

CHAPTER I

INTRODUCTION

1.1 Background

In all societies, music has an important role in the lives of all people. Music is a universal language that all societies use to express emotion, imagination, and ideas. The fact that music could be expressed through different genres proves that music is a phenomenon evident in different cultures throughout the world. In the 20th century, the internet changes the method of music consumption.¹ The consumption of music has evolved through the years from the consumption of music through vinyl records, cassettes, CDs and VCDs. The means of consuming music keeps evolving until now, where people consume music through music streaming platforms, such as Spotify. Consuming music digitally through streaming platforms is more convenient and preferable that it sharply decreases the amount of the sales of music through CDs. People can access music through their phones and laptops anywhere and anytime. On a trend basis, the number of Spotify's paid subscribers has continued to increase in the last five years.² In 2021, Spotify's paid subscribers increased by 16.12% from 155 million users in 2020 to 180 million users in 2021. Furthermore, the global revenues of

¹ Will Brewster, "The History of Music Streaming" <https://mixdownmag.com.au/features/the-history-of-music-streaming/>, accessed on 10 January 2024

² Cindy Mutia Annur, "Dominasi Pasar Streaming Musik Global, Spotify Raih 180 Juta Pelanggan Berbayar hingga 2021" <https://databoks.katadata.co.id/datapublish/2022/03/21/dominasi-pasar-streaming-musik-global-spotify-raih-180-juta-pelanggan-berbayar-hingga-2021>, accessed on 23 October 2022

digital music platforms also increased from \$4.4 billion in 2009 to \$6.9 billion in 2014.³ In the United States, the sales of music and licensing reached approximately \$14.6 billion in 2000. However, by 2009, it sharply decreased to \$6.3 billion due to digital music platforms.⁴ Taylor Swift, a well-known American singer-songwriter, took her recordings out of Spotify in 2014.⁵ Before doing so, Taylor Swift wrote in *Wall Street Journal* that, “Piracy, file sharing and streaming have shrunk the numbers of paid album sales drastically, and every artist has handled this blow differently.”⁶ This fact proves that the economic right of an artist is jeopardized if the royalties that come from digital music platforms is not regulated.

Looking at the phenomena above, the legal protection of music must evolve in order to balance the new means of music consumption. There must be legal protection to those who create a musical work as creators need to be compensated for their musical work in the form of royalty. All creators must receive an economic benefit from commercializing their own creation. In the United States, The Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“**MMA**”), signed into law in October 2018, amended Title 17 of the United States Code which is The Copyright Act of 1976

³ Recording Industry Association of America, “Digital Music Report 2015”.
<https://www.riaa.com/reports/digital-music-report-2015/>, accessed on 21 October 2022

⁴ CNN Money, “Music’s Lost Decade: Sales Cut in Half”.
http://money.cnn.com/2010/02/02/news/companies/napster_music_industry/ accessed on 21 October 2022

⁵ Tim Bjarin, “Apple Music: How Taylor Swift Saved Apple’s Music Streaming Service”.
<http://time.com/3940500/apple-music-taylor-swift-release/>, accessed October 21, 2022.

⁶ Person, “For Taylor Swift, The Future of Music Is a Love Story”.
<https://www.wsj.com/articles/for-taylor-swift-the-future-of-music-is-a-love-story-1404763219>
accessed October 21, 2022.

(“**The American Copyright Law**”). This Copyright law gives a new definition of digital phonorecord delivery, establishes a new licensing system, and creates an entity called the Mechanical Licensing Collective (“**MLC**”) to manage and obtain royalties from music streaming platforms like Spotify. In contrast with the United States, Indonesia does not have a solid copyright protection for music streamed in musical platforms. In Indonesia, copyright is regulated under Law No. 28 Year 2014 regarding Copyright (“**The Indonesian Copyright Law**”). Furthermore, based on the principle of *‘lex specialis derogate legi generali’*, the Indonesian Government enacted Government Regulation Number 56 of 2021 regarding Management of Song and/or Music Copyright Royalties (“**Government Regulation 56/2021**”), as well as Regulation Of The Minister Of Law And Human Rights Of The Republic Of Indonesia Number 9 Of 2022 Concerning Implementation Of Government Regulation Number 56 Of 2021 Concerning Management Of Song And/Or Music Copyright Royalty (“**MOLHR 9/2022**”) to specifically address the issue of royalties and the entity that collect royalties. Regarding the matter of the specific amount of royalties that needs to be paid, another special act was issued by the government namely the Decree of the Minister of Law and Human Rights Number HKI.2.OT.03.01-02 of 2016 [“**Kepmenkumham 2016**”]. In Indonesia, the entity that collects royalties is the *Lembaga Manajemen Kolektif Nasional* (LMKN) which act as the only door to collect and manage royalties. Nevertheless, these aforementioned laws have no provision that

allows the LMKN to collect royalty payments from Spotify and other streaming platforms. Furthermore, these laws did not have the method to count the standard royalty rate that copyright owners should receive because of the streaming of their music.

In addition, Candra Darusman noted that practically all consumers listen to music through digital streaming applications and are free to choose the music they desire. Because there is no formal rule, the distribution of royalties from digital streaming platforms is still extremely small for artists and performers. Music on streaming platforms has a lower commercial value than music on compact disks or vinyl. So the task is to figure out how to encourage musicians to profit in proportion to the rise in consumption in the digital era.⁷ In a legal seminar conducted by Kementerian Hukum dan HAM,⁸ this legal problem is mentioned as well by Nevey Varida, a researcher from *Badan Penelitian dan Pengembangan Kementerian Hukum dan Hak Asasi Manusia*, who stated that currently, Indonesia does not have a strong legal basis in regulating royalties from digital platforms. Although the distribution of royalties has been discussed between the owners of the relevant rights, in practice not all parties receive royalties fairly. This research aims to compare The American Copyright Law with The Indonesian Copyright Law, to see the loopholes within The Indonesian

⁷Medcom.id Developer, “Candra Darusman Ingin Regulasi Terkait Royalti Musik Dipertegas”. <https://www.medcom.id/nasional/peristiwa/akW9X3MN-candra-darusman-ingin-regulasi-terkait-royalti-musik-dipertegas>, accessed October 21, 2022.

⁸Balitbang Kemenkumham, “Strategi Kelola Royalti Musik Digital Di Tengah Pandemi.” <https://www.balitbangham.go.id/detailpost/strategi-kelola-royalti-musik-digital-di-tengah-pandemi>, accessed October 21, 2022.

Copyright Law and to observe how The American Copyright Law dealt with the issue of streaming music platforms, especially Spotify.

1.2 Formulation of Issues

In regard to the topic of this thesis, the Author will discuss the following formulation of issues:

1. How does the Indonesian regulation, relating to the fulfillment of economic rights of the songwriter and holders of related rights in Spotify through LMKN, differ with the United States?
2. How does the Indonesian regulation, relating to the licensing agreement between Spotify and songwriter and holders of related rights, differ with the United States?

1.3 Research Purpose

The Author has two purposes in writing this thesis, namely:

1. To solve a legal problem regarding the lack of legal protection in the fulfillment of the economic rights for creators, copyright holders and related rights holders, who publicize their music on Spotify in comparison with America's copyright regime.
2. To develop future jurisprudence in Indonesia to give full legal protection over creators.

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, the Author hopes that this research will give an insight of the loopholes about copyright law in Indonesia, pursuant to Law No. 28 Year 2014 regarding Copyright, Government Regulation Number 56 of 2021 regarding Management of Song and/or Music Copyright Royalties, and the Decree of the Minister of Law and Human Rights Number HKI.2.OT.03.01-02 of 2016 as well as Regulation Of The Minister Of Law And Human Rights Of The Republic Of Indonesia Number 9 Of 2022 Concerning Implementation Of Government Regulation Number 56 Of 2021 Concerning Management Of Song And/Or Music Copyright Royalty. The Author would compare the existing regulations with The Copyright Act of 1976 in America, which provided legal protection for the taking of royalties from digital music platforms, a regime that is not yet regulated in Indonesia. All in all, the Author hopes that this research will provide further knowledge of Indonesian Copyright Law.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can provide an input for the government to reform Indonesia's regulation regarding the collection of royalties from digital music platforms.

In addition, the Author also hopes that this research would give the general public, especially music creators, an understanding of their rights pursuant to Indonesian Copyright Law. As the main goal of Copyright Law is to give compensation to creators and to foster new creations, the Author hopes that a reformed copyright regulation would guarantee the economic rights of music creators so that more new and fresh music will be created by creative minds in Indonesia.

1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER I: INTRODUCTION

This chapter consists of an introduction which gives a background to the issue that will be discussed further in this thesis by the author. This chapter is further divided into five parts, which are background, research question, research purpose and research benefits.

CHAPTER II: LITERATURE REVIEW

In this chapter, the Author will divide this chapter into two sub-chapters. First, the Author will select the relevant theories in connection with the protection of

Copyright. Second, the Author will discuss the concepts of Copyright

CHAPTER III: RESEARCH METHODS

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the Author uses to discuss the issues in this thesis.

CHAPTER IV: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the research problems along with its solution. This chapter will be divided into two further sub-chapters and each sub-chapter will answer the respective research question as stipulated in chapter two of this thesis. The first sub-chapter discusses the difference between the mechanism of payment royalty towards Copyright holders with the United States. The second sub-chapter discusses the difference between the United States and Indonesia's licensing regime.

CHAPTER V: CONCLUSION AND RECOMMENDATION

In this last chapter, the Author will explain the conclusion as an answer to the issues that have been analyzed in chapter four. Furthermore, the Author will also give suggestions and recommendations towards these issues and the possibility of adding or reforming a regulation regarding Copyright, thus providing legal protection in terms of economic right under the copyright law for creators and holders of related rights.

