



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

Editorial Office: Faculty of Law, Sriwijaya University
Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.
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Website: <http://journal.fh.unsri.ac.id/index.php/sriwijayalawreview>

Protection of Performers' Rights in Indonesian Copyright Law: Copyrighted Works Uploaded to YouTube

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Article	Abstract
<p>Copyrights: Indonesia Law; Keywords: Performer Rights; Protection; Youtube.</p> <p>Article History Received: Mar 14, 2021; Reviewed: Jan 20, 2022; Accepted: Jul 29, 2023; Published: Jul 31, 2023.</p> <p>DOI: 10.28946/slrev.Vol7.Iss2.1092.pp300-317</p>	<p>The Beijing Treaty allows performers to benefit from using audiovisual fixation for commercial purposes. This treaty is the first treaty specifically to protect against the head of the show. Indonesia has ratified the Beijing Treaty in order to give protection to the performers. There are provisions that performers can maintain moral rights until death (but not after death) and until the end of economic rights and refuse all forms of distortion, excision and modification that damage the reputation of performers. This article analyses the protection of the rights of performers whose works were uploaded without permission to YouTube under Indonesian Copyright Law 2014. This research is normative juridical research with a conceptual and statutory approach. The result is that the show performers' performance rights under the Beijing Agreement have been adopted in the 2014 Indonesian Copyright Act, even though there are some differences in defining the fixation and scope of the show rights to the fixed performance terms. The 2014 Indonesian Copyright Law has indefinitely maximised the protection of performers' moral rights. Moreover, the Indonesian Copyright Law 2014 Act No. 28 states that the rights of performers cannot be eliminated or cannot be removed for any reason, including their economic rights, such as a right to carry out themselves, give permission, prohibit broadcast or communication the performance to other parties, come under by using online media. Therefore, when an illegal act such as uploading the performance of performers without permission violates Copyright Law, dan perpetrators can be sued.</p>

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INTRODUCTION

Performer rights are an important and controversial issue at the international level,¹ it was seen when the parties signed the Beijing Treaty to protect the rights of performers on June 2012.²

¹ Jesús Heredia-Carroza, Luis Palma Martos, and Luis F. Aguado, "Why Does Copyright Ignore Performers? The Case of Flamenco in Spain," *Journal of Arts Management Law and Society* 49, no. 5 (2019): 1–14,

The Beijing Treaty is the first time international treaty to protect the rights of all performers concerning their audiovisual performances,³ and this treaty seeks to remedy much of the discrimination performers feel over their economic rights.⁴ Then, the Beijing Treaty is a step forward in the protection of performer rights,⁵ it cleared the Beijing Treaty is prospective benefits to performers.⁶

The right of performers is one of the rights related to copyright. The concept of related rights emerged as a reaction to technological developments that have enabled the wider dissemination of works of art.⁷ Related rights are a way to protect those who help intellectual creators to communicate their message and spread their works to society as a whole. For example, performers performing singers are only limited to singers who sing songs with permission from the songwriters. Singers are only limited to having the rights to the songs that are sung, which are referred to as rights related to performers.

Performers are actors, singers, musicians, dancers, and everyone who acts, sings, gives speeches, delivers, plays, interprets, or performs artistic and literary works or folklore expressions. This includes those who exhibit literary or artistic works created or first realised in the show's context. It has been confirmed under Article 2 *Beijing Treaty on Audiovisual Performances*. Also, this has covered actors' performances in all media, such as film and television, including musicians, when their performances are recorded on a digital video disc or any other audiovisual.⁸

Protecting the rights of performers, namely moral and economic rights, is very important.⁹ The performer's moral rights are separate from the economic rights of the performer. Even after the transfer of rights concerning the live performance or the performance manifested in audiovisual fixation, the performer will have the right to make a claim to be recognised as the performer of the performance unless the removal is indeed part of how the show was staged; and raise objections to distortions, mutilations or other modifications of the show which would be detrimental to its reputation, bearing in mind the nature of audiovisual fixation, this has been

<https://doi.org/10.1080/10632921.2019.1646682>. Jorge Wolf R. Meier-Ewert; Gutierrez, "WTO Staff Working Paper," *Intellectual Property and Digital Trade: Mapping International Regulatory Responses to Emerging Issues*, 2021.

² Aaron X. Fellmeth, "Introductory Note To The Beijing Treaty On Audiovisual PerformancesNo Title," *International Legal Material* 51, no. 6 (2012): 1211–22.; Jacob M. Victor, "Garcia v. Google and a 'Related Rights' Alternative to Copyright in Acting PerformanceNo Title," *The Yale Law Journal Forum* 124, no. 10 (2014): 80–88.

³ Michael A. Shinall, "The Beijing Treaty on Free Expression: How Stopping Digital Piracy May Cost the World Free ExpressionNo Title," *B.C. Int'l & Comp. L. Rev.E. Supp.* 36, no. 3 (2014): 105–14.

⁴ Sarah Howes, "Creative Equity: A Practical Approach to the Actor's Copyright," *Mitchell Hamline Law Review*. 42, no. 1 (2016): 70–109.

⁵ David Carson, "Session Iv: Fair Use And Other Exceptions," *Colum. J.L. & Arts* 40, no. 3 (2017): 389–94.

⁶ David Lange, "Perspective, From Berne to Beijing: A Critical," *Vanderbilt Journal Of Entertainment & Technology Law* 16, no. 1 (2013): 1–10.

⁷ Yngvar Kjus, "The Use of Copyright in Digital Times: A Study of How Artists Exercise Their Rights in Norway," *Popular Music and Society* 44, no. 3 (2021): 241–57, <https://doi.org/10.1080/03007766.2019.1698206>.

⁸ Pitchanee Wongsuesat, "Performer's Right Protection Under the Beijing Treaty on Audiovisual Performances of the World Intellectual Property Organization," *Naresuan University Law Journal* 8, no. 1 (2015): 156–74.

⁹ Jessica C Lai, "The Development of Performers' Rights in New Zealand: Lessons for the Asian Pacific Region," in *Making Copyright Work for the Asian Pacific Making Copyright Work for the Asian Pacific, Australia*, n.d., 257–91.

confirmed under article 5.1 Beijing Treaty. Article 5.2 of the Beijing Treaty, stressing moral rights still exist for performers after the performer dies unless the countries have arranged to end moral rights after death.

Economic rights in Article 6 Beijing Treaty asserted that in the case of the show, the performer had the exclusive right to grant broadcasting and communicating licenses to the show that had not been fixed to the public unless the show had become a broadcasting performance; and fixation on performances that have not been fixed.

Indonesia has ratified Beijing Treaty by Presidential Regulation No. 2 of 2020 concerning the Ratification of the *Beijing Treaty on Audiovisual Performances*. Indonesia is the 30th member to ratify the treaty on January 2020. The Beijing Treaty ratification is a concrete manifestation of the commitment of the Government of Indonesia to provide intellectual property guarantees and legal protection certainty for audiovisual performers in Indonesia.¹⁰ This is as mandated in Article 20 of the Beijing treaty concerning audiovisual performances, including a Provisions on clause Enforcement of Rights related to the enforcement of rights. Related to enforcing rights, participating countries must ensure the law contains effective enforcement procedures.

With the development of multimedia computing since the last 20th century, performing arts, in general, have adopted interactive visuals in performances. Visual artists live in adapting music performances and appropriate technology to achieve expression through visual media.¹¹ The development of digital technology has also changed how copyrighted works can be accessed and disseminated. Previously, copyrighted works such as books, music and films were usually only accessible through physical forms such as prints or cassettes. However, with the internet and digital platforms, copyrighted works can now be easily accessed via electronic devices such as computers, smartphones and tablets.

A work of creation based on technology and digitisation makes it possible to disseminate and distribute through the Internet network; the creation can reach the world without limits when everyone in any part of the world is connected to the Internet network. However, in such conditions, the copyrighted work uses digitisation and has a high risk that it will be easy to change, modify, distribute without permission and even duplicate a copyrighted work freely without any agreement with the copyright holder.¹² Technological advancements have affected intellectual property rights in Indonesia, especially audiovisual, which is not only accessible directly by public television but also can be accessed through pay television and internet media such as YouTube.

¹⁰ Kementerian Luar Negeri Indonesia, Indonesia Menandatangani Beijing Treaty on Audiovisual Performances di Markas Besar World Intellectual Property Rights Organization (WIPO) di Jenewa December 18, 2012 <https://mission-indonesia.org/2012/12/18/indonesia-menandatangani-beijing-treaty-on-audiovisual-performances-di-markas-besar-world-intellectual-property-rights-organization-wipo-di-jenewa/> [retrieved: 11th Mei 2020].

¹¹ Raul; Nuno N. Correia Masu, "Pathways to Live Visuals in Dance Performances: A Quantitative Audience Study No Title," *EAI Endorsed Transactions on Creative Technologies* 7, no. 23 (2020): 1–8.

¹² Bagus Fauzan and Miranda Risang Ayu, "Pelindungan Hak Cipta Sinematografi Pada Medium Internet Menurut Beijing Treaty Dihubungkan Dengan Sistem Hukum Indonesia," *Acta Diurnal* 3, no. 1 (2019): 58–79, <http://dx.doi.org/10.24198/acta.v3i1.311>

When the results of the show are uploaded to internet media such as YouTube without permission from the show, it becomes the responsibility of the screening.¹³ In Indonesia, many shows are uploaded to YouTube without permission from the screening.¹⁴ In case, YouTube Channel by the Parlophone Records accounts with the title: "This is the new #1" was Re-uploaded by the Prospective Bachelor's account on YouTube with the title "Parlophone Records, Channel YouTube No #1" without permission from the Parlophone Records.¹⁵ Hanindhiya uploaded a video of the song titled "Akad" on her YouTube account without permission from the Band Payung Teduh.¹⁶ Furthermore, Gen Halilintar used, without permission, the videos of the Nagaswara music house in his YouTube account.¹⁷ Of course, it is very disrespectful and detrimental to the performers.

With various cases of piracy of copyrighted work, it is very urgent to need legal protection. In addition, the losses experienced by creators, performers or industries engaged in producing works are getting higher. This article analyses the rights of performers whose works are uploaded to YouTube without permission in the Indonesia Copyrights Law.

RESEARCH METHOD

This research is normative juridical research with a conceptual and statutory approach. Legal research is conducted to solve the legal issues at hand. Researchers will explore an object in more depth and detail to make the data found visible. The normative juridical research method will examine the theories, concepts and principles of protecting performers' rights. This research method aims to understand the relationship between legal sciences and positive law or written legal norms, such as statutory regulations. Data was collected through a literature study exploring various literature and laws and regulations. Data analysis was carried out by describing existing legal norms with facts that occurred as examples. Then, theories and principles are used to analyse the literature data and draw conclusions.

ANALYSIS AND DISCUSSION

Indonesia Copyrights Law 2014 Act No. 28

Copyright and Neighboring Rights are still one entity but can be separated. The same is true between song copyrights and broadcast rights.¹⁸ The first right is copyright, while the last right is neighbouring rights. That is the reason for using terms that are commensurate with copyright but can be separated. The existence of a copyright always follows the existence of

¹³ R Masur, "The Importance of Copyright Protection to Audio and Audiovisual Performers in the Digital Age," *Columbia Journal Of Law & The Arts* 38, no. 3 (2015): 331–37.

¹⁴ Wulan Purukan, "Perlindungan Hukum Neighboring Rights Sebagai Hak Yang Berdampingan Dengan Hak Cipta Menurut Undang-undang Nomor 28 Tahun 2014," *Lex Et Societati* 5, no. 5 (2017): 44–51.

¹⁵ Andika Aditia, "Duduk Perkara Dugaan Plagiat Akun Calon Sarjana Dan Permintaan Maaf CEO Infia," *Kompas.Com*, 2019. [retrieved: September 10 2020].

¹⁶ M. Zairul Alam Jeaney Dwi Sapta Aquar, Afifah Kusumadara, "Tindakan Pelanggaran Hak Cipta Dalam Menyanyikan Ulang Atau Mengcover Lagu Melalui Media Youtube," *Jurnal Hukum FH UB* 6, no. 27 (2018).

¹⁷ Abdul Arif, "Dugaan Pelanggaran Hak Cipta, Saksi Gen Halilintar Untungkan Nagaswara," *Semarang.Com*, 2020. [retrieved: June 08 2020].

¹⁸ Usak, "Perlindungan Hukum Terhadap Hak Terkait Produser Fonogram Atas Mechanical Rights Fonogram Yang Dikomersilkan Oleh Pihak Lain," *Refleksi Hukum* 10, no. 1 (2016): 55–70, <https://doi.org/https://doi.org/10.24246/jrh.2016.v10.i1.p55-70>.

neighbouring rights, but conversely, the existence of a copyright does not require the existence of neighbouring rights.¹⁹

Copyright has been protected since the first announcement was made because the protection of the work was born automatically based on declarative principles after the work was realised in real form. The announcement has been affirmed in Indonesian Copyright Law 2014 Act No. 28 that it is the reading, broadcasting, or showing of a work using any electronic or non-electronic means or doing it in any way so that others can read, hear, or see it.²⁰

This provision applies *mutatis mutandis* to related rights,²¹ so, since a film or video (as a form of cinematographic work) is shown to the public, it has also received protection for related rights, including performers. Moreover, Indonesian Copyright Law 2014 Act No. 28 states that recording works and related rights products are not required to obtain Copyright and Related Rights.²² That is because copyright and related rights, including performers, have been protected since it was shown to the public.

Neighbouring rights in Indonesia are implicitly regulated in the Indonesian Copyright Law 2014 Act No. 28. article 1.5 has confirmed that neighbouring rights are rights relating to copyright which are exclusive rights for performers, phonogram producers, or broadcasters. Categorised as actors according to this law are actors, singers, musicians, dancers, or those who display, demonstrate, perform, sing, display, recite, or play a musical work, drama, dance, literature, or other arts.

Neighbouring rights owners are performers, phonogram producers (better known as record producers), and broadcasters.²³ These three subjects are sometimes not creators, but they have a big part in distributing entertainment facilities that the community can enjoy and use. So, there is a neighbouring rights owner group, i.e.:²⁴ (i) Performing artists, which can consist of singers, actors, musicians, dancers, and other actors who perform literary and artistic works which can consist of singers, actors, musicians, dancers, and other actors who perform literary and artistic works which can consist of singers, actors, musicians, dancers, and other actors who perform literary and artistic works; (ii) Producers of Phonogram; (iii) Broadcasting Organization.

Performers have more rights than the Producers of Phonograms and Broadcasting Organizations.²⁵ Performers have moral and economic rights, while Producers of Phonograms and Broadcasting Organizations only have economic rights.²⁶ The phonogram producers have economic rights, which include the right to carry out on their owner, give permission or forbid another party to: procure phonograms in any way or form; distribution of original phonograms or copies; public leasing of phonogram copies; the provision of phonograms with or without

¹⁹ Ni Komang Irma Adi Sukmaningsih; Ratna Artha Windari; Dewa Gede Sudika Mangku, "Hak Terkait (Neighboring Right) Pelaku Pertunjukan Berdasarkan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," *Komunitas Yustitia Universitas Pendidikan Ganesha Jurusan Ilmu Hukum* 1, no. 1 (2020): 77–88, <https://doi.org/http://dx.doi.org/10.23887/jatayu.v1i1.28667>.

²⁰ See article 1.11 Indonesia Copyrights Law 2014 Act No. 28.

²¹ See articles 57 and 62 Indonesia Copyrights Law 2014 Act No. 28.

²² See Article 64 Indonesia Copyrights Law 2014 Act No. 28.

²³ See articles 30 and 3.b Indonesia Copyrights Law 2014 Act No. 28.

²⁴ See articles 23, 24 and 25 Indonesia Copyrights Law 2014 Act No. 28.

²⁵ Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination of The Legal Protection of Right-Holders To," *Jambura Law Review*. 2, no. 01 (2020): 65–82.

²⁶ See Article 20 Indonesia Copyrights Law 2014 Act No. 28.

publicly accessible cables.²⁷ Therefore, every person who exercises phonogram economic rights must obtain permission from the phonogram producer, except in the distribution of fixation copies sold shows that phonogram producers have transferred to other parties.

The economic rights of broadcasting institutions include the right to carry out alone, give permission, or prohibit other parties from broadcasting broadcasts, broadcast communications, broadcast fixation, and/ or procuring broadcast fixation. Accordingly, everyone is prohibited from distributing without permission for commercial purposes for the broadcast content of broadcasting institutions.²⁸ Phonogram producers and broadcasters will enjoy economic rights while they are within the period of protection. Economic rights will be protected for 50 years for phonogram producers since the phonogram is fixed and 20 years for broadcasters since the broadcast work was first broadcast.²⁹

Provisions on performers' rights in the Indonesian Copyright Law 2014 Act No. 28 have not been compatible with the Beijing Treaty. Namely, the fixation determined by the Indonesian Copyright Law 2014 Act No. 28 needs to be confirmed in audiovisual form.³⁰ It can be seen in Article 1 of Indonesian Copyright Law 2014 Act No. 28 that "fixation is sound recordings that can be heard, recorded images or both, which can be seen, heard, reproduced, or communicated through any device ... ". Meanwhile, in Article 2b of the Beijing Treaty, audiovisual fixation means "the embodiment of moving images, whether accompanied or not with sound or with their representatives, from which they can be felt, reproduced or communicated through devices". So, there is a clear difference between the performance space of the performers literally in the Indonesian Copyright Law 2014 Act No. 28 and the Beijing Treaty.

The Beijing Agreement is an agreement that supports new rights for visual performers or performers and helps curb digital piracy.³¹ In addition, the Beijing Agreement has far-reaching implications for copyright law and the degree of moral rights protection and shows economic rights internationally. Beijing Treaty has been adopted in the Indonesia Copyrights Law 2014, Act No. 28, namely moral and economic rights. This was confirmed in articles 22 and 23 of Indonesia Copyrights Law 2014, Act No. 28, which became a force for performers to get the rights when other parties used the performances for commercial purposes. That is, when another party uses the results of the show uploaded by YouTube without permission, the performer can file a claim or take legal action. Although, there are still some differences in the regulatory provisions between Copyrights Law 2014, Act No. 28 and the Beijing Treaty in protecting performers' rights. Among these are the definitions of fixation, which do not mention audiovisual or the rights of performers to provide fixated performances.

In a general explanation of Indonesian Copyright Law 2014 Act No. 28, a decipher limited definition of "fixation" is not included in audiovisual fixation in provisions on the rights of

²⁷ See article 24 Indonesia Copyrights Law 2014 Act No. 28.

²⁸ See Article 25 Indonesia Copyrights Law 2014 Act No. 28.

²⁹ See Article 63 Indonesia Copyrights Law 2014 Act No. 28.

³⁰ Muhammad Hawin, "Protection of Performers' Rights under Indonesian Copyright Law and International Conventions," *KLRI Journal of Law and Legislation* 8, no. 1 (2018): 123–68.

³¹ Okubor Cecil Nwachukwu and Kwubosu Ikechukwu, "Regulatory Response to Copyright Protection in an Online and Digital Environment: A Comparative Analysis," *Beijing Law Review* 13, no. 04 (2022): 983–1005, <https://doi.org/10.4236/blr.2022.134063>.

performers in Indonesian Copyright Law 2014 Act No. 28.³² So, there is a clear difference in the performance scope of the performers literally in the Indonesian Copyright Law 2014 Act No. 28.

The scope of legal protection for creators and owners of related rights is based on the Indonesian Copyright Law 2014 Act No. 28, namely: (a) Related rights product listing arrangement, (b) Arrangements for users of related rights who use related rights for commercial purposes must pay royalties to the owners of related rights through the Collective Management Organization, (c) There are criminal threats to violations of the economic rights of creators and related rights owners as stipulated in the Indonesian Copyright Law 2014 Act No. 28.

Then Indonesian Copyright Law 2014 Act No. 28 also categorises actions that are deemed not to violate copyright or related rights if: (a) Dissemination of copyright content and/or related rights through information and communication technology media is not commercial, (b) In the case of commercial use of works and/or related rights products by users as long as the user has carried out and fulfilled the obligations according to the agreement with the Collective Management Agency, (c) If in quoting or using work by including the source.

So, Indonesian Copyright Law 2014 Act No. 28 already clearly regulates the associated rights space, including the protected and unprotected rights of performers.

Moral rights of the performer

Moral rights in copyright are referred to as human rights as natural rights possessed by humans. Thus, every performer must obtain recognition and protection of moral rights attached to his creation.³³ Thus, it is an obligation that every performer must receive recognition and protection of the moral rights attached to his work. Although economic rights have been transferred inside the Beijing Treaty, moral rights allow principals to object to modifications to their creativity. The enforcement of moral rights is usually subjective, where performers object to any distortion, mutilation, or other modification to their reputation. These rights extend to the heirs or institutional actors of the performance.³⁴

The moral rights of performers are recognised and regulated by law in several countries and form part of broader copyright protection. Although moral rights are non-economic, they are very important in recognising and respecting the creativity and contributions of performers. In Article 22 of Indonesia Copyrights Law 2014, Act No. 28, the moral rights of Performers include the right to have their names listed as Performers, unless otherwise agreed, and no distortion of the work, mutilation of the work, modification of the work, or matters that are detrimental to their dignity or reputation unless otherwise agreed. Therefore, it can be said that the moral rights of the perpetrators consist of attribution rights and integrity rights.

Furthermore, the moral rights of the players cannot be cancelled and cannot be removed for any reason, even though the related rights have been transferred to someone else.³⁵ It is an

³² See article 1.13 Indonesia Copyrights Law 2014 Act No. 28.;

³³ Ni Komang Irma Adi Sukmaningsih Ratna Artha Windari, "Neighboring Right on Performers of Balinese Dance Based on Copyright Act 28 of 2014," in *SRU International Conference 2018*, 2018, 64–83.

³⁴ See Article 5, Beijing Treaty.

³⁵ See, article 21 Indonesia Copyrights Law 2014 Act No. 28.; Zulvia Makka, "Bentuk Perlindungan Hukum Terhadap Pemegang Hak Terkait (Neighbouring Rights)," *Borneo Law Review*, 3, no. 1 (2019): 20–35, <https://doi.org/https://doi.org/10.35334/bolrev.v3i1.1011>.

obligation that every performer must obtain recognition and protection of the moral rights attached to his work as confirmed under Indonesian Copyright Law 2014 Act No. 28. And the moral rights of the performers will be protected following the creator's moral rights are the moral rights of the creator apply indefinitely.³⁶ This provision exceeds the protection of the moral rights of performers in the Beijing Treaty, which states that the protection of the moral rights of performers continues until after death or at least until the end of economic rights. So, in activities on YouTube social media, it is an offence if someone brings a song as video content uploaded for commercial use.³⁷ Of course, it is a moral and economic violation of performer rights.

Violation of the moral rights of performers occurs when rights related to integrity and recognition of works are not respected or violated by other parties. Moral rights are non-economic rights attached to creators or performers as an expression of recognition of their creative identity. Protection of the integrity of the work they have created or presented. Some examples of violations of the moral rights of performers are: (a) Counterfeiting works is a violation of moral rights because the works of performers or their performances are falsified or claimed by others without the approval or acknowledgement of the original creator. This forgery can take the form of plagiarism of appearance, unauthorised adaptation or claim to the appearance of another person, (b) Alteration without permission is a violation of moral rights because the performer's work is altered or modified without their permission, thereby altering the original meaning or undermining the creative integrity of the work, (c) Inappropriate use is the use of the performer's work in a context that is inappropriate, degrades, or distorts their image, which can be considered a violation of moral rights. This can include using the content for purposes that conflict with the performer's values or beliefs, (d) Using the work of performers without including the appropriate names can be considered a violation of moral rights because it is detrimental to the recognition of their creative identity, (e) Unapproved cutting or editing of a performance by a performer without their permission, to undermine the creative integrity of the performance, may be considered a violation of moral rights.

Economic Rights of Performer

Intellectual Property is the concept of awarding over an economic value creation and innovation, which, when not applied, would cause a State wherein the creators and inventors of innovations creations were weak in morale and motivation. How a new song or movie, novel, or the creation of architectural choreography always brings new colours to human life. The entrepreneur/investor gives the appreciation in the Fund a process creation and new creation because of economic value, but they are sure the benefit is worth it.³⁸ Performing right is one form of economic rights. Creating rights (economic rights) on Copyright and Related Rights

³⁶ See articles 57 and 62. Indonesia Copyrights Law 2014 Act No. 28.

³⁷ Muhammad Humarul Faruk; Zainal Asikin; Eduardus Bayo, "Copyright License For Track Recycles Version (Cover) On Youtube Social Media Under Law NO. 28 OF 2014 ON Copyright," *International Journal of Humanities, Religion and Social Science* 2, no. 4 (2018): 1–17.

³⁸ Zulkifli Makkawaru, "Performing Right In Cache Copyright Law Of Indonesia," *Journal of Humanity* 3, no. 1 (2015): 107–22, <https://doi.org/https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.14724%2Fjh.v3i1.32>.

(neighbouring rights) in the library of categorised Intellectual Property rights is not a substantial Copyright/original.

Some economic rights performers possess are: (a) Performance rights give performers the exclusive right to present their work in public. This means that anyone wishing to perform the performance must obtain permission from the performer and may also pay a royalty or fee, (b) Recording rights give performers the exclusive right to record and distribute a recording of their performance, either in audio or video form. Suppose a person or institution wishes to record and distribute the performance. In that case, they must obtain a permit and may pay a royalty or a percentage of the revenue, (c) Broadcasting rights give performers the exclusive right to broadcast their performances through media such as television, radio or online streaming platforms. This applies to live broadcasts as well as recorded broadcasts, (d) Reproduction rights give performers the right to permit or prohibit the reproduction of their work in certain forms, such as print or physical copy, (e) Adaptation rights give performers the exclusive right to permit or prohibit the adaptation or modification of their work, for example in the form of theatre, film or other art, (f) Distribution rights give performers the right to control the physical or digital distribution of their work, such as CD, DVD, or digital downloads, (g) As also emphasised in article 23 of Indonesia Copyrights Law 2014, Act No. 28 asserts that Performers have economic rights which include the right to conduct them, give permission, or forbid another party to do: a) broadcasting or communication of performers performances; b) fixation of the performance that has not been fixed; c) doubling of the fixation of the show in any way or form; d) distribution of fixation of shows or copies; e) leasing fixation of performances or copies to the public; and f) provision of fixation of publicly accessible performances.

Based on the article, performers have rights to grant permission and forbid in Make, Multiply, Broadcast where divided again, Renting, Public performances, Communicating in a manner life, and Communicating interactively. When an actor's performance is to be recorded, permission from the actor is required before recording. So, a permit is also required if the recording contains performance actors to be reproduced or broadcast. Which includes broadcasting activities and a recording of performance under the Rights Act Copyright includes, among other things, renting out, doing a public show, and doing direct or interactive communication.

In other words, the performer has the right to give permission and prohibit: making, developing, broadcasting (Rent, Public performance, public performances, and communicating interactively). Therefore, if a player's performance must be recorded, permission is needed from the actor before recording.³⁹ It also includes permission from the performer if the recording containing the performer's performance must be reproduced or broadcast. This provision is slightly different from the scope of the economic rights of performers in Article 10 Beijing Treaty, which states in more detail that Performers obtain exclusive rights to permit the provision of fixation of performances in audiovisual fixation to the public, via wired or wireless devices, in a way certain so that the public can access it at a place and time of their choosing. This difference is very unfortunate because the treaty has free participant countries, and

³⁹ Ahmad FalDI Albar; Rohaini; Diane Eka Roermawati, "Perlindungan Hukum Penggunaan Musik Sebagai Latar Dalam Youtube Menurut Undang-Undang Hak Cipta," *Pactum Law Journal* 1, no. 4 (2018): 321–35.

Indonesia should make the maximum economic rights provisions for performers. This is because many uses of fixation never give economic rights to the performers.

However, there are exceptions that broadcasting or communication of performances with the performer does not apply to the result of fixation of performances which Performers have permitted; or broadcasting or re-Communication that has been permitted by the Broadcasting Institution that first obtained a performance permit.⁴⁰

Performers must receive reasonable compensation when phonograms that manifest their performance have been published commercially or are reproduced directly for broadcast and/ or communication purposes.⁴¹ This provision is new to Indonesian Copyright Law 2014 Act No. 28 because the previous Copyrights Law did not contain the provisions. For example, royalties obtained from marketing DVD players that load films never get royalties to the film players but are only received by producers.

Performers will enjoy rewards if their economic rights are still within the protection period of 50 years for the performers since the show is fixed on a phonogram or audiovisual.⁴² Therefore, video or movie content is uploaded to a YouTube account which many people then watch; YouTuber must ask permission from the performer before uploading. YouTubers will get economic benefits from other parties, namely YouTube, so YouTubers, based on the permission obtained, are obliged to pay rewards to performers. That is stated in the Indonesian Copyright Law 2014 Act No. 28 that commercial use is the creation and/ or product of rights related to obtaining economic benefits from various sources or paid.⁴³

Many digital media platforms allow users to share, download, and distribute content without the legal permission of the copyright owner or related rights owner.⁴⁴ Access to digital media often results in violations of copyright, for example: (a) Music and film piracy occurs through illegal websites and file-sharing services that allow users to download and distribute music, movies, and television shows without paying or obtaining permission from the copyright author and related rights owner, (b) The distribution of e-books without permission occurs in digital books on the internet media illegally, thus harming the authors and publishers who have exclusive rights to the work, (c) Use of digital images, illustrations and graphics on websites, social media or marketing materials without permission from the copyright holder, or without paying royalties, (d) Original content videos that can be downloaded and re-uploaded by others without permission, causing a decrease in popularity and revenue for the original creator, (e) Unauthorised use of licensed or pirated software without paying for the appropriate license.

Then specifically a violation of copyright and related rights through the online media⁴⁵ YouTube is one example that is quite common in the digital era. YouTube is the world's largest video-sharing platform that allows users to upload, watch and share videos online. However, in

⁴⁰ See 23.3 Indonesia Copyrights Law 2014 Act No. 28.

⁴¹ See 23.1 Indonesia Copyrights Law 2014 Act No. 28.

⁴² See Article 63 Indonesia Copyrights Law 2014 Act No. 28.

⁴³ See article 1.24 Indonesia Copyrights Law 2014 Act No. 28.

⁴⁴ Ragnhild Brøvig-Hanssen and Ellis Jones, "Remix's Retreat? Content Moderation, Copyright Law and Mashup Music," *New Media and Society* 25, no. 6 (2023): 1271–89, <https://doi.org/10.1177/14614448211026059>.

⁴⁵ Kjus, "The Use of Copyright in Digital Times: A Study of How Artists Exercise Their Rights in Norway." *Popular Music And Society* 2021, VOL. 44, NO. 3, 241–257 <https://doi.org/10.1080/03007766.2019.1698206>

the process, some users may not comply with copyright rules and may commit copyright and related rights violations. Some violations of copyright or related rights include the rights of performers on YouTube, are: (a) Uploading copyrighted content is often done without the permission of the original owner, including uploading movie trailers, music clips, or videos that have been produced by someone else, (b) Re-uploading original content created by others to their channel without the permission of the original creator. This is a violation regulated in the Indonesia Copyrights Law 2014 Act No. 28, (c) Unlicensed use of music in their videos without getting permission from the owner of the copyright and related rights, including for background music and music clips in videos, (d) Content that is censored or cropped or removes parts of the video that are protected by copyright and related rights to avoid detection by YouTube's automated systems that monitor copyright infringement.

In dealing with the problem of copyright infringement through YouTube media, policies and systems are needed that can protect the rights of creators, performers or industries that produce copyrighted works. One of them is implemented by YouTube with Content ID, where the system allows copyright owners to track and manage the use of their content on the platform. If other users upload copyright-protected content, the copyright and related rights holders can block, remove or generate revenue from the video through monetisation.

The Doctrine of Protection of the Copyright and Related Rights

In order to protect copyright and related rights, the Indonesian Copyright Law 2014 Act No. 28 has adopted several copyright and related rights doctrines. The Fair use doctrine mentioned in articles 26 and 43-51 Indonesian Copyright Law 2014 Act No. 28 explains the limitations and provisions if a person is not deemed an infringer of copyright or related rights.⁴⁶ For example, restrictions on the creation and distribution of copyrighted content and related rights through information and communication technology media in article 43.d Indonesian Copyright Law 2014 Act No. 28 which reads: "The creation and distribution of copyrighted content through information and communication technology media that is not commercial and/or profitable for the creator or related parties, or the creator has stated that he has no objections to the production and distribution".

The doctrine of Utilitarianism states that the presence of monopoly restrictions will spur innovation.⁴⁷ The innovation system must recognise the exclusive rights of intellectual creation in the form of rights that are limited in time and scope and are balanced against the economic appreciation of the holders and owners. So, there needs to be incentives for creators to encourage them to produce new works. Conversely, with these incentives, creators will gain enthusiasm for creating. Therefore, the purpose of forming legislation is influenced by the doctrine of Utilitarianism, namely to promote maximum welfare for economic efficiency. The doctrine of Utilitarianism is reflected in the Indonesian Copyright Law 2014 Act No. 28, that is: (a) The norms that protect the interests of creators and society have been formulated in a balanced way in the context of copyright protection as a whole, (b) It turns out that strategic legal norms are not treated strictly towards users, such as the criminal provisions that are ad-

⁴⁶ Inge Dwisvimiar, "Penerapan Kepentingan Yang Wajar (Fair Use) Mengenai Materi Hak Cipta Di Internet," *Hukum Dan Masyarakat Madani* 11, no. 2 (2021): 425–37.

⁴⁷ Agung Sujatmiko, "Tinjauan Filosofis Perlindungan Hak Milik Atas Merek," *Jurnal Media Hukum* 18, no. 2 (2011): 177–89.

hered to which are complaint offences, (c) Copyright restrictions contained in the Indonesian Copyright Law 2014 Act No. 28, also stated more broadly and rigorously.

The Personality doctrine is based on the assertion that private property rights are essential to satisfying some basic human needs, so policymakers must strive to create and allocate rights to resources to satisfy those needs best.⁴⁸ This doctrine is the reason that influences the determination of moral rights for creators and actors of performances in legislation. Articles 4-7 Indonesian Copyright Law 2014 Act No. 28 contains norms that protect creators by adopting a Personality doctrine. For example, content uploaded from the results of documentation of singing other people's songs directly in public, done without asking permission from the creator and performer, violates moral rights. The essence of the Personality doctrine is oriented towards recognising the creator's moral rights over a protected work and performers' rights as related rights. This shows that the Indonesian Copyright Law 2014 Act No. 28 has built a balance of interests between creators/copyright holders and the community.

The Labor Doctrine is a doctrine developed by John Locke. This doctrine states that it is natural to reward one's work. This form of award is manifested in the form of IPR.⁴⁹ It was further emphasised that the results of human work, the results of human hands, belong to these humans. When humans have mixed their work with natural products, then these results are his. Because humans have sweated the results of their hard work and mixed it with human work, humans have the right to have these results. This doctrine also contains a moral aspect that argues that copyright and the rights of performers to their works must be recognised and respected. However, in reality, the moral aspect and protection of IPR are no longer fully provided to workers who do the work of creating and discovering but to owners of capital who invest in taking advantage of IPR.

The social control planning doctrine is a doctrine that focuses on the role of IPR in society, where an IPR must provide benefits to society. The social control planning doctrine is the latest development of the copyright protection doctrine. This doctrine has relevance as a foundation in protecting copyright and related rights on the internet. For example, uploading a copyrighted work to digital media such as YouTube must obtain permission from the creator or related rights holders, including performers. In addition, there is also a time limit for the protection of economic rights from copyrights and related rights. That is, a right is given not only to provide unilateral benefits but also to provide equal justice between the two parties to be granted and recognised by law. This doctrine also helps to give appreciation to people who have the creativity to then translate it into a tangible form, namely, growing a just society and encouraging cultural achievements.

Protection restrictions of performer rights

The utilitarian foundations of IP law in providing incentives to creators as respect for ideas that are useful to society.⁵⁰ The use of a work in related rights can be excluded from the economic

⁴⁸ Khwarizmi Maulana Simatupang, "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 67, <https://doi.org/10.30641/kebijakan.2021.v15.67-80>.

⁴⁹ Annisa Ramadhani, "Copyright Protection Regarding Plagiarism Cases and Warkopi Ethics Against Warkop DKI," *Journal of Creativity Student* 7, no. 2 (2022): 133–54, <https://doi.org/10.15294/jcs.v7i2.38493>.

⁵⁰ Daniel Gomez, "So You Want To Be an Author: A Comparative Analysis of the Authorial Rights Awarded to Performers," *Journal of St. John's Law* 94, no. 1 (2020): 269–301.

rights of performers, phonogram producers, and broadcasters if:⁵¹ (a) Use of short excerpts of work and/ or Related Right products for reporting on actual events intended only to provide actual information, (b) Duplication of creation and/ or Related Right product is only for scientific research purposes, (c) Duplication of creation and/ or Related Right products only for teaching purposes, except for performances and phonograms that have been made Announcements as teaching materials; and (d) Use for educational and scientific development purposes that enable a work and/ or Related Right product to be used without permission from a Performer, Phonogram Producer, or Broadcasting Institution.

In addition, some restrictions are not considered copyright infringement, namely: (a) Announcement and/or reproduction of the state emblem and national anthem according to their original nature, (b) Announcement and/or reproduction of everything announced and/or by or on behalf of the Government, except when the copyright is announced and/or reproduced, (c) Return of actual news, either in whole or in part, from news agencies, Broadcasting Institutions, and newspapers or other similar sources, provided that the source must be stated in full.

The Indonesian Copyright Law 2014 Act No. 28 stated that the use is for non-commercial purposes, stating that the source is not considered a violation.⁵² This restriction allows education to utilise video and film content to study at school or college without violating the economic rights of performers. Thus, uploading video or film content that is not for commercial purposes means that the upload does not get any economic benefit either directly or from a third party. It does not include violations of economic rights. Meanwhile, video or movie content uploaded to a YouTube account will benefit economically from third parties, so it is necessary to heed the economic rights of performers because it is an offence.

The legal consequence of violations of economic rights committed by YouTubers is that any person who, without rights and/ or without the author's permission or copyright holder, violates the creator's economic rights for commercial use will be punished with a range from one year to a maximum of ten years in prison and/ or fines from one hundred million to a maximum of four billion rupiahs.⁵³ Thus, the protection of the rights of performers in the copyright law is a useful effort to increase economic efficiency.

Protection of Performers' Rights: Legal Remedies and Threat of Punishment

Legal protection of related rights, including the rights of performers, is important to create an environment that is conducive to creativity, innovation, and knowledge, as well as respect for intellectual work produced by creators and performers.⁵⁴ Legal protection is also to prevent duplication and unauthorised dissemination of protected works. Legal protection for performers is given to: singers, presenters, program hosts, newsreaders, athletes, and others.

⁵¹ See article 26 Indonesia Copyrights Law 2014 Act No. 28.

⁵² Nur Khaliq Khussamad; Noor Winner Sitorus; Hasbir Paserangi, "Perlindungan Hukum Hak Cipta Atas Film Layar Lebar Yang Dipublikasi Melalui Media Sosial Tanpa Izin," *Riau Law Journal* 3, no. 1 (2019): 124–48, <https://doi.org/http://dx.doi.org/10.30652/rlj.v3i1.7328>.

⁵³ See article 113 Indonesian Copy Rights Law 2014 Act No. 28.

⁵⁴ Carson, "Session IV: Fair Use And Other Exceptions."Cristina Lazariuc, "Intellectual Property in the Context of Global Ethics," *Eastern European Journal Of Regional Studies* 7, No. 1 (2021): 273–88, <https://doi.org/10.4324/9780203875049>.

Performers can take legal action if their rights to use by others are impaired.⁵⁵ Performers can take legal action through the commercial court or through alternative dispute resolution.⁵⁶ Performers or heirs can file a lawsuit for compensation to the commercial court for violations of related rights, including the rights of performers according to the statement in the Indonesian Copyright Law 2014 Act No. 28. The lawsuit for compensation can be in the form of a request to hand over all or part of the income derived from the performance or exhibition of the infringed works. In addition, the owners or holders of related rights can apply for provisional decisions or interlocutory decisions to the commercial court. So, creators, copyright holders, and/or related rights holders or their heirs who experience loss of economic rights are entitled to compensation. Compensation is given and stated simultaneously in the court decision regarding criminal cases of copyright and/or related rights. Compensation is paid within 6 (six) months after the court decision that has permanent legal force.⁵⁷

In addition to legal remedies through lawsuits, violations of the rights of performers can be punished with imprisonment. Performers or heirs of related rights can make complaints to the police. Article 116, paragraph 1 Indonesian Copyright Law 2014 Act No. 28, confirms that anyone who unlawfully violates the economic rights of performers in leasing a fixation of a performance or a copy of it to the public is commercially punishable with a maximum imprisonment of one year and/or a maximum fine of one hundred million rupiah.

Then, anyone who unlawfully violates economic rights in broadcasting or communicating performances of performers, providing fixations of shows that the public can access for commercial use, shall be punished with a maximum imprisonment of three years and/or a maximum fine of five hundred million rupiahs.⁵⁸ And every person who without rights violates economic rights in the reproduction of the fixation of his performance in any way or form distributes the fixation of the copy; performance or for commercial use shall be punished with a maximum imprisonment of four years and/or a maximum fine of one billion rupiahs.

Violations committed against means of supporting related rights, including the rights of performers, have also been adopted in the Indonesian Copyright Law 2014 Act No. 28. In article 52 of the Indonesian Copyright Law 2014 Act No. 28 confirms that everyone is prohibited from damaging, destroying, removing, or making technological control devices non-functional which are used to protect creations or related rights products and safeguard copyrights or related rights, except for the interests of national defence and security, as well as other reasons under the provisions of laws and regulations, or otherwise agreed.⁵⁹ If this is violated, they will be subject to a maximum penalty of two years and/or a maximum fine of three hundred million rupiahs under the provisions of Article 112 Indonesian Copyright Law 2014 Act No. 28.

Furthermore, it is also emphasised that anyone who manages a trading place in all its forms who deliberately and knowingly allows the sale and/or duplication of goods resulting from copyright infringement and/or related rights at the trading place they manage shall be punished

⁵⁵ Karima Fatma Nusantika and Budi Hermono, "Tinjauan Yuridis Karya Seni Penggemar (Fanart) Sebagai Sebuah Ciptaan," *Novum: Jurnal Hukum* 17, no. 1 (2023): 167–76, <https://doi.org/https://doi.org/10.2674/novum.v0i0.53833>.

⁵⁶ See Article 95 Indonesian Copy Rights Law 2014 Act No. 28

⁵⁷ See article 96 Indonesian Copyright Law 2014 Act No. 28.

⁵⁸ See article 116.1 Indonesian Copyright Law 2014 Act No. 28

⁵⁹ See article 52 Indonesian Copyright Law 2014 Act No. 28.

with a maximum fine of one hundred million rupiahs. So, it is clear that the Indonesian Copyright Law 2014 Act No. 28 has provided support to performers or their heirs who have been harmed by the use of related rights, including the rights of performers, to take civil legal action to commercial courts or through alternative dispute resolution or criminal legal remedies.

Thus, the legal protection given to owners or holders of related rights includes the rights of performers based on the Indonesian Copyright Law 2014 Act No. 28, is: (a) Arrangements regarding the registration of related rights products, (b) Arrangements for users of related rights who use related rights for commercial purposes must pay royalties to the owner or holder of related rights through the Collective Organization, (c) Provide criminal threats for violations of the economic rights of owners or related rights holders as stipulated in the Indonesian Copyright Law 2014 Act No. 28.

CONCLUSION

Performers' rights, as one of the related rights, have been given legal protection in the Indonesian Copyright Law 2014 Act No. 28. Performers have moral and economic rights. Performers are the only related rights that have moral rights as applicable *mutatis mutandis* with copyrights. Moral rights include the right to maintain the integrity of their work and to protect the work from modification, distortion or changes that damage the image or message of the work. The economic rights of performers in terms of commercial use of creations or related rights products related to public communication, performances and broadcasting or internationally. With moral rights and economic rights, performers have the authority to prohibit other people from using or reproducing or cutting or rearranging without the performers' permission.

Performers have a copyright over the interpretation or execution of the work they perform. This right protects the unique and creative execution of the work so that others cannot copy or imitate it directly without permission. Performers have the right to be recognised as actors in the work. This includes rights to names and photographs used or published. If their performances are recorded, broadcast, or distributed commercially, performers are entitled to royalty payments according to the terms of the contract or applicable copyright laws. Thus, if the performers do not get their rights, the performers can take legal action.

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