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The Legal Certainty regarding Song Plagiarism Standard in the Indonesian Copyright Law

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Abstract. Creating a high-quality song requires the author's creativity and hard work. That is the Indonesian Copyright Law protects the author's right to gain economic benefit and a good reputation for their work. However, many authors are plagiarizing an original piece of work to create an intricate piece of song so that the benefits entail could be obtained more quickly. When a song plagiarism occurs, it is questionable whether the provisions from the Indonesian Copyright Law could provide legal certainty to authors. The theory of legal certainty by Gustav Radbruch will be used to analyze the existing provisions concerning song plagiarism standard and to determine the urgency of creating a song plagiarism standard.

Keywords. Intellectual Property Rights, Copyright, Song, Plagiarism, Standard

1. Introduction and Background

Creating high-quality songs requires resources from its author. John Locke argues that it is the author who has the right to benefit from their creative work as because they are the one who works hard to create. Creating songs opens opportunities for the author, such as economic and reputational gain. It is not uncommon however, for authors plagiarize other songs to reach opportunities. The phenomenon of song plagiarism could hinder the development of the nation due to the difficulty of Indonesian musicians to compete with international musicians if the work created is not original. The culture of plagiarism could also erode the motivation of authors to create original works.

To anticipate this phenomenon, the Indonesian government has made various efforts to protect copyrights from plagiarism with various laws governing copyright. Such as promulgating the main basis for copyright provisions in Indonesia which is Law Number 28 of 2014 concerning Copyright. However, it is not uncommon for the substance of a law and its implementation to be inconsistent. On this basis, it would be urgent to re-discuss the substance of the Indonesian Copyright Law regarding the protection of authors against acts of song plagiarism.

2. Literature Review

According to Gustav Radbruch, there are three basic values in law, namely justice, certainty, and expediency. This paper will focus on the value of legal certainty as without legal

certainty, the law will lose its importance. The law will become a law that cannot be used as a guide for people's behaviour. The second reason why this paper focuses on legal certainty is, in essence, this value is in the middle between two other values, justice, and expediency. The value of legal certainty is not only needed for public benefit but also for justice. In addition, the requirement for the value of justice is legal certainty, where the law is certain and is not interpreted and applied in one way in one place or another in another. If there is a conflict between the values of justice and legal certainty, it can be resolved in this way: the positive law guaranteed by legislation will be prioritized even though its substance is unfair and does not provide benefits to the people, unless the conflict between the law reaches an intolerable level - where the law is interpreted as a "defective law", the value of justice must be prioritized (M.D.A. Freman, 2014).

Sudikno Mertokusumo explained that the value of legal certainty is a condition where the law is certain due to the existence of concrete authority over the law (Sudikno Mertokusumo, 1993). The value of certainty protects justice seekers from irresponsible actions. With that, the seeker of justice can get what they hope for in a situation. Legal certainty can also be interpreted as a guarantee that the parties who have rights protected by law can have their rights enforced (Fence M. Wantu, 2007).

Intellectual Property Rights (IPR) are rights granted to a person for the creation of his or her mind (World Trade Organization, 2022). IPR is divided into two branches, namely copyright and industrial property rights (Indonesian Directorate General for National Export Development, 2022).

According to Article 1 number (1) of the Indonesian Copyright Law, Copyright is the exclusive right of the author that arises automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. These exclusive rights branch into two: moral rights and economic rights. According to Article 5 paragraph (1) of the Indonesian Copyright Law, moral rights are related to the protection of the integrity of the author of the work and the right to be attributed. Meanwhile, economic rights are the rights of authors to get economic benefits from their songs which are only intended for them (Article 8 of the Indonesian Copyright Law). According to Article 1 number (2) of the Indonesian Copyright Law, the author is one or several people who individually or together produce a creation that is unique and personal.

The Indonesian Dictionary (Kamus Besar Bahasa Indonesia) defines song as a variety of rhythmic sounds (in speaking, singing, reading, and so on). Meanwhile, the Indonesian Copyright Law explanation explains that what is meant by "songs or music with or without text" is defined as a unified whole of copyrighted works. Plagiarism is the presentation of another author's work as his own, either in whole or in part, in more or less changes in form or context (Henry Soelistyo, 2011).

3. Research Method

This writing uses the normative-empirical method by studying Law Number 28 of 2014 concerning Copyright and the implementation of the provision contained. Secondary data such as rules and regulations, scientific books, journals, and non-legal materials such as dictionary obtained from literature study supported with primary data obtained from a direct expert interview is used for this research. These qualitative data are then analysed using legal certainty theory.

4. Analysis and Discussion

The term plagiarism is not found in the Indonesian Copyright Law as plagiarism is not necessarily a legal issue, only ethical. Plagiarism will become a legal issue if the object of plagiarism is protected by the law. Therefore, the provisions regarding song plagiarism in the Indonesian Copyright Law are only implicit in nature. In relation to this, it is necessary to establish that a song or music is a creation protected by the Indonesian Copyright Law in Article 40 paragraph (1) letter d. Because of song is a creation that is protected by the Indonesian Copyright Law, plagiarism therefore is a copyright infringement. Even so, the Indonesian Copyright Law only protects songs or music that have been expressed in a tangible form. Ideas or concepts about songs or music that are not yet accessible to the five senses have no legal protection.

Once the author expresses a song into a tangible form of expression, the copyright will automatically appear. According to Article 5 paragraph (1) of the Indonesian Copyright Law, song plagiarism basically violates the moral rights of the author as it includes eliminating the author's right to be given attribution. In the event of song plagiarism is done by reaping the economic benefits from the plagiarized song, the author's economic rights guaranteed by Article 8 the Indonesian Copyright Law are also violated.

The Indonesian Copyright Law also regulates what is not an infringement of song copyright through plagiarism in Article 44. There is no copyright infringement on the use, reproduction, and or modification of a song in whole or in a substantial part of the song if the author's name is included and such usage is limited for educational, governmental, and judicial purposes, performances with no fee and to facilitate access for persons with disabilities.

Article 44 implicitly contains a standard of song plagiarism with the concept of substantial partial use of a song. In the elucidation of Article 44, it is defined that the substantial part of a song or musical work is the most important and distinctive part of a song. Thus, when someone uses a part of an author's song without attributing the author even though the use is very small in terms of quantity, if the plagiarized part is a substantial part of the song and for commercial purposes, the act will be considered as plagiarism.

Article 44 may be able to give a little idea about the standard of song plagiarism in Indonesia, especially in terms of plagiarism that occurs in totality of a song's part such as its chorus. However, a song is a layered creation. It may be easy to postulate that the chorus of a song is a substantial part of a song. But even the chorus itself consists of many layers of other elements such as melody, rhythm, and harmony. If someone only plagiarized part of the chorus of a song, such as only the melody, the Indonesian Copyright Law does not explain further about the standard of song plagiarism.

Judging from the analysis above, there is a legal vacuum on the detailed standards of song plagiarism in Indonesia. This affects the implementation of the plagiarism standard where no cases of alleged plagiarism have been brought to court. The plagiarism standard in the Indonesian Copyright Law also has multiple interpretations. For example, in 2020, there were widespread cases of alleged plagiarism where Kekeyi through her song "Keke Bukan Boneka" (Keke is Not a Doll) (released 2020) was suspected of copying a song created by Novi Umar, namely "Aku Bukan Boneka" (I'm Not a Doll) (released 2007).

Musician Anji gave an opinion on this alleged plagiarism case based on Article 44 paragraph (1) the Indonesian Copyright Law. According to Anji, while it is true that Kekeyi has used a substantial part of Novi Umar's song, namely the hook of the song without permission and attributing Novi Umar. However, the use of Novi Umar's hook in Kekeyi's song is not a substantial part. Novi Umar's hook may be a substantial part of his song, but when Kekeyi uses

Novi Umar's hook in her song, it is not a substantial.

The problem with Anji's interpretation is that the Article 44 of the Indonesian Copyright Law does not stipulate whether the use of an original work in whole or a substantial part may be used in an insubstantial part of a new work. This proves that regulations that only regulate generally about song plagiarism standards provide legal uncertainty due to multiple interpretations. Here the provisions regarding plagiarism standards in the Indonesian Copyright Law lose their importance, as it cannot be used as a guide whether what Kekeyi did to Umar is plagiarism or not.

The value of legal certainty is also related to concrete legal force. Where the law is not only normatively non-multi-interpreted, but the law can also be implemented. The absence of cases that have been brought to court does not mean that the musicians suspected of being plagiarized are not interested in bringing the case to court. The copyright holder of the song, "Menulis Di Atas Kertas" (Writing on Paper) (released 1994), Papa T. Bob, whose song is also said to be similar to the song "Keke Bukan Boneka" stated that he is ready to bring the alleged song plagiarism case to the court. However, he is not convinced that his copyright can be implemented.

In relating to this, Sudikno Mertokusumo gave his opinion that legal certainty should be a guarantee that parties who have rights protected by law can have their rights enforced. Presumably a strategic step on setting a more detailed standard of song plagiarism needs to be launched so that the value of legal certainty can be realized. This is what the Intellectual Property Rights consultant and lawyer, Remigius Jumalan, recommends. According to Jumalan, the challenge in resolving song plagiarism properly and fairly is an unfinished work for the relevant agencies. Laws, regulations and even court decisions will evolve over time. In the future copyright laws should at least set the groundwork for plagiarism in relation to musical compositions including chords, rhythms, melodies, lyrics, and other items.

It is undeniable that a more detailed standard of song plagiarism can have a boomerang effect on musicians instead. These standards can hinder the creativity of new musicians, especially if the standards are too rigid and could create a so called "ripple effect" where there will be many cases brought to court and the emergence of case decisions that threaten songwriters for creating music inspired by previous works. Moreover, basically all music shares inspiration from previous musical works. By removing any meaningful standards to draw the line between permissible inspiration and unlawful plagiarism, such judgments can stifle creativity.

This is what happened in the United States, that due to the standard of song plagiarism, there was little resemblance – even though its mere genre nature could be disputed for millions of US dollars to the detriment of musicians who were arguably inspired only by the original song. As in the case of *Gray v. Perry*, for example, where the plaintiff (Gray) sued Katy Perry for similar ostinato (short descending patterns in music). According to attorney Christine Lepera, the plaintiffs here are trying to have the basic building blocks of music, such as the alphabet, be available to all.

5. Conclusion

It can be concluded that there is a legal vacuum regarding song plagiarism standard in the Indonesian Copyright Law. The Indonesian Copyright law makes it difficult for the rights of authors that have been guaranteed by the Indonesian Copyright Law to be implemented through the courts. This encourages the urgency of establishing song plagiarism standards so that there is legal certainty for the authors.

Realizing the value of legal certainty in the Indonesian Copyright Law through details of song plagiarism standards in Indonesia is not a simple matter. There are pros and cons to this step. Both sides have given critical and rational arguments against this. However, when viewed in general terms again, it is necessary to provide details on the standard of song plagiarism in Indonesia to realize the value of legal certainty.

Counter opinions could also be used as a guide in making the song plagiarism standard. It can be seen that the United States is a country that is quite experienced in setting and implementing song plagiarism standard. This country's trials and errors may be a lesson for Indonesia when setting standards for song plagiarism.

The question now is not whether there is a need for a more detailed plagiarism standard, but how to develop a plagiarism standard that can provide legal certainty to the author which can simultaneously be balanced with the interests of the people at large. It is hoped that the government and lawmakers will consider this matter carefully.

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