to get the music we want, from listening to music at music concerts directly, listening to it on various platforms on the internet such as Youtube, Joox, Spotify, and others. Because the means to get music are getting easier, there are also more violations in the field of copyright against music, ranging from piracy to plagiarism. Therefore, the protection of copyright in the field of music really needs to be reviewed.

A creation made in digital form is indeed very easy to duplicate and the result of the act is also almost indistinguishable from the original. In addition, now people can make modifications or changes to the results of the copy which can then be distributed throughout the world at almost no cost. On the one hand, for almost everyone this certainly makes it very easy to violate the copyrights of others on a very large scale, but on the other hand it is

<sup>3</sup> Habi Kusno. "Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet". Jurnal Fiat Justisia. Vol.10 No.3. 201, page 490.

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*



not easy for creators as copyright owners to be able to find out if an infringement has occurred or to take legal action.

This article will discuss how the law regulates copyright protection in the field of music on the internet and also how the Spotify music service platform protects copyright. The occurrence of acts of copyright infringement on a created song that is carried out at the present time, because it is easy for us to access the internet to get a created song by all means, ranging from legal methods according to legislation and illegal ways such as piracy of songs created and others. Therefore, it is necessary to discuss further on how a song service provider platform on the internet protects the copyright of the songs created on the platform. The focus of this study is on how copyright infringement by Spotify service providers is and how law enforcement is for Spotify service providers.

### RESEARCH METHODE

The method used in this study is a normative legal research, namely library law research which refers to the legal norms contained in the legislation<sup>6</sup>. This approach is carried out by reviewing all laws and regulations related to the legal issue being handled<sup>7</sup>. In legal research, there are several approaches, with the approach of getting information from various aspects regarding legal issues that will be sought for answers.

### RESULTS AND DISCUSSIONS

#### Copyright Infringement by Spotify Service Providers

Basically, copyright is a right owned by legal subjects over their creations. The creations can be in the fields of science, art, and literature. Especially in artistic works which include song and/or music copyrights, there are two kinds of rights, namely moral rights and economic rights<sup>8</sup>. Regarding economic rights, they are further divided into 2 (two) namely

<sup>6</sup> Soerjono Soekanto and Sri Mamudji, (2006), *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, page 23.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2011, page 93

<sup>8</sup> Habi Kusno, 'Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet', *Fiat Justitia*, 10.3 (2016), 489–502.



mechanical rights relating to the reproduction of songs and/or music on cassettes, compact disks, laser disks, etc., and performing rights which are related to the activity of playing a copyrighted song and/or music, for example singing a song or playing a cassette in a public place for commercial purposes.

Spotify is a digital music, podcast, and video service that gives you access to millions of songs and other content from creators around the world. One well-known music streaming company, Spotify, was sued by Wixen Music Publishing in 2018 for allegedly using songs without a license agreement and compensation to the publisher of the music. It does not have a direct license or mandatory license from Wixen that allows the company to reproduce and distribute the songs. This can be said as a form of violation of performing rights activities aimed at announcing commercial purposes, which will definitely bring benefits to the company owner.

Authentically, UU No. 28 of 2014 has formulated that what is meant by announcement is reading, broadcasting, exhibiting a work using any means, whether electronic or non-electronic or doing so in any way so that a work can be read, heard, or seen by others. From a civil perspective, performing rights can be viewed from the perspective of granting licenses to users in the form of licensing agreements. This is in line with copyright as an exclusive right and economic right, where the creator or copyright holder has the right to give permission to other parties to publish their creations and granting such permission cannot be separated from the problem of profits from the use of their copyright. The granting of permission from the creator or copyright holder to another person is called a license. License comes from the Latin, namely *licentia*<sup>9</sup>. In this language, a license can be interpreted as a form of permit that is used in certain cases and is contained in a certain deed based on an agreement which basically contains the agreement and the rights and obligations of both parties.

Licensing is a form of granting permission to utilize an intellectual property right, which can be granted by the licensor to the licensee so that the licensee can carry out a form

<sup>9</sup> Roeslan Saleh, *Seluk Beluk Praktis Lisensi*, Sinar Grafika, Jakarta, 1991, page 1



of business activity, either in the form of technology or knowledge that can be used to produce, produce, sell or market certain goods, by using the licensed intellectual property rights. For this purpose, the licensee is required to provide a performance contract in the form of royalty payments known as license fees<sup>10</sup>.

From the point of view of the aspect of criminal law, song and/or music copyright regarding performing rights is the use of songs and/or music without permission from the author and/or the legal copyright holder. Criminal provisions relating to copyright infringement of songs and/or music in the field of performing rights are contained in Article 113 paragraph (1) to paragraph (3) of UU no. 28 of 2014 about Copyright.

The undeniable fact is that the creator has enriched the user community through his creative work, so that the creator has a fundamental right to receive compensation commensurate with the value of his contribution. So in that case, one of the obligations of the licensee for the announcement of songs and/or music is payment of a sum of money to the licensor which is commonly referred to as a royalty (license fee). Royalties are a form of payment made to copyright owners or performers for not using their ownership<sup>11</sup>. In relation to the payment of royalties as a consequence of copyright in songs and/or music as an exclusive right, it can also be argued that this is an embodiment of the economic rights contained in copyright, namely the right to obtain economic benefits from the creation.

Quoted from Spotify official website, the Spotify Copyright Policy section explains that "Spotify respects intellectual property rights and expects its users to do the same. If you are the copyright owner or agent, and you believe that any of the copyrighted material directly available on Spotify violates your copyright, please let us know"<sup>12</sup>. Spotify itself does provide a means of complaint both online through the form they include on their official website page, as well as the address where a complaint can be filed if there is an alleged violation that occurs in their streaming application. However, Spotify does not clearly

<sup>10</sup> Gunawan Widjaja, *Seri Hukum Bisnis, Lisensi*, PT. Rajagrafindo Persada, Jakarta, 2003, page 10-11

<sup>11</sup> Hendra Tanu Atmadj. 2003. *Perlindungan Hak Cipta Musik atau Lagu di Indonesia*. Jurnal Hukum & Pembangunan. Vol. 33 No. 2, page 293.

<sup>12</sup> Spotify.com, Legal Copyright Policy

explain what steps they will take to resolve a matter if a violation is indeed justified other than terminating the account of the user who is suspected of committing the violation.

In fact, it was Spotify itself that committed the offense and was reluctant to respond to the allegations levelled against them<sup>13</sup>, but was willing to pay damages to settle a proposed joint lawsuit alleging it did not pay royalties for some of the songs it provided to users. The occurrence of copyright infringement in music streaming applications is indeed increasingly difficult to detect in the online world distribution flow, then it has an obligation to fulfil and comply with the requirements of the applicable laws and regulations, namely ensuring that there is legal security for all related subjects as a service provider.

Spotify as a streaming service provider must of course have a license for the music or songs they provide in the application as previously explained through a license agreement with the licensor. Under the law, it will be the licensee who will have its own rights and obligations after the agreement is concluded. Obligations that must be adhered to for the licensee or in this case the Spotify company, include:

1. The licensee is obliged to pay a certain amount of royalty money. Paying royalties is a top priority obligation of the licensee. What is often questioned is how much and how the royalty payments should be made. There are several ways of paying royalties that are often used in the practice of licensing agreements, including: (i) Lump sum payment, (ii) Instalment payment, (iii) fixed annual payment, (iv) running royalties: (a) percentage basis, (b) fixed sum per unit sold, (v) minimum royalty payment, (vi) maximum royalty payment, (vii) payment paid up clause. Each method uses a technical calculation formula. Other issues related to royalties are (a) from when the royalties have to be paid, (b) whether the royalty payments are free from tax payments, (c) whether late payments of royalties will be subject to interest and/or sanctions.
2. The licensee is basically burdened with the obligation to use the rights obtained from the license agreement. Except in certain cases, for example (i) if the licensee agrees to pay a

<sup>13</sup> Reuters. 2018. "Spotify Dituntut \$1,6 Miliar atas Pelanggaran Hak Cipta" <https://www.voaindonesia.com/a/spotify-dituntut-1-koma-6-miliar-dolar-atas-pelanggaran-hak-cipta/4190189.html> (June, 24, 2021)



certain minimum amount of royalties regardless of whether he will exercise his rights or not, (ii) in the case of a non-exclusive license agreement, such obligations are not required of the licensee.

3. The licensee is also obliged to (a) not to disclaim the licensed rights, (b) the obligation not to compete, (c) the obligation to maintain confidentiality, (d) the obligation to maintain the quality of the product, and (e) the obligation to fulfil and comply with the requirements. - the requirements of the applicable laws and regulations<sup>14</sup>.

After the emergence of cases of alleged violations of using thousands of songs without a license and compensation to music publishers, unfortunately Spotify has not updated the protocol and preventive measures that can be applied if this happens again other than confirming that they will be more thorough in investigating related cases. Learning from cases of license violations in the past, the violations committed certainly do not need to occur in the online music streaming industry and should not happen again in the future if the existing regulations are implemented strictly and there are additional regulations that reduce loopholes in the online service provider industry.

### **Spotify Service Provider Law Enforcement System**

The Indonesian government has accommodated everyone who wants to protect their creations, especially in the field of copyright as stipulated in the laws and regulations, namely UUU no. 28 of 2014 about Copyright (hereinafter referred to as the Copyright Law). As regulated in Article 40 paragraph (1) of the Copyright Law, a person's creations that are protected can be in the form of science, art, and literature such as books, pamphlets, lectures, speeches, songs, music instruments, paintings, photography, interpretations, adaptations, computer programs, and several other works.

Legal protection for copyrights, especially musical works or songs, is given to the creator. In Article 1 point 2 of the Copyright Law it is explained that the creator is a person or several people who individually or jointly produce a work that is unique and personal.

<sup>14</sup> Sumantoro, *Masalah Pengaturan Alih Teknologi*, Edisi Pertama, Cetakan I, Penerbit Alumni, Bandung, 1993 page 69-70



According to Article 1 point 4, those who can become copyright holders are the creators as copyright owners, other parties who receive the rights legally from the creators, or other parties who further receive rights from the parties who receive the rights legally. The creator of the song or music can register his creation to the Directorate of Copyright and Industrial Design in accordance with the provisions of Article 64 paragraph (1) of the Copyright Law. The recording of the work to obtain this copyright is not mandatory, because the principle of this copyright itself arises automatically when the work is announced or manifested in a tangible form (automatic protection).

Nowadays, we can listen to music or songs from any creator wherever and whenever we want. This can happen because of the development of a new technology that we call streaming. Streaming is the sending of data in the form of video or audio content to electronic devices such as computers or mobile phones through constant internet transmission. In streaming activities, users have an alternative to be able to watch live or listen directly to streaming shows and services to watch later by downloading the file first<sup>15</sup>. Currently, one of the most widely known song streaming applications in the community is Spotify.

When streaming, there is a broadcasting activity of a work using electronic media (gadgets and personal computers) so that other people can listen to the work of the song, this is included in the form of announcement of copyrighted works as stipulated in Article 1 number 11 of the Copyright Law, which reads:

“Announcement is the reading, broadcasting, exhibition, of a work by using any means, whether electronic or non-electronic, or doing so in any way so that a work can be read, heard, or seen by others.”

Article 9 of the Copyright Law states that the creator or copyright holder has the economic right to publish the work, copy the work, and others, one of which is the right to announce the work. The song streaming system on Spotify is an exclusive right held by the copyright or copyright holder. Because of these exclusive rights, other people cannot announce copyrighted works without permission from the creator or copyright holder.

<sup>15</sup> Austerberry and David, *The Technology of Video and Audio Streaming*, (Burlington: Focal Press, 2005). page 134



In the Spotify application, users can upload song works into the application. After uploading, there will be a legal relationship between the Spotify service provider and the uploader which will be determined in an agreement. The agreement is the Spotify Terms and Agreement which basically explains that if the user does not agree to the things stipulated in the Terms and Agreement, the user may not use the Spotify streaming application service. This means that the uploader has agreed to the related matters stipulated in the Terms and Agreement.

The legal relationship between the user who uploads the song containing the copyright and the creator and/or copyright holder and/or heir whose rights have been violated is a bond that arises because of the law; this is in accordance with article 1352 of the Civil Code. Works that have been uploaded to Spotify already contain copyright in it where if there is such a thing is detrimental to the creator and/or copyright holder and/or his heirs. Article 10 Copyright states:

“The manager of a trading place is prohibited from allowing the sale and/or reproduction of goods resulting from infringement of Copyright and/or Related Rights in the trading place they manage.”

So, the legal relationship above is a bond that arises from the legislation in Article 1352 BW.

In an effort to overcome the occurrence of copyright infringement, dispute resolution through alternatives is prioritized. As regulated in Article 95 paragraph 1 of the Copyright Law, which reads "Copyright dispute resolution can be done through alternative dispute resolution, arbitration, or court". Settlement of disputes in alternative settlements is based on good faith to the exclusion of litigation in the district court. The dispute resolution is carried out by holding a direct meeting between the disputing parties. The scope of arbitration and alternative dispute resolution is also regulated in Article 5 Paragraph 1 of the Law on Arbitration and Alternative Dispute Resolution, namely:

- (1) Disputes that can be resolved through arbitration are only disputes in the trade sector and regarding rights which according to laws and regulations are fully controlled by the disputing parties.



(2) Disputes that cannot be resolved through arbitration are disputes which according to the laws and regulations cannot be reconciled.

According to the explanation of Article 66 letter B Arbitration and Alternative Dispute Resolution, what is meant by the scope of trade law are activities in the fields of commerce, banking, finance, investment, industry, and intellectual property rights<sup>16</sup>.

The creator or copyright holder, who knows that his copyright has been infringed, can take legal action. Liability according to Peter Mahmud Marzuki refers to the position of a person or legal entity that is deemed to have to pay a form of compensation or compensation for having committed an unlawful act that causes harm to the other person or legal entity<sup>17</sup>. In the event of a loss due to copyright infringement, the creator or copyright holder has the right to file a civil lawsuit, as well as criminally prosecute as stated in Article 105 of the Copyright Law. Another thing that needs to be considered is the provision in Article 120 of the Copyright Law which states that a criminal act in the copyright law is a complaint offense. Where the complaint offense is clearly stated, this crime can only be prosecuted if there is a complaint from the interested party. In this case, it is the creator, copyright holder, and/or their heirs.

## CONCLUSION

*Spotify* as a streaming service provider must of course have a license for the music or songs they provide in the application as previously explained through a license agreement with the licensor. However, in 2018, it was sued for not having a direct license from Wixen that would allow the company to reproduce and distribute the songs. This can be said as a form of violation of performing rights activities aimed at announcing commercial purposes, which will definitely bring benefits to the company owner.

The Indonesian government has accommodated everyone who wants to protect their creations, especially in the field of copyright as stipulated in the laws and regulations, namely

<sup>16</sup> Explanation Article 66 Letter B of Law No 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

<sup>17</sup> Paulus Aluk Fajar Dwi Santi, "Mempertanyakan Konsepsi Tanggung gugat". 2016. Jurnal Binus University



UU no. 28 of 2014 about Copyright. *Spotify* as one of the world's famous song streaming applications has the exclusive right as a copyright licensee to exercise exclusive rights as regulated in Article 9 of the Copyright Law.

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