

## Corporate Responsibility As A Legal Subject For Song Copyright Infringement

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**ABSTRACT.** *Corporate crime is one of the activities or activities that arise in line with rapid developments in the economic and technological fields. The development of the position of corporations as business institutions is increasingly strengthening, making corporations as legal subjects dominate economic life without government control. One of the corporate violations that frequently occurs today is song copyright infringement. Violations that have a major impact on the music business, especially on songwriters as owners of original works. The law that regulates copyright infringement is Law Number 28 of 2014 concerning Copyright. Copyright is an exclusive right for the creator or recipient of the right to publish or reproduce his creation or work by giving permission to do so without prejudice to restrictions according to applicable laws and regulations. The method used in this research is a normative legal research method which examines laws and regulations in a society's legal system relating to corporate responsibility as a legal subject for violations of song copyright. The data collection method is qualitative descriptive analysis with emphasis on literature study. The aim of this research is to determine the factors that cause corporations as legal subjects to violate song copyright and the responsibility of corporations as legal subjects to violate song copyright.*

**Keywords:** *Liability, Corporations, Legal Subjects, Infringement, Copyright.*

## INTRODUCTION

### Background

Recently, the development of industrialization in Indonesia has progressed very rapidly. This is marked by the proliferation of corporations operating in various fields that dominate the Indonesian economy. Besides that, the presence of technology in everyday life also greatly influences various aspects of human life. The development of crime develops dynamically following changes in government, economics and politics in a country, which is a world phenomenon that is increasing rapidly. Considering that a corporation as a legal subject in criminal law is a business entity that makes maximum efforts to obtain maximum profits without caring about how much loss is caused by the behavior or activities of the corporation. Because winning the competition and getting lots of profits is the main goal of establishing a corporation.

Etymologically, the word corporation comes from the Dutch language, namely *corporatie*, in English and German it is called a *corporation* with the meaning of a body or entity made into a person or an entity or body resulting from human actions as opposed to a natural human being. Meanwhile, in the Big Indonesian Dictionary (KBBI), a corporation is defined as a business entity or several large companies that are legal and have a legal entity. A corporation is a business entity that has received legal recognition and has a separate identity from the individuals within it. Corporations are one of the subjects of criminal law, which means they can be held accountable.

The rise in cases in the music industry has attracted attention from various groups because it causes huge losses and impacts on personal and state economic income. In the middle national development implementation activities which is increasing, especially in the field of arts and culture literature, there has also been a development of infringement activities carried out by corporations in the arts sector, namely infringement of song copyrights. As we know, a song is a unit music consisting of a sequence of various notes. Someone can be entertained and feel calm when listening to songs. However, with the development of time and advances in technology, everyone has a way to enjoy music and songs.

The scope of copyright is so broad that it is thought to create separate regulations regarding copyright. Ownership of intellectual property resulting from human intellectual abilities and creativity in the form of ideas or notions to protect someone's work. Copyright itself is regulated in Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. Based on Article 1 paragraph 1 of the Copyright Law, the definition of copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with statutory provisions.

Based on the regulations of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, what is meant by a corporation is an organized group of people and/or assets, whether a legal entity or non-legal entity. The objects of copyright include the fields of science, all written works ( *literary works* ) and art ( *artistic works* ). Copyright consists of 2 (two) parts, namely economic rights *and* moral *rights* . Economic rights are the right to obtain economic benefits from creation rights from related products. Meanwhile, moral rights are rights that are inherent in the creator and cannot be removed even if the copyright is transferred.

Copyright infringement is very worrying because it can affect people's lifestyles and reduce their interest in creating works of art. A corporation is said to have violated song copyright if it commits violations such as duplicating songs and using songs illegally. Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright explains that taking, using, duplicating and remodeling creative works is not a crime if the perpetrator credits the creator when publishing the work.

We need to know that a corporation that violates copyright can be sued under criminal law and civil law by replacing the losses suffered by the creator due to copyright infringement have harmed the personal interests of the creator and the whole of society. For this reason, strict law enforcement is needed against the perpetrators, especially corporations that have been proven to have committed violations, so that they feel deterred and before committing a violation, it is better to sort out the impact of their actions.

According to Muladi and Priyatno, in matters of criminal liability, the principle of error is still maintained. However, in the development of corporate criminal liability, the principle of error or the principle of "there is no crime without error" does not absolutely apply. The fact that the victim has suffered is sufficient as a basis for demanding criminal responsibility for the perpetrator in accordance with the *res ipsa loquitur adage* which states that the facts speak for themselves.

In Article 113 paragraph 3 of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, it states "Every person who, without the right and without the permission of the creator or copyright holder, violates the economic rights of the creator as intended in Article 9 paragraph 1 letter g for use commercially, it is punishable by a maximum imprisonment of 2 (two) years or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

In connection with the increasing number of cases relating to copyright infringement committed by corporations and the absence of laws that can take firm action against corporations, the author feels interested in discussing further in this scientific work entitled "**Corporate Responsibility as a Legal Subject for Violations Song Copyright**".

### **Formulation of the problem**

Based on the description of the background above, the author will discuss further legal issues as follows:

1. What are the factors that cause corporations as legal subjects to violate song copyright?

2. What is the responsibility of corporations as legal subjects for song copyright violations?

## RESEARCH METHODS

The type of method used in this research is a normative legal research method which focuses on legal rules and norms which can be used as a benchmark to determine whether human behavior is appropriate or not. The types of data used in this research are primary, secondary and tertiary legal materials. Primary legal materials are statutory regulations and all official documents that contain legal provisions. Secondary legal materials consist of books, writings containing legal principles, results of previous research and other literature such as papers, journals and newspapers. Tertiary legal materials include Indonesian dictionaries, English dictionaries and encyclopedias. The data collection technique uses qualitative analysis by taking a statutory approach ( *the statue approach* ) as well as an analytical approach ( *analytical approach* ) by examining and analyzing Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright.

## DISCUSSION

### 1. Factors that cause corporations as legal subjects to violate song copyright

In the current era of globalization, various communication tools and technologies have developed and are used to carry out various commercial activities, both at the national and international levels. The development and progress of information systems and technology has had a significant impact on various areas of human life. The more developed information systems and technology, the higher the level of vulnerability to piracy of scientific works without permission from the owner of the work, which leads to criminal acts of violating copyright.

In general, copyright violations are based on wanting to make big profits quickly by ignoring the interests of creators and copyright license holders. If we discuss copyrighted works and musical works of art, we must discuss Intellectual Property Rights (IPR). Intellectual Property Rights themselves are regulated and protected by existing laws in Indonesia, namely Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. In Article 1 paragraph 3 it is explained that "Creation is any creative work in the fields of science, art and literature which is produced based on inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in concrete form."

Basically, humans have the mind and mind to create a creative idea to produce a creative work that must be given appreciation and respect. Because all human creations will be given intellectual property rights to avoid piracy or activities. The actions of the perpetrators clearly violate legal regulations because they do not comply with, respect and appreciate the rights of other people's new works in the fields of science, art and literature.

In the Copyright Law, there are several works that are included in the category of works that have copyright, including:

1. Images include motifs, diagrams, sketches, logos and beautiful letter shapes.
2. A complete song or piece of music, which is assessed from the song or melody, poetry or lyrics, and note arrangement;
3. Other similar creations, for example lectures, lectures and speeches;
4. Transformation is changing the form of a statue into a painting, a romance story into a drama or film.
5. Batik that is made conventionally because of its motifs and color composition is considered to have artistic value;
6. The arrangement of the appearance of a written work or typographical arrangement, namely the artistic and aesthetic aspects of the composition and form of writing a written work. This includes, among other things, format, decoration, color and arrangement or layout of letters which as a whole displays a distinctive form;
7. Cinematographic work is a mass communication medium of moving *images* . For example: documentaries, films, films, reports or story films made with scenarios and cartoon films;
8. A database is a compilation of data in any form that can be read by a machine (computer) because the selection or arrangement of the data contents is an intellectual creation;
9. Maps depicting man-made natural elements, which depict the top and bottom of the earth's surface on a flat plane at a certain scale;
10. Teaching aids related to geography, topography, architecture, biology or other sciences;
11. Anthology which includes creations in book form containing a collection of various selected written works, a collection of selected songs recorded on one

cassette, optical disc as well as compositions from various selected dance works; And

12. Architecture which includes the art of building drawings, the art of drawing miniatures and the art of building drawings;

Copyright infringement and other forms of intellectual property risk have long been a major concern for traditional publishers and entertainment companies due to the rapid growth of the internet, social media and the ease of producing content. The following are general activities that can expose a company to intellectual property risks, including:

- a. Misuse of name or likeness ;
- b. Misuse of ideas, plagiarism and trade secrets ;
- c. Publication of photos and video clips on websites and social media ;
- d. Use of third party music in social media posts; And
- e. Promotional materials and advertising may infringe trademark rights and trade dress rights;

Copyright crime is an attitude of not respecting other people's work by using creations that are recognized and protected by copyright law for personal gain. The impact of copyright infringement activities is very detrimental to the nation's life structure in the economic, legal and socio-cultural fields. It must be acknowledged that so far efforts to prevent and take action against copyright infringement have not been optimal so that the violators or perpetrators of copyright infringement are not deterred and even continue to repeat their actions.

The following are factors that cause corporations as legal subjects to violate song copyright, including:

1. Economic Factors. This factor arises because of the inequality of socio-economic backgrounds between one another. So people are competing to find solutions to balance prices in order to meet their daily economic needs even though they know that their actions are contrary to the law;
2. Law Enforcement Factors. This factor arises from the lack of ongoing supervision by law enforcement officials towards the perpetrators. This is caused by a lack of knowledge by law enforcement officials about copyright, the laws governing copyright and a lack of awareness about the meaning of protection.;

3. Educational Factors. This factor arises because the level of public education is still minimal amidst the rapid advances in science and technology. People who do not receive socialization about the importance of copyright protection for cultural development, increasing community creativity and economic development make them trapped as perpetrators of copyright infringement;
4. Cultural Factors. This factor arises because people are not used to buying original products. The culture of people who buy a product only focuses on price without looking at the quality of an item;
5. Environmental factor. This factor arises from outside the perpetrator who lives in the community, which provides an opportunity or condition where the community, individually or in groups, carries out activities in order to maintain life, even if these activities violate the law.
6. Technological Factors. This factor arises from utilizing machines as sophisticated technological tools. Where the process of machine work to duplicate the work is so fast that the perpetrator can freely market it on the market; And
7. Unemployment Factor. This factor arises due to the increase in population which is disproportionate to the very limited employment opportunities. The unemployed status of having to meet basic needs every day makes perpetrators continue to carry out activities even though they know that it violates the law;

## **2. Corporate Responsibility as Legal Subjects for Song Copyright Violations**

Through the sophistication of science and technology in everyday life, we can enjoy the beauty of singing songs with various musical arrangements. The presence of music can accompany us and make us more enthusiastic in carrying out our activities. The work of the creator is very beautiful. However, as time goes by, there are more and more cases related to song piracy, which is usually called copyright infringement. Copyright violations, especially song copyright violations, are increasingly rampant due to the opportunity and indecisiveness of law enforcement officials in processing the perpetrators so that there is no deterrent effect that makes them feel discouraged from committing these violations. Corporate crime is a criminal act committed by a corporation to gain large profits without considering the impact of its activities which are detrimental and ignore the interests of the state and the general public.

It should be noted that in cases of corporate crime in Indonesia it is still difficult to hold corporations accountable under criminal law because the legislative system is still weak. This is because the Indonesian Criminal Code (KUHP) still adheres to the view of *societas delinquere non potest* so that it does not accommodate the position of corporations as subjects of criminal law. In copyright, corporations should be categorized as subjects of criminal law that can be prosecuted for their actions in violating copyright because this is a development of modern criminal law. The criminal provisions in the Copyright Law must be considered *lex specialis* because they specifically regulate copyright ( *lex specialis derogat lex generali* ). However, the law only focuses attention on the Copyright Law without touching on the substance of the criminal provisions in the Criminal Code (KUHP).

The Copyright Law does not only regulate song creations but generally regulates the creation of intellectual property of every person because copyright is an exclusive right, where the rights attached to the creator begin when the creation falls into a category in the rights law. create music or songs. So that the existence of copyright law can protect the works of creators from the many violations that occur. Copyright infringement consists of 2 (two) types, namely:

1. Quoting parts of other people's creations and incorporating them into one's own creation as if they were one's own creation, for example plagiarism of written works of books, songs and song notations; And
2. Taking other people's creations to reproduce them without changing the content, creators and publishers is usually called piracy. An example is piracy which is often carried out on books and audio or video recordings such as song cassettes and pictures on VCDs.

Discussions regarding corporate responsibility in criminal law always reap pros and cons. This cannot be separated from the criminal responsibility paradigm in the Criminal Code (KUHP) which is personal, meaning humans ( *natural persons* ) as legal subjects. Corporate liability as a legal subject for violations of song copyright can be subject to several sanctions, including:

1. Civil. The creator or party holding the copyright who feels that his work has been harmed has the right to file a civil lawsuit as a compensation sanction through the Commercial Court.

2. Criminally. The creator or party holding the copyright who feels he has been harmed by his work can file a lawsuit if the violation is in accordance with the provisions contained in:
  - a. Article 113 paragraph 2 of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright explains that "any person who does not have rights and does not have permission from the copyright holder or creator commits a violation of economic rights as stated in Article 9 paragraph 1 letter c , letter d, letter f, and/or letter h, if used commercially, may be subject to imprisonment for a maximum of 3 (three) years and/or a fine of a maximum of IDR 500,000,000.00 (five hundred million rupiah)";
  - b. The act of singing a song again which is categorized as an announcement is subject to Article 113 paragraph 3 of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright which states that "Every person who without rights and/or without permission of the creator or copyright holder commits a violation of the economic rights of the creator as stated in referred to in Article 9 paragraph 1 letter a, letter b, letter e, and/or letter g for commercial use shall be punished by a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 ( one billion rupiah)".
3. Corporations as legal entities have responsibility for criminal violations as regulated in Article 3 of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, which are criminal acts committed by people based on work relationships or based on other relationships, whether individually or jointly acting for and on behalf of the corporation inside or outside the corporate environment.

## **CONCLUSION**

From the descriptions above, the author draws the following conclusions:

1. The factors that cause corporations as legal subjects to violate song copyright are economic factors, law enforcement factors, educational factors, cultural factors, environmental factors, technological factors and unemployment factors.
2. Corporate liability as a legal subject for violations of song copyright can be subject to several punitive sanctions in the form of civil legal sanctions by

requesting compensation through the Commercial Court, criminal legal sanctions with the provisions contained in Article 113 paragraph 2 and Article 3 of Law Number 28 of 2014 concerning Copyright and Article 3 of the Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

## **BIBLIOGRAPHY**

- Belardo, P. M. J. (2016). Law enforcement action against foreign vessels carrying out illegal fishing in Indonesian fisheries management areas (Thesis). Faculty of Law, University of Lampung.
- Civil Code (Civil Code).
- Criminal Code (KUHP).
- Djuhrijjani. (2021). Implications of Article 16 Paragraph 3 of Law Number 28 of 2014 concerning Copyright for Song Creators. *Lens*, 4(50), 27.
- Fuady, M. (2004). *Dirty business: Anatomy of white collar crime*. Bandung: Citra Aditya Bakti.
- Hanif, A. (2014). Causes and countermeasures for sales of pirated VCDs (Case study of Palu City). *Journal of Legal Studies Legal Opinion*, 2(2).
- Hasibuan, O. (2008). *Copyright in Indonesia special review of song copyright, neighboring rights and collecting society*. Bandung: Alumni.
- Isnaini, Y. (2009). *Copyright and its challenges in the cyber space era*. Jakarta: Ghalia Indonesia.
- Law of the Republic of Indonesia Number 28 of 2016 concerning Copyright.
- Muladi, & Priyatno, D. (1991). *Corporate liability in criminal law*. Bandung: College of Law.
- Muladi, & Priyatno, D. (2010). *Corporate criminal liability*. Jakarta: Kencana.
- Pramono, W. (1992). *Copyright crime*. Jakarta: Sinar Grafa.
- Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.
- Roisah, K. (2015). *Legal concept of intellectual property rights: History, understanding and philosophy of IPR recognition from time to time*. Malang: Setara Press.
- Situmeang, A., & Kusmayanti, R. (2020). Legal protection for song creators or copyright holders in royalty payments. *Journal of Law and Policy Transformation*, 5(1).

- Soemarsono, L. R., & Dirkareshza, R. (2021). The urgency of copyright law enforcement against content creators for reuse on social media. *USM Law Review*, 4(2), 1. <https://doi.org/10.26623/julr.v4i2.4005>
- Swari, P. D. A., & Subawa, I. M. (2018). Legal protection of songs uploaded without the creator's permission on the YouTube site. *Kertha Semaya Legal Science Journal*, 6(3), 4.
- Syahputra, R., Kridasaksana, D., & Arifin, Z. (2022). Legal protection for musicians for copyright in royalty payments. *Semarang Law Review (SLR)*, 3(1), 84. <https://doi.org/10.26623/slr.v3i1.4783>