

Copyright Legal Protection on Ownership of the Song “Majulah, Jayalah STA” (Study of the Supreme Court Decision No. 279 K/PDT.SUS-HKI/2020)

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Abstract. Intellectual Property Rights (IPR) are exclusive rights born from human intellectual abilities. In IPR there is copyright, which is the creator's exclusive right that arises automatically within a work. One object that is protected by copyright is a song. Violations of copyright, especially songs, are still rife in Indonesia, as in the case of Decision No. 279 K/Pdt.Sus-HKI/2020. This research was conducted to determine the subject matter and legal protection for the creator of the song object of the case. The author uses a normative juridical approach with descriptive-analytical research specifications and qualitative descriptive analysis methods. The results of this study indicate that the Panel of Judges has provided legal protection for PT STA as the creator and interested parties based on Article 33 paragraph (1) jo. Article 34 Law No. 28 of 2014 concerning copyright, states that PT STA is proven to be the party that designed, led, and supervised the process of working on the song object of the case. The author suggests that the public always checks and records their creations for clearer legal protection.

Keywords: Copyright, Creator, Mars Song, Legal Protection.

1 Introduction

Legal subjects in Indonesia need a legal umbrella to protect a work, one of which is Intellectual Property Law (IPR). Intellectual Property Rights are exclusive rights, each of which is given to someone who has produced works of thought which have the form, nature, or meet certain criteria based on the applicable laws and regulations [1, 2]. The exclusive rights in question did for the holder, so no other party m IPR was born from human thought as a human effort to meet the needs of social life [3, 4]. The existence of intellectual works as a form of IPR is needed by humans [5].

In general, IPR can be classified into two main categories: copyright and industrial property rights. The scope of copyright is copyrighted works in the fields of science, art, and literature, while the scope of industrial property rights is in the technology field. In IPR terminology, the terms “creator” and/or “inventor” is known [6, 7]. Copyright is regulated in Law No. 28 of 2014 concerning copyright (hereinafter referred to as the Copyright Law). The definition of copyright is contained in Article 1 point 1 of the Copyright Law, which reads, “Copyright is the exclusive right of the creator that arises automatically based on declarative

principles after a work is manifested in a tangible form without reducing restrictions following the provisions of laws and regulations.”

To obtain and realize these exclusive rights, the creator as a person or group producing work or creation with a characteristic can register the results of his work with the Directorate General of Intellectual Property Rights [7, 8]. Therefore, copyright protection through copyright law will provide legal protection for its creators [9]. In Indonesia, copyright infringement is still common. It seems normal because of the low level of public knowledge about copyright knowledge and the lack of socialization and law enforcement for copyright infringement that occurs [10].

Several works are protected by the Copyright Law, one of which is Article 40 paragraph (1) letter d of the Copyright Law, namely “songs and/or music with or without text.” A song is a collection of tones, rhythms, and text or lyrics that are put together and form a harmonious sound. As a work of art, a song can be understood as a symbol for communication and identifying a group or institution. [11] Artworks are very diverse and have their own point of view on enjoying it. For a work of art to be said to be beautiful, it is necessary to look at a depth of its work, one of which is a marching song, [12] such as a company march, a school march, and others that are the hallmark and pride of the institution [13].

An example of this is the march from PT Sumber Tani Agung (PT STA), a palm oil business company based in Medan, North Sumatra, entitled “Majulah, Jayalah STA”. This marching song was created by the company PT STA which was taken from the vision and mission of the STA Group Company. The marching song was used to celebrate the company's anniversary, which later became the identity of PT STA. A song can be composed by an individual or a group of people, such as the march “Majulah, Jayalah STA” composed by several employees producing the song for PT STA.

This song, which was supposed to be the identity of PT STA, was then registered by Johannes Diodemus Masfin Sitepu with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia (DJKI Kemenkumham RI) under his personal name with Registration No. 000110690. Johannes Diodemus Masfin Sitepu is an employee from PT STA who has resigned from the company. This caused problems that had to be resolved through a court at the District Court at the Medan Commercial Court between PT STA as the Plaintiff and Johannes Diodemus Masfin Sitepu, Rosmaini Ginting, and DJKI Kemenkumham RI as the Defendants. In decision No. 3/Pdt.Sus-HKI/Cipta/2018/PN Niaga Mdn, the Panel of Judges stated and partially granted PT STA's lawsuit. Still, the defendants submitted an appeal to the Supreme Court and issued a Supreme Court decision No. 279 K/ Pdt.Sus-HKI/2020 contains the rejection of the cassation request from the cassation applicant, namely the Defendants.

Based on the description above, the problems that can be arranged include:

1. What is the subject matter of the Supreme Court Decision No. 279 K/Pdt.Sus-HKI/2020?
2. How is the legal protection for the ownership rights of the song “Majulah, Jayalah STA” based on Law No. 28 of 2014 concerning Copyright?

2 Research Methods

The method used in this research is normative juridical. A normative juridical approach is an approach that uses the provisions of applicable laws, also known as the doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those

related to the issues discussed [14]. The juridical approach in this paper reviews from the point of view of legal science, civil law, and legislation, namely Law No. 28 of 2014 concerning copyright, while the normative approach is to search to examine legal library materials and secondary data. It is related to the issue of legal protection against a dispute over the ownership of the work, which in this study is the ownership of a song.

Specifications The research conducted in this writing is descriptive-analytical, which means that it describes the applicable laws and regulations associated with legal theories and practices of implementing positive law concerning the problems in this research [15]. The secondary data used in this study were divided into three, namely:

1. Primary legal materials, in the form of HIR, Law No. 28 of 2014 concerning Copyright, Decision No. 279 K/Pdt.Sus-HKI/2020, and 4) Decision No. 3/Pdt.Sus-HKI/Cipta/2018/PN Niaga Mdn.
2. Secondary legal materials include books, journals, articles, and scientific works of scholars related to Intellectual Property Rights and legal protection.
3. Tertiary legal material, in the form of a legal dictionary.

In the preparation of this research, the analytical method used is descriptive qualitative analysis, namely presenting a study on the data obtained from the research object. A descriptive study is intended to provide data that is as accurate as possible about humans, conditions or other symptoms [16].

3 Results and Discussion

3.1 The main points of the Supreme Court Decision No. 279 K/Pdt.Sus-HKI/2020

In 2013, Plaintiff, the superior of Defendant I, ordered Defendant I, who at that time was still a Plaintiff's Staff, to cooperate with other Plaintiff's staff to compose a song which would later be used as the Plaintiff's Company Mars Song. The lyric design of the song was then given the title of the song "Majulah, Jayalah STA" (Song Mars STA), which the Plaintiff took from the vision and mission of the STA Group company, which then changed the words to match the tone of the song, but did not reduce the company's vision and mission. The Plaintiff used the song for activities to commemorate the anniversary of the Ccompany and there was no distribution (sale, distribution, and/or distribution) that harmed Defendant I.

Defendant, I had left the Plaintiff's Company on January 31, 2015, and apparently, without the Plaintiff's knowledge, the song "Majulah, Jayalah STA" (Song Mars STA) was unilaterally requested for its recording by Defendant I to the Ministry of Law and Human Rights CQ. Director General of Intellectual Property (Defendant III). The song has been recorded in the Copyright Registration Letter with Registration No. 000110690 on behalf of Defendant I.

Defendant I is only one person or a small part of the team formed by the company to create the song and is not the sole creator on the personal initiative of Defendant I and is not the owner of the design idea, but the Plaintiff who leads and oversees the completion of the entire series and process of creation until it is realized in the form of song. Defendant, in the process of creating songs, has always been under Plaintiff's leadership, direction, instructions, and supervision.

Plaintiff feels aggrieved by the existence of the Song Creation Recording Letter "Majulah, Jayalah STA" (Song Mars STA) on behalf of Defendant I. Plaintiff also feels aggrieved

because Defendant I have sent a summons letter dated September 14, 2018, to the Plaintiff. Defendant I, through his attorney, has also submitted a letter dated October 9, 2018, with No.072.12/KHPR/X/2018 regarding the settlement of the problem of using the Copyright for the song “Majulah, Jayalah STA” (Song Mars STA) and a letter dated October 30, 2018 No.008.12 /KHPR/X/2018. As a result, the unilateral recording carried out by Defendant I brought huge losses to the company both morally and materially. It was sufficient reason to punish Defendant I to pay Plaintiff both material and immaterial losses of Rp. 110,000,000,000 (one hundred and ten billion rupiah).

Based on the actions of Defendant I, Plaintiff intends to cancel the Letter of Registration for the Song Creation “Majulah, Jayalah STA” (Song Mars STA) with Registration No. 000110690 on behalf of Defendant I by filing a lawsuit in a special civil case. On November 12, 2018, under the case register No. 3/Pdt.Sus-HKI/Cipta/2018/PN Niaga Mdn, the Plaintiffs have sued the Defendants.

Plaintiff requests the Head of the Commercial Court at the Medan District Court through the Panel of Judges who examined this case, deigning to examine the lawsuit that has been filed. The lawsuit asks the Panel of Judges to legally state that the Plaintiff is an interested party and is the author of the song “Majulah, Jayalah STA” (Song Mars STA) recorded by the Ministry of Law and Human Rights Cq. Director General of Intellectual Property in the Letter of Registration of Works with Registration No. 000110690; then stated that the Copyright Registration Letter on behalf of Defendant I had no legal force and had to be annulled; to punish Defendant III to cancel the Letter of Recording the Song Creation “Majulah, Jayalah STA” (Song Mars STA) from the General Register of Copyrights and announce it in the Official Gazette of the Director General of Intellectual Property of the Republic of Indonesia; and sentenced Defendant I to pay the Plaintiff's material and immaterial losses of Rp. 110,000,000,000,- (one hundred and ten billion rupiah) as well as all costs incurred in this case.

Defendants I and II submitted an answer to the Plaintiff's claim in the form of an exception and a counterclaim, which was then continued with a proof agenda, in which both Plaintiffs and Defendants I and II presented witnesses and submitted evidence in the form of letter evidence and photographic evidence, used by the panel of judges in giving their considerations. The judge's considerations are contained in his ruling, which in essence are:

1. The provisional claims of Defendants I and II/Plaintiffs cannot be accepted;
2. Rejecting the exceptions of Defendants I and II in part;
3. Stating that the Plaintiff is a party with interest in the song of the object of the case;
4. Stating that the Plaintiff is the author of the object of the case;
5. To declare that the letter of registration of work on behalf of Defendant I has no legal force and must be canceled;
6. To order Defendant III to cancel the recording of the object of the case on behalf of Defendant I; and
7. Reject the counterclaim of Defendants I and II in its entirety.

Defendants I and II objected to the results of the first instance decision, so they filed an appeal to the Supreme Court in the end. In Decision No. 279 K/Pdt.Sus-HKI/2020, the Supreme Court stated that it rejected the appeal that had been submitted. The judge thought that in the first-degree decision, there were no errors and did not conflict with the laws and regulations, and believed that the party who had the idea to create the object song of the case was the Plaintiff/Respondent of Cassation.

3.2 Legal Protection of the Ownership Rights of the Song “Majulah, Jayalah STA” based on Law No. 28 of 2014 concerning Copyright

Legal protection can be interpreted as all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and or victims, which can be realized in forms such as restitution, compensation, medical services, and legal assistance [16]. According to Satjipto Rahardjo [17], legal protection is to protect human rights that others have harmed. That protection is given to the community so they can enjoy all the rights granted by law. According to Muchsin [18], there are two kinds of legal protection, namely:

1. Preventive Legal Protection, namely legal protection, is provided to prevent a violation. Preventive legal protection is contained in laws and regulations to provide limitations in carrying out an obligation.
2. Repressive Legal Protection is the final protection in the form of fines, imprisonment, and additional penalties when a dispute or violation has occurred.

Departing from the opinion of Muchsin [18], it can be said that with the first-degree decision and the cassation decision, the legal protection provided is repressive because the result of a decision containing the judge's considerations is to protect the party who feels aggrieved. Moreover, protection is given after a violation occurs.

In understanding the legal protection of a decision, it is necessary to look at the articles used by the Panel of Judges as a reference in giving their considerations and the application of these articles in the decision. In the case of the song “Majulah, Jayalah STA” (Song Mars STA), the Panel of Judges used several articles in Law No. 28 of 2014 concerning Copyright. In Article 33 paragraph (1) of the Copyright Law, it is stated that “if the Work consists of several separate parts created by 2 (two) or more persons, who are considered as Authors, namely the Person who leads and supervises the completion of the entire Work.” In this case, PT STA has proven itself as the leader and supervisor of completing the work so that it gets its rights as the creator. Then, in Article 34 of the Copyright Law, it is stated that “if a work is designed by someone and is realized and carried out by another person under the leadership and supervision of the person who designed the work, the one who is considered the creator is the person who designed the work.” In this case, Defendant I cannot be said to be the author because it is proven that PT STA designed the work. In Article 64 paragraph (1) jo. Article 74 paragraph (1) letter c states that “The Minister shall carry out the recording and deletion of works and related rights products. The legal force of recording works and related rights products is nullified because of a court decision that has obtained permanent legal force regarding the cancellation of the recording of works or related rights products.” Based on the article, it appears that the evidence in the decision resulted in the Directorate General of Intellectual Property Rights being required to cancel the registration letter for the song composition of the object of the case.

In addition to looking at the articles used in the decision, to understand legal protection, it is necessary to compare the analysis of the elements of the case with cases or similar decisions. In this case, the author takes the case of using the SBSI slogan, logo, and marching song as stated in Decision No. 69/Pdt.Sus-HakCipta/2014/PN.Niaga.Jkt.Pst and Decision No. 378 K/Pdt.Sus-HKI/ 2015 for comparison. The point of the case in the decision is that Plaintiff wants to get a guarantee of copyright protection for the creation of the slogan (Tri Darma), the logo, and the SBSI marching song used by KSBSI without any license permission from Plaintiff. At the first level, the Panel of Judges rejected Plaintiff's claim that he wanted to get guaranteed copyright protection for his three creations because the use of the three works was

only used for organizational interests, not commercial interests. The plaintiff, who felt aggrieved by the decision of the first instance, filed an appeal to the Supreme Court. At the cassation level, the Supreme Court accepted Plaintiff's cassation request because Plaintiff could prove that he was the owner of the three works and obtained guaranteed copyright protection for his three works. [19] In the case of PT STA, Plaintiff wants to be declared an interested party and the creator of the song "Majulah, Jayalah STA" (Song Mars STA).

Based on the comparison of the two cases above, it can be seen that both have received legal protection. In the SBSI case, Plaintiff received legal protection because it could prove itself as the creator of the three works, while in the PT STA case, PT STA received legal protection due to Defendant I was proven to be only one of the team who made it but registered it in his name unilaterally. From the two cases above, the author can also conclude that in providing legal protection, the most important thing is the proof so that later it can be determined who has the right to be declared the creator and/or copyright holder of a work.

4 Conclusion

PT STA, as the plaintiff, felt aggrieved by the unilateral recording of Defendant I for the song "Majulah Jayalah STA". Therefore, PT STA filed a lawsuit to cancel the recording of the song "Majulah, Jayalah STA" to the Medan Commercial Court. For this matter, the Panel of Judges stated that PT STA was the creator and interested party of the song and sentenced the Director-General of Intellectual Property to cancel the Letter of Registration of Works on behalf of Johanes Diodemus Masfin Sitepu (Defendant I). Based on this decision, a cassation request was filed by Defendants I and II, but the Supreme Court rejected the request.

In providing legal protection, the most important thing is to ensure the proof so that it can be determined who has the right to be considered as the creator and/or copyright holder. In this case, the Panel of Judges in providing repressive legal protection refers to the provisions of Article 33 paragraph (1) and Article 34 of the Copyright Law which proves that PT STA is the leader, supervisor, and the person who designed the song "Majulah, Jayalah STA" so that PT STA get their rights as creators and interested parties to the song. Based on the Copyright Law, PT STA has an exclusive right attached to the song "Majulah, Jayalah STA" (Song Mars STA).

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