

iThenticate - JURIDICAL REVIEW OF
COMMERCIAL USE OF SONG CREATIONS
IN RESTAURANTS/CAFES IN THE
GOVERNMENT REGULATION NO. 56 OF
2021 ON SONG COPYRIGHT ROYALTIES
AND/OR MUSIC

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JURIDICAL REVIEW OF COMMERCIAL USE OF SONG CREATIONS IN RESTAURANTS/CAFES IN THE GOVERNMENT REGULATION NO. 56 OF 2021 ON SONG COPYRIGHT ROYALTIES AND/OR MUSIC

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Abstract: Copyright is a part of intellectual property rights as a result of one's thoughts. Songs are a part of a copyright's type that has received legal protection from acts harming the songwriter as stipulated in Law No. 28 of 2014 concerning Copyright. Everyone or a business activity such as a restaurant/café is allowed to use a song from a songwriter commercially in public service provided that it meets the specified requirements and mechanisms and the royalties are paid. However, based on the juridical-normative review, both Law No. 28 of 2014 and Government Regulation No. 56 of 2021 do not explain the understanding of commercial use of songs and regarding royalty payment procedures, this issue certainly requires legal certainty. The results showed that First, Government Regulation No. 56 of 2021 has determined the commercial use of songs in public services. But it does not specify and explain the purpose of commercial use of songs in public service, it needs to be clearly regulated for legal certainty. Second, Government Regulation No. 56 of 2021 has determined that everyone, singing songs commercially in public service, must pay royalties. But it is not specified about royalty payment procedures, this needs to be clearly regulated for legal certainty. This research aims to find out how to use songs commercially in Government Regulation No. 56 of 2021 regarding Song copyright royalties and/or music, how to pay royalties based on procedures for the commercial use of songwriting in Government Regulation No. 56 of 2021 concerning Song and/or Music Copyright Royalties. This research used normative legal research – research on secondary data comprising primary, secondary and tertiary legal materials collected through literature review.

Keywords: Use; Commercial Songwriting; Restaurant/Café.

1. INTRODUCTION

The current technological advances have clearly affected the inhabitants of cyberspace, addressing the entertainment field – songs and music. (Makhmotov et.al., 2020: 309; Kim et.al., 2020). But apart from the positive impacts, innovative advances in entertainment such as music also has negative impacts, particularly stealing melody done by certain people, such as the owner of cafés, bistros, etc. Songs that have already owned copyright should be protected by copyright laws, however it recently depends on the assumption that the songs were illegally transferred through streaming exercises on authority sites, especially those performed by certain restaurants without noticing the copyright – from the copyright maker or holder. (Syamsudin, 2011: 5).

Copyright as a part of the Intellectual property Rights (IPR) component ⁷ has been regulated in Law No. 28 of 2014 concerning Copyright or abbreviated as UUHC (Copyright law). Article 1 number 1 Copyright law states that copyright is "*The suffrage of its own arising maker depends on dechlorative guidelines after a creation is displayed in a substantial structure without prejudice to restrictions in accordance with the regulations of the law*". (Firmansyah, 2008: 7) Songs and music are the types of copyrights that must get a guarantee of good legal protection. (Paganelli et.al., 2021: 25), as any melody as well as music made is added to the selective rights claimed by the creator or copyright holder as a moral right and financial right. Nonetheless, demonstrations of the monetary use of additional songs and music on authority sites are unlawful or without the consent of designers or copyright holders, especially those conducted by certain restaurants/bistros – i.e. copyright infringement and causing monetary rights loss to designers or rights holders. Producing Tune is a part of the melodic component as an arrangement that communicates the feelings and contemplation of its producer. (Jamalus, 1988: 1)

In terms of the sovereignty of board techniques in relation to the use ¹ of tone and music is not regulated in Article 9 to Article 12 of Unofficial Law ⁶ No. 56 of 2021 concerning the Primacy of Melodies and Additional Music Copyright. In accordance with Article 9 of The Unofficial Law No. 56 of 2021, everyone can utilize additional tone and music as a public administration of business by applying for permission ¹ to the Copyright Holder or Related Rights Owner ⁶ through LMKN (National Collective Management Organization). Then, at that time, in accordance with Article 10 of The Unofficial Law No. 56 of 2021, everyone who uses melodies and additional music as a business public administration that relies on the regulation of permits pays expensively through LMKN. Furthermore, in Article 12 of the General Authority Guidelines, unregulated, LMKN collects figures from individuals ¹ who use melodies and additional music as business public administration for Authors, Copyright Holders, and Related Rights Owners who have become members of LMK (Aggregate Administration Foundation).

Based on the law mentioned above, it can be concluded that everyone, including restaurant owners/bistros who will utilize or economically use songs or music that ¹ have the potential to be a business public administration, must apply for permission ¹ to the Copyright Holder or Related Rights Owner through LMKN. By the understanding of permission, the use or a client of additional songs and music as a business public administration pays sovereignty through LMKN for Songwriters, Copyright Holders or Related Rights Owners.

The foremost thing that requires to be discussed further related to the above arrangements is the implied thing in the use of song business in Unofficial Law No. 56 of 2021, on the grounds that these administrative guidelines do not provide an explanation of this matter. Then, at the time, the guidelines of public authorities did not provide guidelines on how to pay sovereignty based on procedures for business use in melody manifestation. This issue must provide legal certainty, so that in its application, the differences in interpretation among scholastics and jurists can be avoided.

2. METHODS

⁸This study used a normative research. This normative research is based on a process to find the rule of law, legal principles and legal doctrines to answer the legal issues faced so as to obtain new arguments, theories or concepts for being prescriptions in solving problems. (Marzuki, 2005: 35) This research used a statutory approach and a conceptual approach. This research applied a descriptive analysis – a study that aims to describe or explain certain legal symptoms – regarding legal protection of song copyrights uploaded by restaurant owners without having the songwriter's permission and then to analyze based on UUHC. The legal materials used were primary legal materials, secondary legal materials and tertiary legal materials.

3. RESULTS AND DISCUSSION

3.1. Commercial Use of Songs in Government Regulation No. 56 of 2021 concerning Royalties on Song Copyright and/or Music

Indonesian intellectual property law provides assurance to the creator as the right to his/her work after being used as an original work (obsession), not as a mind. For the results of thoughts that have been communicated in a substantial structure, the creator obtains security naturally without reducing the limitations according to the regulation of the law. The coverage transferred by the creator is as a responsibility for the rights to his/her creation.

⁶The Part of the embodiment guaranteed in Article 40 paragraph (1) letter d of Law No. 28 of 2014 is melody and tone – a part of the musical component as a structure that expresses feelings and contemplation. Musicians have the right to be selective as a financial right and a moral right to the songs they make. Selective rights imply that no one but the songwriter can take moral and financial advantage. A different meeting cannot take advantage of the selective privileges of a song-protected work monetarily without the permission of its creator. A business use is the utilization of a potentially related work or entitlement item specified to get monetary benefits from a different source or for cost.

The use of protected songs or potential music that is prohibited without the consent of the creator considering exhibiting the protected works of the song. The use of tone creations should be able to be done by anyone and anywhere. Places that often turn into song performances are cafes or bistros that provide recording music offices. Music that is not recorded becomes a part of the attraction in a restaurant to attract guests. In addition to enjoying food and drinks, guests can also appreciate famous melodies.

The issue arises when there are café or bistro guests who deliberately want to sing a song. The intentional performance of works protected by restaurant guests who are not songwriters and cafes that do not have a written permission from musicians ⁶ perform melodic exhibitions can be called as a business use. The use of business as stipulated in Article 1 number 24 of Law No. 28 of 2014 is the utilization of embodiment objects and related rights specified to obtain monetary benefits from different sources

or for a cost. In view of this arrangement, there are two components that describe the use of a business, in particular: (a) the utilization of a work or potentially related rights item, (b) obtaining monetary benefits.

Law No. 28 of 2014 does not explicitly regulate the importance of melodies or the potential for music copyright. Additional melodies and music are only parts of the work guaranteed by law as are other works recorded in Article 40 paragraph (1) letter d, in particular the production of tones or music with or without text. Thus, for tone and music, all general principles that apply also to different works, unless explicitly expressed, have no significant influence.

In accordance with Article 9 of The Unofficial Law No. 56 of 2021, everyone can utilize melody or musical potentially as a business public administration by applying for permission to the Copyright Holder or Related Rights Owner through LMKN (National Collective Management Organization). Then, at that time, Article 10 of the General Authority Guidelines stipulated that everyone who uses tone or potential music as a business public administration that relies on understanding permission to pay for sovereignty through LMKN. In addition, Article 12 of the General Authority Guidelines states that LMKN gathers the sovereignty of individuals who economically use melody or music potentially as a business public administration for songwriters, copyright holders, and related rights owners who have become members of LMK (Aggregate Administration Foundation).

In relation to the above arrangements, it tends to be considered that everyone and moreover the owner of a restaurant / bistro who will utilize melody and music financially as an open administration must apply for permission to the Copyright Holder or Related Rights Owner through LMKN. By permission arrangement, the use of a song or music potentially as a business public administration pays for sovereignty through LMKN for songwriters, copyright holders or related rights owners.

Utilization is a derivative of the word "benefit" which is an experience that only shows the act of receiving. This experience generally encourages the security or utilization of valuables, either directly or indirectly, to help. As J.S. Badudu in the reference to the whole Indonesian word says that the use is "the thing, the way, the result of the work in using something valuable". The meaning of utilization expressed above shows that there is a contrast, so clarity is needed with respect to the idea of use. However, on a fundamental level, its use is to exploit something of financial value or benefit.

Similarly, there is no clarity in the efforts to use melodies or music potentially as stipulated in Unofficial Law No. 56 of 2021 considering that the Law itself does not regulate this further, and its equivalent - applying to the type of utilization. This problem will certainly cause a difference in understanding about the motivation behind the economic use of melody and music. For instance, a guest at a restaurant or bistro singing a melody equipped with melodic hardware available at the scene, can it be considered a demonstration of the economical use of tone and music? If the demonstration is remembered for the classification of the business use of the song,

then at that time, a commitment was made to pay for sovereignty, and who should bear the excellence, café or bistro or guest.

This issue is not clearly directed, and it is characterized by a blurring of motivation behind the use of business songs as stipulated in Law No. 56 of 2021. Therefore, it is the basis then there is clarity in the demonstration of the use of business songs as regulated by unofficial laws for the recognition of valid certainty.

3.2. Royalty Payment Procedures for Commercial Use of Songwriting in PP Number 56 of 2021 Concerning Song and/or Music Copyright Royalties

An exploratory report from the College of Kentucky found that music can strengthen intellectual capacity, relieve pressure, and reduce stress and tension. This revelation was applied by a British adviser, Lori Goding, who was also a Duck of British musical care who made music a consideration.

Apparently, from many elements of music that provide many benefits for the connoisseur, then at that time the associations that make music / melodies from the results of their scientific musings should also benefit from their work. Something that must be owned by musicians is the right of sovereignty over his work.

The incident of copyright infringement of melodies or music comes entirely from artists who are still classified as rare people who understand the rights they should get as stipulated in Law No. 28 of 2014. Many perpetrators also fail to see how to fight for their privileges. through a different channel. In addition, the perpetrator is also lethargic to fight for his/her rights considering the fact that copyright cases actually do not give results to the creator, either through lawsuits or non-prosecutions.

Based on the above conditions, the president of the Republic of Indonesia, Joko Widodo, has established Unofficial Law Number 56 of 2021 concerning the Melodic Copyright Sovereignty Agency or Music Potential on Walk 30 of 2021. These given Guidelines are to provide valid security and confidence to the Creators, Copyright Holders, and Related Rights Owners of the financial rights to additional songs and music as with any individual using a potential melody or music. Similarly, it also increases the capacity of copyright supervision over the utilization of works and related matters in the field of melodies or potential music.

Article 3 paragraph (1) of Government Regulation No. 56 of 2021 specifies that "any person may commercially use songs and/or music in any type of public service of a commercial nature by paying royalties to the Creator, Copyright Holder, and/or Related Rights Owner through LMKN (National Collective Management Organization)".

LMKN is an institution that has the authority to attract, collect, and distribute royalties and manage the economic rights interests of creators and owners of related rights in the song and / or music field.

According to Government Regulation No. 56 of 2021, royalty management carried out by LMKN based on data integrated in song and/or music data centers. The song and/or music data center contains all songs and/or music that have been listed in

the general list of creations. This data center contains at least information about the ² Creator, Copyright Holder, Related Rights Owner, copyright, and related rights that may come from e-copyright. Such song and/or music data centers may be accessed by LMKN as a basis for managing royalties, and creators, copyright holders, related rights owners, and/or their representatives and people who make commercial use to obtain recorded song and/or music information.

¹ Article 14 of Government Regulation No. 56 of 2021 determines that royalties collected by LMKN are distributed by LMKN based on reports on the use of song and/or music data in SILMN (Song and/or Music Information System). Royalties collected by LMKN are used for:

- a. being distributed to songwriters/¹creators, copyright holders, and related rights owners who are members of LMK;
- b. Operational funds; and
- c. Reserve funds.

The existence of Government Regulation No. 56 of 2021 on the one hand aims to provide legal protection and certainty to the economic rights of creators, copyright holders, and other related rights, but on the other hand this Government Regulation does not provide arrangements regarding royalty payment procedures for the commercial use of songwriting. While it is known that the ²royalty payment procedure has an important role in providing legal protection to the economic rights of creators, copyright holders, and owners of related rights to his/her songs and / or music creation.

The presence of Government Regulation No. 56 of 2021 from the perspectives of industry activists is a positive thing that needs to be supported by its implementation in order to run well. The presence of Government Regulation No. 56 of 2021 is welcomed positively for the work creator because of its economic rights in the form of royalties will be obtained from the use of songs and / or music commercially. However, the positive reception from the creators of the songs and/or music works is not supported by a legal arrangement, as the Government Regulation does not regulate the royalty payment procedures that must be included by everyone who utilizes or uses songs and/or music commercially.

¹ Government Regulation No. 56 of 2021 only determines that everyone who uses songs and/or music in the type of public service that is commercial under the license agreement or not, still pays royalties. How the procedure for payment of royalties or the commercial utilization of songs and/or music is not regulated in the government regulations.

⁷ Government Regulation No. 56 of 2021 only regulates the management procedures, and distribution of royalties that have been collected as a result of royalty payments. The government, from the Government Regulation, should determine the procedures of paying royalties for the use of songs and / or music commercially. From the proceeds of royalty payments, it is carried out the management and distribution of royalties. To support the existence of Government Regulation No. 56 of 2021 which

aims to provide legal protection and certainty to songwriters/creators, copyright holders, and related rights holders, the issue of royalty payment procedures is something urgent, so that royalty payment procedures for the use of songs and / or music commercially need to be clearly and firmly regulated in government regulations or implementing regulations for the realization of legal certainty – as part of the purpose of the law, in addition to justice and expediency.

4. CONCLUSIONS

Government Regulation No. 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties has determined the commercial use of songs and/or music in public service. However, this government regulation does not specify and explain the purpose of the commercial use of songs and/or music in public service, so it does not illustrate any legal certainty. Government Regulation No. 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties has determined that everyone who makes commercial use of songs and/or music in public service must pay royalties. However, this government regulation does not regulate the procedures of paying royalties, so it provides less protection and legal certainty to the songwriter/creator, copyright holder, and other related rights to obtain the right to royalty payments.

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