

Position Of Song Copyright Royalties As Joint Property After A Divorce Decision Reviewed From The Copyright Law (Study Of Decision Number 1622/Pdt.G/2023/Pa.Jb)

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Abstract. *This research is motivated by the birth of the Decision of case number 1622 / Pdt.G / 2023 / PA.JB which is the first decision in Indonesia that stipulates song copyright royalties as joint assets obtained during the marriage. This study aims to determine and analyze the position of song copyright royalties as joint assets after a divorce decision reviewed from the Copyright Law and Civil Law and the legal consequences of Royalties as Joint Assets After a Divorce Decision Reviewed from the Copyright Law after Decision Number 1622 / PDT.G / 2023 / PA.JB) The research method used is a normative juridical method with a statutory approach with a qualitative juridical analysis method. The results of the study show that the position of song copyright royalties as joint assets after a divorce decision reviewed from the Copyright Law and Civil Law is that song copyright royalties in decision number 1622 / Pdt.G / 2023 / PA.JB are categorized as joint assets because they have economic value and are considered as intangible movable objects obtained during a legal marriage, then all profits from these royalties become joint assets including all derivatives. This is because the song creation process is carried out during the marriage period and in the Copyright Law, including the status of rights and protection of the creator's rights to these royalties and the legal consequences of Royalties as Joint Assets After a Divorce Decision Reviewed from the Copyright Law after Decision Number 1622 / PDT.G / 2023 / PA.JB is that by being recognized as joint assets, they must be divided, this is based on the legal aspect of property that royalties are intangible movable objects in the form of rights. The determination of royalties as joint marital assets is in principle correct because it is considered a right in the form of income. In its decision, the Panel of Judges determined that the royalty distribution would be 50% for each party without any clear legal considerations, as royalties are part of copyright. This limited interpretation of the division of joint assets into two equal parts contradicts the principle of protecting the rights of creators*

in the context of intellectual property law. There are no explicit legal provisions regarding the mechanism for dividing royalties in marriage or after a divorce. This creates legal uncertainty that could potentially lead to future disputes, especially if the royalties are long-term or inherited.

Keywords: Joint Property; Royalties; Song Copyright.

1. Introduction

Divorce is the termination of a marriage for any reason by a judge's decision at the request of one or both parties in the marriage.¹Article 39 paragraph (1) of the Marriage Law also explains that divorce can only be carried out in court after the court concerned has tried and failed to reconcile the two parties and to carry out a divorce there must be sufficient reason, that the husband and wife will not be able to live together again as husband and wife.²

Divorce is an act that is permitted but hated by Allah, but husbands and wives may divorce if their marriage can no longer be maintained, but the divorce must still have reasons as regulated by law that the husband and wife will not be able to live in harmony as husband and wife.³Dissolution of Marriage is a legal term use in the Marriage Law to explain divorce or the end of a marital relationship between a man and a woman who have lived as husband and wife.⁴

A divorce suit is a suit filed by a wife against her husband, for those who are in an Islamic marriage.⁵The term "divorce" legally means the dissolution of a marriage which results in the dissolution of the relationship as husband and wife or means being a husband and wife.⁶

Divorce not only affects marital status and property. According to Article 37 of the Marriage Law in conjunction with Articles 126 and 128 of the Civil Code, divorce results in the dissolution of joint property, which must be divided between the husband and wife.⁷

2. Research Methods

The case approach in research refers to the opinion of Soerjono Soekanto and Peter Mahmud Marzuki. The problem-solving approach used in normative legal research consists of five approaches: the statute approach, the conceptual approach, the historical approach, the case approach, and the comparative approach. The appropriate approach in this research is the case approach.⁸

¹PNHSimanjuntak, Principles of Indonesian Civil Law, Pustaka Djangkat, Jakarta, 2007, p. 53.

²Ahmad Tholabi Kharlie, Indonesian Family Law, Sinar Grafika, Jakarta, 2013, p. 231

³Muhammad Abdul Kadir, Indonesian Civil Law, 5th Edition, Citra Aditya Bakti, Bandung, 2014, p. 118

⁴Amir Syarifuddin, Islamic Marriage Law in Indonesia, 3rd ed., Kencana, Jakarta, 2009, p. 189

⁵Abdulkadir Muhammad, Indonesian Civil Law, Citra Aditya Bakti, Bandung, 2014, p. 119

⁶Muhamma Syaifuddin et al., Divorce Law, Sinar Grafika, Jakarta, 2013, p. 15.

⁷ <https://www.hukumonline.com/klinik/a/dampak-perceraian-terhadap-harta-bersama--lt4f3b41b9d92da/>, Accessed on Sunday, April 6, 2025, at 22.00 WIB

⁸Peter Mahmud Marzuki, Legal Research, Kencana, Jakarta, 2011, p. 93.

3. Results and Discussion

3.1. The Position of Song Copyright Royalties as Joint Property Following a Divorce Decision in Terms of Copyright Law

1. General Provisions on Song Copyright Royalties

Article 1 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that Copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with the provisions of statutory regulations.⁹ Then, Article (2) states that the Creator is one or several people who individually or together produce a creation that is unique and personal.¹⁰ And Article (3) states that Creation is every creative work in the fields of science, art and literature which is produced by inspiration, ability, thought, imagination, dexterity, skill or expertise which is expressed in a tangible form.¹¹

Furthermore, Paragraph (4) states that the Copyright Holder is the Creator as the owner of the Copyright, the party who legally received the right from the Creator, or another party who received further rights from the party who legally received the right.¹²

In general, royalties are defined as payments for the use of intangible assets, but now the definition of royalties can also include payments for the use of intellectual property rights. Royalties are compensation for the use of economic rights obtained from the use of rights to Patents or Copyrights, where this compensation is given when the licensee pays a portion of the income to the legal owner of an item or creation within the scope of Intellectual Property such as Trademarks, Patents, and Copyrights. Article 1 number (21) states that royalties are compensation for the use of the Economic Rights of a Creation or Related Rights Product received by the creator or owner of related rights.

The payment system is in the form of a percentage share of their income in exchange for the use of the owner's assets, this is what is called royalties. Royalties in the scope of Intellectual Property are regulated in Law No. 14 of 2016 concerning Patents and Law No. 28 of 2014 concerning Copyright. In the Patent Law, Royalties are defined as compensation given for the use of rights to Patents. Meanwhile, in the scope of the Copyright Law, Royalties are defined as

⁹See Article 1 Paragraph (1) of Law Number 28 of 2014 concerning Copyright

¹⁰See Article 1 Paragraph (2) of Law Number 28 of 2014 concerning Copyright

¹¹See Article 1 Paragraph (3) of Law Number 28 of 2014 concerning Copyright

¹²See Article 1 Paragraph (4) of Law Number 28 of 2014 concerning Copyright

compensation for the use of economic rights of a creation or related rights product received by the creator or owner of related rights.

Royalties are a form of payment made by a copyright user to the copyright owner (creator) or performer for using their copyrighted work. The amount of royalties paid is based on a percentage of the income arising from the use of someone's copyrighted work or in other ways. The percentage of royalty payments received by the copyright owner depends on the agreement between the copyright user and the copyright owner or performer. The definition of royalties according to the Indonesian Dictionary is a service fee paid by a publisher to an author for each book published, or a service fee paid by a person (company) for goods they produce to a person (company) who has patent rights to the goods.¹³ Royalty is a fee that must be paid at a certain value to the owner of intellectual property rights for the economic enjoyment of an intellectual property right, the amount of which is agreed upon by the parties, for a certain period of time.

Meanwhile, Law Number 28 of 2014 concerning Copyright in Article 1 Paragraph (21) explains that the definition of royalties is a form of compensation for the use of economic rights to a creative work or product of related rights received by the creator of a creative work or owner of related rights.¹⁴ The definition of royalties actually encompasses things like copyrights, patents, trademarks, designs or models, plans, secret formulas or processing methods, and information regarding industrial, commercial, or scientific experience, as well as the right to use industrial, commercial, or scientific equipment. The definition of royalties can also encompass the provision of assistance that can be used to support the exercise of the rights exercised.¹⁵

Referring to the explanation of Article 4 Paragraph (1) letter h of Law Number 7 of 1983 concerning Income Tax, Royalties can be interpreted as an amount of money paid or owed in any manner or calculation, whether done periodically or not, as compensation for:

1. The use or right to use copyright in the field of literature, art or scientific works, patents, designs or models, plans, secret formulas or processes, trademarks, or other forms of intellectual/industrial property rights or similar rights;
2. Use or right to use industrial, commercial or scientific equipment or supplies;

¹³Editorial Team of the Big Indonesian Dictionary, Language Center, Big Indonesian Dictionary, Fourth Edition, (Jakarta: Gramedia Pustaka Utama, 2008), p. 1184.

¹⁴Article 1 Paragraph (21) of Law Number 28 of 2014 concerning Copyright

¹⁵Otto Hasibuan, Copyright in Indonesia: A Special Review of Song Copyright, Neighboring Rights, and Collecting Society, PT. Alumni, Bandung, 2008, p. 52.

3. Provision of knowledge or information in the scientific, technical, industrial or commercial fields;
4. The provision of additional or complementary assistance in connection with the use or right to use the rights mentioned in number 1, the use or right to use the equipment/supplies mentioned in number 2, or the provision of knowledge or information mentioned in number 3, in the form of (i) Use or right to use image recordings or sound recordings or both, for television or radio broadcasts broadcast/transmitted via satellite, cable, fiber optic, or similar technology; (ii) Use or right to use part or all of the radio communications spectrum;
5. Receipt or right to receive image recordings or sound recordings or both, which are distributed to the public via satellite, cable, optical or similar technology;
6. The use or right to use motion picture films, films or video tapes for television broadcasts, or sound tapes for radio broadcasts;

Legal Basis for Royalties Article 1 Paragraph 21 of the Copyright Law states that royalties are compensation for the use of economic rights of a work or related product received by the creator or owner of related rights. Regulations regarding copyright and royalties are regulated in Law Number 28 of 2014 concerning Copyright and Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties, which aim to optimize the management function of copyright royalties for the use of works and related rights products in the field of songs and/or music. The function of the royalty payment itself aims to protect the creator or copyright holder.

Article 40, number 1, letter d of the Copyright Law states that songs and music are intellectual works of human beings that are protected by law. Musicians, as creators of songs and music, have economic rights to the use of their creations for commercial purposes. Therefore, anyone or any party using another person's songs and music for commercial purposes is required to first obtain permission from the creator or copyright holder of the song or music.¹⁶Then the user is required to pay royalties to the creator as a form of economic rights obtained by the creator for the use of his creations for commercial purposes. Commercial use of songs is not considered a violation of Copyright as long as the user fulfills their obligations under the agreement with the Collective Management Institution (LMK) to pay song royalties based on Article 87 Paragraph (4) of Law No. 28 of 2014 concerning Copyright.¹⁷In Article 87 of the Copyright Law, the Collective

¹⁶Article 40 Paragraph (1) Letter d of Law Number 28 of 2014 concerning Copyright

¹⁷Ni Made Dharmika Yogiswari, and I Nyoman Mudana, Legal Protection of Song Copyrights for Arrangement Activities, *Kertha Semaya Udayana Legal Scientific Journal*, Vol. 8, No. 5, 2020, p. 704.

Management Institution acts as an intermediary between users and copyright holders in granting permission (licenses) to copyright users and users must pay royalties to the relevant copyright holders.¹⁸

Commercial use of creations and/or related rights products by users is not considered a violation as long as the user has carried out and fulfilled the obligations in accordance with the agreement with the collective management institution.¹⁹ Thus, if another party wishes to use the work of the creator of the work, then he is required to first ask for permission from the creator or the person who holds the copyright to the work. The granting of this permission can be referred to as the granting of a license, the provisions of which are regulated in Article 80 Paragraph (1) of the Republic of Indonesia Law Number 28 of 2014 concerning Copyright.

2. Joint Property

Husband and Wife Etymologically, joint property is a term consisting of two words, namely wealth and joint. The Great Dictionary of the Indonesian Language (KBBI) defines property as two meanings: First, property is goods (money, etc.) that constitute wealth. Second, property is tangible and intangible assets that have value and are legally owned by a company. Joint property is property acquired jointly during a marriage. Terminologically, joint property is property acquired jointly by a husband and wife during a marriage.²⁰ Joint property is property acquired jointly by a husband and wife during the marriage. The definition of joint property, as defined in Article 35 of the Marriage Law, is that property acquired during the marriage becomes joint property.

One of the definitions of marital property is joint property of husband and wife obtained by both of them during the marriage, such as if someone gives money, or a motorbike, or other goods to a husband and wife, or property purchased by a husband and wife from both of their money, or savings from the husband's salary and the wife's salary combined, all of which can be categorized as joint property or joint property. The Compilation of Islamic Law in Article 1 letter (f) clearly states: "Property in marriage or syirkah is property obtained either individually or

¹⁸Ibid.

¹⁹Mahmuda Pancawisma Febriharini, The Existence of Intellectual Property Rights Against Cyber Law, Scientific Journal: Faculty of Law, University of August 17, 1945, Vol. 5, No. 1, 2016, pp. 13-14.

²⁰Ibid.

together by husband and wife during the marriage and is hereinafter referred to as joint property, without questioning whether it is registered in whose name.²¹

The concept of joint property originally came from customs or traditions that developed in Indonesia in a marriage bond. The Civil Code, which adopted colonial law, in Article 119 states that: "From the time the marriage takes place, according to the law there is joint property entirely between husband and wife as long as there are no other provisions in the marriage agreement. The joint property, during the marriage, may not be eliminated or given away with an agreement between husband and wife."

3.2. Legal Consequences of Royalties as Joint Assets Following a Divorce Decision Reviewed from the Copyright Law Following Decision Number 1622_Pdt.G_2023_Pa.Jb

According to Apeldoorn, rights are divided into absolute rights that apply to everyone and relative rights that only apply to certain subjects. In Articles 503-505 of the Civil Code, objects are defined as goods or rights that can be owned, which are classified into movable, immovable, tangible, and intangible objects. In the Civil Code, there are two types of rights over objects, namely *Bezit* (control) and *Eigendom* (ownership). *Bezit* is a condition in which a person controls or enjoys an object as if it were his own, without regard to actual legal ownership.²²

According to experts, possession includes the right to control movable and immovable objects, with or without the help of others, and includes control of objects that are ownerless (*res nullius*). Meanwhile, *eigendom* is the right of full ownership of an object, including the right to enjoy, use, or carry out legal actions on the object, as long as it does not violate regulations or the rights of others (the concept of *eigendom* in the Civil Code has been revoked with the enactment of the Basic Agrarian Law). Based on the explanation above, copyright is not included in the category of movable or intangible objects according to the Civil Code.

One of the interesting rulings was the West Jakarta District Court's (PA) granting royalties as joint property. The ruling stated that, as Inara's wife, she was entitled to 50 percent of the net royalties from three songs written by Virgoun: *Surat Cinta Untuk Starla*, *Bukti*, and *Selamat*. Dissatisfied with the ruling, Virgoun then filed an appeal. Regarding the ruling, Intellectual Property Rights experts and practitioners emphasized that intellectual property, including copyright, is a *sui generis* work of

²¹Ni Made Dharmika Yogiswari, and I Nyoman Mudana, Legal Protection of Song Copyrights for Arrangement Activities, *Kertha Semaya Hukum Udayana Scientific Journal of Legal Science*, Vol. 8, No. 5. pp. 37-38.

²²Muhammad Dwi Ardiansyah, Kanti Rahayu, Imam Asmarduin, Regulation of Royalty Payment for Copyright of Song Arrangements in Indonesia and America, *Nesya Ekspanding Management*, Central Java, 2021, p. 88

art regulated by [Copyright Act](#). Due to its unique nature, the concept of joint ownership of property related to copyright cannot be equated with other types of property.²³

Song copyright cannot be fully transferred to another party, as copyright ownership is a personal right of the creator, inherent in moral rights. Even if the creator dies, ownership of the song remains with the creator, with the exception of economic rights, which can be transferred to heirs. Economic rights refer to the exclusive right of the creator or copyright holder to obtain economic benefits from the work. These economic rights can be transferred to another party through various means, one of which is licensing. This licensing agreement can be entered into by the creator without the need for spousal consent.²⁴

This transfer of economic rights cannot be carried out for a lifetime. The Copyright Law itself limits copyright license ownership to 25 years. In a marital relationship, royalties can be considered joint property, allowing the wife or partner to enjoy them as long as the work was created during the marriage. However, if the marriage ends in divorce, the concept of royalties as joint property can only be claimed as long as the marriage continues. This means that the wife or partner can claim royalties as joint property until the divorce decree is final and binding. The husband, as the copyright owner, shares the royalties with his wife as the husband's responsibility to meet household needs.²⁵

Furthermore, contributions to song ownership or copyright must be carefully considered. A person can be said to have contributed to a song's creation if they were directly involved in the process. An inspirator cannot claim to be the creator if they have not contributed to the creation of the work itself. According to him, a songwriter has full rights to write a song without having to cite the source of their inspiration as the creator.

However, if the wife claims her involvement in the creation of certain song lyrics, but the husband failed to register them, she can file a lawsuit with the Commercial Court. Conversely, if the husband admits his wife's involvement in further creation,

²³Source :<https://www.hukumonline.com/berita/a/hak-cipta-tak-bisa-dialihkan--royalti-hanya-dinikmati-pasangan-selama-perkawinan-lt65a0a6e6ebe10/?page=all>, accessed on Thursday, May 1, 2025, at 20.00 WIB

²⁴Ibid

²⁵Source :<https://www.hukumonline.com/berita/a/hak-cipta-tak-bisa-dialihkan--royalti-hanya-dinikmati-pasangan-selama-perkawinan-lt65a0a6e6ebe10/?page=all>, accessed on Thursday, May 1, 2025, at 20.00 WIB

a declaration and re-registration with the Directorate General of Intellectual Property Rights is required.²⁶

In this case, copyright is a right that is *sui generis*, which means "of its own kind" and "unique." Copyright has its own characteristics that are different from other types of intellectual property rights, one of which is that copyright protection is something that is naturally born to the creator for the originality of the work he created. For this reason, legal regulations and protection, including every legal act attached to copyright, are subject to special provisions as regulated in the Copyright Law. Referring to Article 16 paragraph (1) of the Copyright Law, copyright is classified as an intangible object. The *a quo* intangible is expressed in the form of rights, namely moral rights and economic rights that are attached to the creator as a single entity whose ownership cannot be separated according to Article 4 of the Copyright Law. Based on Article 9 of the Copyright Law, economic rights include the right to carry out various legal acts, namely:

- a) Publish works,
- b) Multiplying creations in various forms,
- c) Translating works into other languages,
- d) Adapting, arranging, or transforming the work of creation,
- e) Distribute or recopy,
- f) Displaying creations in public,
- g) Publicly announcing the creation,
- h) Conveying through created communication media, and
- i) Renting out the creation.

Copyright transfer can only be done for economic rights, one of which is royalties as regulated in Article 16 paragraph (2) of the Copyright Law. Copyright can be transferred or assigned, either in whole or in part due to inheritance, grant, will, written agreement, or other reasons permitted by law. Specifically for the transfer of economic rights, this applies during the creator's lifetime and will continue for up to 70 (seventy) years after the creator's death, as regulated in Article 58

²⁶Source : <https://www.hukumonline.com/berita/a/hak-cipta-tak-bisa-dialihkan--royalti-hanya-dinikmati-pasangan-selama-perkawinan-lt65a0a6e6ebe10/?page=all>, accessed on Thursday, May 1, 2025, at 20.00 WIB

paragraph (1) of the Copyright Law. However, if not transferred in part or in whole to a third party, the economic rights remain in the hands of the Creator. Clearly, copyright is attached to material rights that are relative in nature, which can only be maintained by certain people. Likewise with Royalties as the actualization of economic rights, this is an absolute right that is only attached to certain objects and can only be transferred legally through legal acts/events, and does not follow where the object is located.²⁷ Clearly, the right to royalties as a form of economic rights can be transferred or inherited continuously as a form of income for the creator to the heirs.

4. Conclusion

The position of song copyright royalties as joint assets after a divorce decision is reviewed from the Copyright Law and Civil Law, namely song copyright royalties in decision number 1622/Pdt.G/2023/PA.JB are categorized as joint assets because they have economic value and are considered as intangible movable objects obtained during a legal marriage, so all profits from these royalties become joint assets, including all derivatives. This is because the song creation process was carried out during the marriage and in the Copyright Law, including the status of rights and protection of the creator's rights to these royalties. The legal consequences of Royalties as Joint Assets after a Divorce Decision Reviewed from the Copyright Law after Decision Number 1622/PDT.G/2023/PA.JB is that if recognized as joint assets, they must be divided, this is based on the legal aspect of property that royalties are intangible movable objects in the form of rights. The determination of royalties as joint marital assets is in principle correct because it is considered a right in the form of income. In the decision, the Panel of Judges determined the distribution of royalties at 50% to each party from the three songs in question. Unfortunately, the a quo decision was not accompanied by clear legal considerations regarding the basis for the proportional distribution of 50% with an equal distribution of 50% because royalties as part of copyright are exclusive and individual rights that are only inherent in the Creator. The limited interpretation of the division of joint assets into two equal parts is contrary to the principle of protecting the creator's rights in the context of intellectual property law. On the other hand, there are no explicit legal provisions regarding the mechanism for the distribution of royalties in marriage or after a divorce. This creates legal uncertainty that has the potential to lead to future disputes, especially if the royalties are long-term or inherited.

²⁷Princess Renita Maharani and Lauditta Humaira, Royalties as Joint Property and Their Legal Consequences in Divorce, *Lex Patrimonium* Volume 4 Issue 1, No. 1, June 2025, p. 7

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