



## LEGAL PROTECTION FOR SONG CREATORS WITH UNREGISTERED WORKS AT THE DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY RIGHTS

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### **Abstract:**

*This research aims to uphold copyright protection, as copyright represents the creative works of individuals or groups and recognizes their achievements through legal recognition. It is expected that creators will be protected under Law Number 28 of 2014, particularly Article 40 paragraph (3), which regulates the protection of works that have not been published or announced but have been realized in tangible form. However, this provision still creates ambiguity, especially regarding copyrights that have not been formally registered. This research employs a normative juridical method with a legislative approach. The findings demonstrate that the concept of legal protection for song copyrights that remain unregistered with the Directorate General of Intellectual Property Rights (DJKI) but have already been published to the public still requires greater legal certainty. The author investigated relevant legal regulations and laws to explain the legal consequences for song creators whose works contain elements of similarity or have been plagiarized by third parties. While Law Number 28 of 2014 establishes a framework for copyright protection, there is currently no legal certainty guaranteeing protection for works that have not been registered with copyright authorities. This is because the concept of exclusive rights as inherent and natural rights provides the meaning that such rights serve as a guarantee for every creator to obtain legal protection.*

**Key words:** Legal Protection, Copyright, Songs

### **Abstrak:**

Penelitian ini bertujuan untuk menjunjung tinggi perlindungan hak cipta karena hak cipta mewakili ciptaan individu atau kelompok dan pengakuan mereka atas suatu prestasi dalam bentuk penghargaan. Pencipta diharapkan akan terlindungi dengan disahkannya Undang-Undang Nomor 28 Tahun 2014, khususnya Pasal 40 ayat (3) yang mengatur perlindungan terhadap ciptaan yang belum diterbitkan atau diumumkan namun telah direalisasikan dalam bentuk nyata. Namun, ketentuan ini masih menimbulkan ambiguitas, terutama mengenai hak cipta yang belum didaftarkan. Metode penelitian yang digunakan adalah yudisial normatif dengan pendekatan legislatif. Hasil penelitian menunjukkan bahwa konsep perlindungan hukum terhadap hak cipta lagu yang belum terdaftar di Direktorat Jenderal Kekayaan Intelektual (DJKI) namun sudah dipublikasikan masih memerlukan kepastian hukum yang lebih jelas. Penulis melakukan investigasi terhadap peraturan hukum dan undang-undang yang relevan untuk menjelaskan akibat hukum bagi pencipta lagu yang lagunya mengandung unsur kemiripan atau dijiplak oleh pihak ketiga. Undang-Undang Nomor 28 Tahun 2014 memang menetapkan kerangka perlindungan hak cipta, namun belum ada kepastian hukum yang menjamin perlindungan terhadap ciptaan yang belum didaftarkan pada lembaga hak cipta. Hal ini dikarenakan konsep hak eksklusif sebagai hak yang hakiki dan kodrati memberikan makna bahwa hak tersebut menjadi jaminan bagi setiap pencipta untuk memperoleh perlindungan hukum.

**Kata kunci:** Perlindungan Hukum, Hak Cipta, Lagu

## **A. Introduction**

When an idea is implemented without any limitations set by law, the creator obtains copyright as their exclusive right based on the declarative principle.<sup>1</sup> Individuals typically seek to protect this monopoly by registering their copyrighted works. However, in the case of creative song works, the uniqueness and originality of each composition is best demonstrated through the individual effort and intellectual process invested in its creation. Therefore, originality is paramount in establishing copyright validity.<sup>2</sup>

To provide peace of mind to creators, a legal framework has been developed to protect copyright holders, both registered and unregistered. In this increasingly advanced era, many creative individuals are producing innovations in the arts, particularly in the form of songs.<sup>3</sup> These creative works have a positive impact on society, such as providing happiness, inspiration, relieving mental stress and tension, improving mood and emotions, and much more. In appreciating and protecting these creations, legal protection is necessary so that the works are not easily plagiarized or imitated and so that proper attribution is given to their creators. The significance of such protection becomes even more crucial when considering that the creation of artistic works, especially songs, requires substantial intellectual investment and emotional expression from the creator.<sup>4</sup>

Because copyright represents the result of individual or collective effort and appreciation, such rights must be protected. Protecting intellectual property is extremely important in today's interconnected global economy.<sup>5</sup> Given the challenges posed by the scope of an increasingly developing global economy, creators will be protected by copyright law.<sup>6</sup> From societal, cultural, economic, political perspectives, and considering the longevity of legally protected works, copyright represents an invaluable resource.<sup>7</sup> The economic dimension of copyright protection is particularly significant, as it enables creators to derive financial benefits from their works through licensing agreements, royalty payments, and other commercial arrangements. Furthermore, the moral dimension ensures that creators receive proper recognition and attribution for their intellectual creations.<sup>8</sup>

Therefore, the legal system in our country should function as a shield, not merely as an accessory. Currently, there exists a new copyright law, namely Law Number 28 of 2014 (hereafter referred to as the Copyright Law in this journal).<sup>9</sup> However, there is still confusion regarding copyrights that have not been registered, as stated in Article 40

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<sup>1</sup> "Law Number 28 of 2014 Concerning Copyright Article 1 Paragraph 1" (2014).

<sup>2</sup> Meriza Elpha Darnia et al., "Perlindungan Hak Kekayaan Intelektual Di Era Digital," *JERUMI: Journal of Education Religion Humanities and Multidisciplinary* 1, no. 2 (2023), doi:10.57235/jerumi.v1i2.1378.

<sup>3</sup> Diah Imaningrum Susanti, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia," *Media Iuris* 5, no. 3 (October 31, 2022): V, 401–28, doi:10.20473/mi.v5i3.40174.

<sup>4</sup> R Purbawati, "Copyright Protection for Song Streaming in Joox," *Yurisdiiksi* 2, no. 2 (2019): II, 620–23.

<sup>5</sup> Anak Agung Mirah Satria Dewi and Anak Agung Mirah, "Legal Protection of Copyright Against Song Cover Versions on Youtube," *Magister Udayana Law Journal* 6, no. 4 (2017): VI, 509.

<sup>6</sup> Abdul Latif Mahfuz, "Problematisasi Hukum Hak Atas Kekayaan Intelektual (HAKI) Di Indonesia," *Jurnal Kepastian Hukum dan Keadilan* 1, no. 2 (2020), doi:10.32502/khdk.v1i2.2592.

<sup>7</sup> "Law Number 19 of 2002 Concerning Copyright" (2002).

<sup>8</sup> Dewi and Mirah, "Legal Protection of Copyright Against Song Cover Versions on Youtube."

<sup>9</sup> Law Number 28 of 2014 Concerning Copyright Article 1 Paragraph 1.

paragraph (3), which concerns the protection of works that have not been formally disclosed or announced but exist in physical form allowing replication of content. This ambiguity creates a critical gap in the legal framework that requires clarification and further investigation.

The primary concern that motivates this research stems from the practical difficulties faced by song creators in Indonesia. While Law Number 28 of 2014 establishes that copyright protection arises automatically upon the creation of a work in tangible form (declarative principle), the protection for unregistered works remains ambiguous in application. This creates a significant legal problem: What is the meaning and scope of copyright protection for songs that have been released to the public but remain unregistered with the Directorate General of Intellectual Property Rights (DJKI)? Furthermore, this ambiguity raises an important practical question: What are the legal consequences for song creators whose works contain elements of similarity or have been plagiarized by third parties, particularly when their original works have not been formally registered?

These questions are not merely theoretical in nature. They have significant practical implications for Indonesian creators in the music industry. Consider a scenario where a musician creates and publishes an original song through digital platforms or social media without registering it with DJKI. Subsequently, another party incorporates similar musical elements or lyrics without permission. Under current law, what legal remedies are available to the original creator? What legal protections actually exist? Does the automatic protection granted by the declarative principle sufficiently shield the creator's interests? These practical concerns demonstrate that while the principle of automatic copyright protection is theoretically established, its concrete application to unregistered works remains unclear, creating legal uncertainty for creators.

The importance of these questions is underscored by the fact that many Indonesian musicians and songwriters do not formally register their works for various reasons, including lack of awareness about the registration process, insufficient understanding of intellectual property laws, limited financial resources, or simple negligence. Yet these unregistered works are frequently published and distributed through modern digital platforms, making them vulnerable to unauthorized copying and plagiarism. The creator's awareness of legal ambiguity may deter them from pursuing legal remedies even when their rights are violated, as they may be uncertain about the strength of their legal position.

To address these concerns, this research pursues two primary objectives that are integrally connected and mutually reinforcing. The first objective is to comprehensively understand the legal concept and framework protecting song copyrights that have not been formally registered with the Directorate General of Intellectual Property Rights but have already been published and disclosed to the public. This understanding is essential because it will clarify the theoretical foundation and practical application of the declarative principle in copyright law. Specifically, this research will examine how Article 1 paragraph (1) and Article 40 paragraph (3) of Law Number 28 of 2014 operate in practice, and whether these provisions actually provide adequate protection to unregistered works. Additionally, the research will analyze the relationship between the automatic acquisition of copyright rights and the specific mechanisms for asserting and defending these rights in legal proceedings.

The second objective is to explain and analyze the concrete legal consequences that arise when song creators whose works are unregistered face unauthorized copying or plagiarism by third parties. This objective seeks to provide practical clarity about the remedies available to creators, the standards of proof required to establish infringement, the burden of proof distribution between parties, and the substantive and procedural remedies available under Indonesian copyright law. This investigation will determine whether creators of unregistered songs have effective legal recourse and, if so, what conditions and limitations apply to such recourse. Furthermore, the research will examine the intersection between moral rights and economic rights in the context of unregistered works, as these two dimensions may be treated differently under existing law.

By achieving these two objectives, the research will contribute to filling an important gap in legal understanding. The expected contributions include: (1) providing clarity on the legal status and protection mechanisms for unregistered copyrighted songs in Indonesia; (2) offering practical guidance to song creators regarding their legal rights and available remedies; (3) identifying gaps and ambiguities in current copyright legislation that may require legislative clarification or amendment; (4) contributing to the broader discourse on intellectual property protection in the digital age, where rapid creation and distribution of content have outpaced traditional legal frameworks; and (5) potentially informing policy recommendations for strengthening copyright protection mechanisms, particularly for creators who do not or cannot register their works.

This research is particularly timely given the rapid expansion of digital music platforms, social media sharing mechanisms, and online distribution channels that have fundamentally transformed how creative works are created, shared, and potentially plagiarized. The legal framework, however, has not evolved at the same pace, leaving creators vulnerable to uncertainty. By investigating and clarifying the legal protection available to unregistered works, this research aims to provide both theoretical understanding and practical solutions to contemporary copyright challenges in Indonesia.

This research builds upon and extends previous scholarly work in Indonesian copyright law. Earlier research with similar titles includes "Factors Causing Non-Registration of Copyright by Academic Artists Producing Works of Art" by Ni Wayan Masyuni Sujayanthi, which identifies the causes and motivations behind artists' failure to register their copyrighted works. While that research addresses the why of non-registration, it does not thoroughly examine the legal consequences and protection mechanisms available when unregistered works are infringed. Another relevant study, "Legal Protection for Songs Uploaded Without Creator's Permission on YouTube" by P. Dina Amanda Swari and I Made Subawa, focuses on unauthorized distribution of copyrighted songs on digital platforms. While that research addresses infringement mechanisms through online platforms, it does not specifically examine the legal status of unregistered works or their differential treatment under copyright law.

This research presents a different and complementary perspective. Rather than focusing on the causes of non-registration (as Sujayanthi did) or on platform-specific infringement issues (as Swari and Subawa did), this research concentrates on the fundamental legal question: Do unregistered copyrighted works receive adequate legal protection, and if so, what is the nature and extent of that protection? Specifically, this research addresses the gap between the theoretical statement that copyright protection arises automatically upon

creation and the practical question of how creators can actually assert and defend these rights when they have not registered their works. The research will clarify the distinction between the automatic acquisition of copyright (which occurs without registration) and the registration of that copyright (which may be necessary for certain legal proceedings or remedies). Furthermore, it will examine whether there are substantive differences in the protection afforded to registered versus unregistered works, and whether any such differences are justified by policy considerations or reflect legislative gaps.

By focusing on unregistered works specifically and by examining both the theoretical foundation and practical application of copyright protection in Indonesian law, this research aims to contribute new insights and analyses that complement and extend the existing scholarly literature. The research recognizes that while the legal principle of automatic copyright protection is established, its practical implementation for unregistered works remains inadequately examined, and this gap in understanding creates real difficulties for creators and potentially undermines the policy objective of providing effective protection to all creators regardless of registration status.

## **B. Research Methods**

The author employs a normative juridical methodology, which is the standard approach for legal research examining existing legal rules, principles, and frameworks.<sup>10</sup> Specifically, the research uses a legislative approach perspective, which involves systematic examination of legal principles as they are established in foundational constitutional documents (such as the 1945 Constitution of the Indonesian Republic) and in specific legislation (such as Law Number 28 of 2014 on Copyright). This approach involves identifying, analyzing, and interpreting the relevant legal rules and principles to understand their content, scope, and application to the specific research questions.

Through this methodology, the government's legal framework for protecting intellectual property, including the concept of copyright and the specific mechanisms for protecting unregistered copyrighted works, will be systematically examined. The research involves tracing relevant legal materials from national legal sources, including constitutional provisions, statutory law, regulations, and judicial decisions, to identify and understand the government's approach to copyright protection and to determine whether current legal mechanisms provide adequate protection for unregistered works. Secondary sources, including legal scholarship, academic articles, research reports, and textbooks, will be consulted to understand how legal scholars and experts have interpreted and analyzed copyright protection issues. The research will trace the evolution of copyright law in Indonesia and examine how the law has attempted to address copyright protection in the digital age.

Sources of law consulted in this research include: (1) primary legal sources, such as the 1945 Constitution, Law Number 28 of 2014 on Copyright, and other relevant statutory enactments; (2) secondary legal sources, including academic journals, legal commentaries, research reports, and authoritative textbooks; (3) tertiary sources, including online legal databases and reference materials; and (4) case materials, where applicable, that illustrate how courts have interpreted and applied copyright law to specific factual situations. By

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<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

systematically analyzing these sources, the research will construct a comprehensive understanding of the legal framework governing copyright protection for unregistered works.

### **C. Result and Discussion**

This section presents the substantive findings of the research and provides comprehensive analysis of the legal protection frameworks and consequences applicable to song creators with unregistered copyrighted works in Indonesia. The discussion is organized thematically to address the core research questions and objectives.

#### **1. Conceptual Foundation: Understanding Legal Protection for Copyrighted Works**

Based on Law Number 28 of 2014 regarding Copyright, the concept of legal protection for artistic works provides that a person or group is afforded legal protection if they become the target of, or are entitled to, legal instruments of a preventive or coercive nature. Illustrated through the definition of legal protection, this concept carries the meaning that law can provide justice, maintain order, ensure certainty, bring benefits, and promote peace for all society. Understanding what constitutes legal protection is fundamental to understanding whether and how unregistered works receive protection under Indonesian law.

Legal protection operates through two distinct mechanisms: preventive protection and repressive protection. Preventive legal protection refers to protective measures that prevent violations of rights from occurring in the first place. Repressive legal protection refers to remedial mechanisms that provide recourse after a violation has already occurred. Both mechanisms are equally important in a comprehensive legal protection system. For copyright holders, preventive protection might include legal prohibitions against unauthorized copying, while repressive protection provides remedies such as damages and injunctive relief when infringement has occurred.

The aim of preventive legal protection is to reduce the likelihood of litigation by giving affected parties the opportunity to voice their concerns before final decisions are made by the government or before disputes escalate.<sup>11</sup> This is particularly important for governmental actions based on freedom to act, as the government is encouraged to be careful in making decisions based on discretion with safeguards provided by preventive law. In the context of copyright, preventive protection manifests through several mechanisms:

First, the legal recognition that copyright arises automatically upon creation of a work in tangible form provides a preventive safeguard. By establishing that creators automatically possess copyright rights without requiring registration or compliance with formalities, the law removes barriers that might otherwise prevent effective assertion of rights. This

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<sup>11</sup> Mira Lady Virginia and Desak Putu Dewi Kasih, "Copyright Protection Against Illegal Distribution of E-Books on the Internet," *Kertha Semaya: Journal of Legal Studies* 9, no. 7 (2021): IX, 1165.

automatic recognition is based on the declarative principle established in Article 1 paragraph (1) of the Copyright Law.<sup>12</sup>

Second, the provision that copyright protection extends to works that have not been published or formally announced (as stated in Article 40 paragraph 3) provides preventive protection by establishing that creators do not need to publicly disclose their works to be entitled to legal protection. This provision is especially important because it recognizes that creative works exist in various stages of development and completion, and protection should extend to all stages where the work exists in tangible form.

Third, notice requirements and warning mechanisms constitute preventive protection. While the Copyright Law does not mandate registration as a prerequisite to copyright ownership, copyright notices and marks serve a preventive function by informing the public that a work is copyrighted and identifying the copyright holder. This notice function can deter potential infringers by making clear that the work is protected and by identifying the rights holder who may pursue legal action.

Repressive legal protection is intended to resolve disagreements and provide remedies after violations have occurred. It represents the enforcement dimension of copyright law and addresses the question: What happens when someone infringes a copyright? How can the copyright holder obtain a remedy? In Indonesian copyright law, repressive protection is administered through both civil courts and criminal justice mechanisms, though civil remedies are more commonly pursued in copyright cases.

The fundamental principle underlying repressive protection is the supremacy of law, which is the second guiding principle in legal protection generally. In copyright law, this principle manifests as the rule of law requirement that disputes be resolved according to pre-existing legal rules rather than arbitrary discretion. This connection between supremacy of law and copyright protection is particularly significant because intellectual property rights, as abstract rights that exist in intangible creative expression, depend critically on systematic legal enforcement to be meaningful.

## **2. The Declarative Principle: Automatic Copyright Acquisition**

One of the most important findings of this research is clarifying how copyright arises under Indonesian law and the distinction between the moment copyright is acquired and the moment it might be registered. Under Article 1 paragraph (1) of the Copyright Law, copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in tangible form without requiring registration or compliance with formalities. This principle is known as the "declarative principle" or "automatic acquisition principle."

The declarative principle stands in contrast to the "constitutive principle" used in some other countries, where copyright rights are only established when a creator complies with specific requirements, such as registration or deposit of copies. Indonesia has deliberately chosen the declarative approach, which aligns with international practice under the Bern Convention for the Protection of Literary and Artistic Works. This choice reflects a policy

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<sup>12</sup> P Dina Amanda Swari and I Made Subawa, "Legal Protection for Songs Uploaded Without Creator's Permission on YouTube Sites," *Kertha Semaya Journal* 6, no. 10 (2018).

decision to protect all creative works regardless of whether the creator has taken formal steps to register them.<sup>13</sup>

The practical implication of the declarative principle is that copyright ownership is automatic and cannot be withheld or denied based on registration status. A creator who writes a song and records it (thereby giving the song tangible form) immediately and automatically becomes the copyright owner, whether or not the creator has registered the work with DJKI. This automatic ownership right exists regardless of whether the work has been published or publicly disclosed. Therefore, registration with DJKI is optional and does not determine whether copyright exists.

A critical clarification that emerges from this research is distinguishing between two distinct legal concepts that are often confused: the ownership of copyright as a legal right versus the registration of copyright as an administrative record. Understanding this distinction is essential to resolving the ambiguity about whether unregistered works receive legal protection.

Copyright Ownership refers to the legal right to control and benefit from creative expression.<sup>14</sup> Under the declarative principle, copyright ownership arises automatically when a work is created in tangible form. This ownership is absolute and complete; it is not deficient or reduced in any way by the failure to register. A creator who has not registered a song owns the copyright to that song with all the rights and protections that copyright entails.

REGISTRATION, by contrast, refers to recording copyright ownership in an official registry maintained by the government (in Indonesia's case, the DJKI). Registration serves several practical functions: (1) it provides evidence of ownership and the date of creation or first publication; (2) it creates a publicly available record that potential licensees can consult; (3) it may be required to pursue certain legal remedies in some jurisdictions; and (4) it may trigger certain statutory benefits such as presumptions of validity. However, registration is not a condition precedent for copyright ownership. A copyright exists whether or not it is registered.

This distinction has profound implications for unregistered works. The fact that a song is unregistered does not mean the creator lacks copyright in it. Rather, it means that the ownership of that copyright has not been formally recorded in an official registry. The rights themselves exist regardless of registration status. However, the failure to register may have practical consequences for asserting those rights, particularly if the creator must prove ownership or priority in a dispute.

### **3. The Nature of Exclusive Rights in Copyright**

Copyright protection in Indonesia is based on recognizing copyright as an absolute right held by creators. An absolute right is one that can be enforced against the world at large;

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<sup>13</sup> Rohmatulloh Rohmatulloh, Anton Aulawi, and Alamsyah Basri, "Legal Awareness of Serang City Musicians Regarding Music Copyright in Light of Law No. 28 of 2014 Concerning Copyright," *Pro Patria: Journal of Education, Citizenship, Law, Social and Political Studies* 5, no. 1 (2022).

<sup>14</sup> Oksidelfa Yanto, "Bern Convention and Copyright Protection," *Surya Kencana Dua Journal: Dynamics of Legal Issues and Justice* 6, no. 1 (2016).

the holder of an absolute right may pursue a claim against any person who violates or infringes that right. This characteristic distinguishes absolute rights from relative rights, which are enforceable only against specific persons with whom the holder has a prior relationship (such as contractual rights).

By characterizing copyright as an absolute right, Indonesian law recognizes that the copyright holder's prerogatives extend to controlling use by any person, regardless of whether the copyright holder has any prior relationship with that person. Therefore, if Person A creates a copyrighted song and Person B uses that song without authorization, Person A may assert copyright claims against Person B even though A and B have no prior contractual relationship. This feature of copyright as an absolute right is critical to its functioning in the creative industries.

Because copyright is characterized as an absolute right, its protection should not depend on registration status. An absolute right that can only be asserted if formalities are complied with ceases to be truly "absolute." To maintain the absolute character of copyright rights, protection must extend to all copyright holders equally, regardless of whether they have complied with registration requirements. This reasoning supports interpreting Indonesian copyright law as providing protection to both registered and unregistered works.

The Copyright Law recognizes two distinct dimensions of copyright: moral rights and economic rights. Moral rights refer to the creator's personal interests in the work, including the right to be credited as the author and the right to object to distortion or mutilation of the work. Economic rights refer to the creator's financial interests in the work, including the right to reproduce the work, distribute copies, and receive compensation for authorized uses.<sup>15</sup>

An important finding of this research is that moral rights may warrant different treatment than economic rights in the context of unregistered works. Moral rights are inherent to the creative act and cannot be transferred or waived by most legal systems.<sup>16</sup> Therefore, the creator's moral rights (right of attribution and integrity) should clearly extend to unregistered works with full force. Economic rights, while also present from the moment of creation, may involve more complex questions about proof of ownership and priority when multiple parties claim rights.

#### **4. The Scope of Protected Works**

Based on Article 40 paragraph (1) of the Copyright Law, works that can be protected are those in the fields of science, art, and literature. This encompasses a broad range of creative expression including books and all scientific written works, ceramics, lectures, songs, music compositions, choreography, films, photographs, and many others. The law's breadth is intentional, recognizing that creativity manifests across many domains.

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<sup>15</sup> N K Supasti Dharmawan and et al., *Harmonization of Indonesian Intellectual Property Law* (Bali: Swasta Nulus, 2018).

<sup>16</sup> Ni Wayan Masyuni Sujayanthi, "Factors Causing Non-Registration of Copyright by Academic Artists Producing Works of Art at the Faculty of Performing Arts, Indonesian Institute of Arts Denpasar," *Segara Widya (Research Results Journal)* (Denpasar: , n.d.).

Songs and musical compositions receive explicit recognition in Article 40 paragraph (1) letter d as subjects of copyright protection. The law does not distinguish between registered and unregistered songs in listing what qualifies for protection. The statute simply states that songs are protected works without any qualifier that this protection applies only to registered songs. This statutory language supports interpreting the law as extending protection to all songs, whether registered or unregistered.

Article 40 paragraph (3) provides that protected works include creations that have not been published or announced but have been realized in tangible form. This provision is particularly significant because it establishes that copyright protection does not depend on publication or public disclosure. A creator who composes a song and records it possesses copyright in that song even if the song has never been publicly performed, distributed, or released.

The recognition of protection for unpublished works serves important policy objectives. First, it protects creators during the development and refinement stages of their works. A musician who is composing a complex symphony should not fear that disclosing drafts to trusted colleagues or collaborators will result in loss of copyright rights. Second, it recognizes that in the digital age, "publication" has become an ambiguous concept. A song uploaded to a private social media account visible only to approved friends exists in a state between complete secrecy and public dissemination. Protecting unpublished and partially disclosed works ensures creators control when and how their works enter the public domain.

## **5. Legal Framework and Regulatory Architecture**

Indonesia's legal framework for copyright protection is grounded in constitutional principles and international treaty obligations. The 1945 Constitution, as interpreted through various scholarly and judicial sources, recognizes the fundamental importance of intellectual and creative work. This constitutional recognition provides a foundation for the statutory copyright protections in Law Number 28 of 2014. The Copyright Law implements and elaborates upon these constitutional principles, establishing a comprehensive statutory regime for copyright protection.<sup>17</sup>

Indonesia is also a signatory to the Bern Convention for the Protection of Literary and Artistic Works, an international treaty that establishes minimum standards for copyright protection. The Bern Convention explicitly does not require copyright protection to depend on registration or formal compliance with any conditions. By ratifying the Bern Convention, Indonesia committed to providing copyright protection in a manner consistent with these international standards. This international obligation reinforces the interpretation that Indonesia's Copyright Law provides protection to unregistered works.

While this research has emphasized that copyright exists regardless of registration, registration still serves important practical functions within the legal framework. Registration with DJKI provides several benefits that may facilitate assertion of copyright rights: (1) creation of an official record of ownership that may be consulted by third parties;

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<sup>17</sup> Camelia Kartika, "Implementation of Copyright Legal Protection for the Arema Indonesia Logo Against Empowerment Practices by Attribute Producers in Malang City" (Malang: , 2011).

(2) provision of prima facie evidence of the registrant's ownership; (3) potential creation of a public database that deters infringement by establishing publicly accessible information about existing copyrights; and (4) possible eligibility for statutory remedies or enhanced damages that may depend on registration.

However, the optional nature of registration in Indonesia means that while registration may provide practical advantages, the absence of registration does not negate copyright ownership. This reflects a policy choice prioritizing protection of all creators over administrative convenience. The burden of proving ownership may be heavier for unregistered works, but the right to copyright itself is not diminished or withheld.

When a third party utilizes a copyrighted song without authorization whether through reproduction, distribution, performance, or communication infringement occurs. The law establishes that infringement is unlawful regardless of whether the copyrighted work is registered. A creator of an unregistered song possesses the same exclusive rights under Articles 8 and 9 of the Copyright Law as a creator of a registered song. These exclusive rights include the right to: Publish the creation; Reproduce the creation in any form; Translate the creation; Adapt, arrange, or transform the creation; Distribute the creation or its copies; Perform the creation; Announce the creation; Communicate the creation; Rent the creation.

Any unauthorized exercise of these exclusive rights constitutes infringement. Importantly, the law does not provide exceptions for infringement of unregistered works. The legal consequences for infringement are the same regardless of registration status.

While the law establishes protection for unregistered works, this research identifies practical challenges that creators of unregistered works may face when attempting to enforce their rights. These challenges do not negate the existence of rights but rather affect the difficulty of asserting them in practice.

*Proof Of Ownership:* In legal proceedings, a copyright holder must establish ownership of the copyright. For registered works, DJKI provides official evidence of ownership. For unregistered works, the creator may need to provide other evidence such as: creation date documentation, drafts or development materials showing the evolutionary process, contemporaneous records such as emails or messages establishing when the work was created, witness testimony from collaborators or people who heard early versions, technical metadata from digital files showing creation dates, and the creator's testimony regarding the creative process. While such evidence can establish ownership, it requires more effort and expense than simply producing a registration certificate.

*Establishing Originality:* Copyright protection extends only to original works, not to ideas, concepts, or public domain materials. A copyright holder must prove that their work is original (independently created) and not copied from existing works. This burden applies equally to registered and unregistered works. However, for unregistered works lacking formal documentation, establishing originality through other means may be more challenging.

*Demonstrating Infringement:* The copyright holder must show that the defendant's work is substantially similar to the copyrighted work and that the defendant had access to the

copyrighted work. "Substantial similarity" is determined by examining both the overall impression and specific similar elements. "Access" means the defendant had the opportunity to hear or see the copyrighted work before creating their own. For unregistered works widely distributed through digital platforms, demonstrating access is often straightforward. However, for lesser-known unregistered works, proving that the defendant could have accessed the work may be more difficult.

*Quantifying Damages:* When infringement is established, the copyright holder may seek damages compensation. The Copyright Law provides for several types of damages including actual damages (proven harm to the copyright holder's economic interests), unjust enrichment (gains made by the infringer), and statutory damages (fixed amounts set by law regardless of actual harm). For registered works, statutory damages may be available with enhanced amounts. For unregistered works, establishing actual damages or unjust enrichment may require more detailed economic evidence.

Indonesian copyright law provides multiple remedies for holders of infringed copyrights, including unregistered works. These remedies fall into two main categories: civil remedies and criminal remedies.

*Civil Remedies:* Civil copyright disputes are brought before civil courts where the copyright holder seeks relief against the infringer. Civil remedies available include: 1) Monetary Damages: The copyright holder may recover from the infringer either: (a) actual damages, calculated as the harm to the copyright holder's interests, typically measured by lost licensing revenue; (b) unjust enrichment, calculated as profits earned by the infringer through infringement; or (c) statutory damages, which are fixed amounts set by law (ranging from a minimum to maximum amounts) that need not be proven and may be awarded in addition to actual damages. 2) Injunctive Relief: Courts may order the infringer to cease infringing activities (prohibitory injunction) or to take positive actions such as destroying infringing copies (mandatory injunction). Preliminary injunctions may also be available to prevent ongoing infringement pending trial of the full case. 3) Seizure Of Infringing Copies: Courts may order the seizure of materials used in infringement and destruction of infringing copies. 4) Moral Damages: In cases where the infringer's conduct has caused emotional harm or damaged the creator's reputation, moral damages (compensation for non-economic harm) may be awarded.

The Copyright Law also provides criminal sanctions for certain infringements. Criminal cases are brought by prosecutors and may result in imprisonment or fines. Criminal remedies are typically available for commercial-scale infringement. The criminal provisions apply equally to infringements of registered and unregistered works, though practical enforcement may focus more on registered works due to the evidentiary advantages they provide.<sup>18</sup>

While legal remedies exist for infringement of unregistered works, creators must consider practical factors when deciding whether to assert copyright rights. The cost of litigation, the evidentiary burden, the likely recovery if successful, and the time required for

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<sup>18</sup> Muhammad Yusuf Ibrahim, "PERLINDUNGAN HUKUM KEKAYAAN INTELEKTUAL DI INDONESIA," *MIMBAR INTEGRITAS: Jurnal Pengabdian* 2, no. 1 (2023), doi:10.36841/mimbarintegritas.v2i1.2651.

resolution all affect the practical feasibility of enforcement. These considerations may be particularly acute for unregistered works where the creator bears a heavier evidentiary burden. Small creators with limited resources may find that the cost of proving ownership and infringement exceeds the potential recovery, making legal action impractical. Nonetheless, the legal rights themselves exist and provide the foundation for resolution through negotiation or legal action when circumstances justify it.

This research has identified a significant gap between the theoretical legal protection available to creators of unregistered works and the practical difficulties these creators face in asserting their rights. While Indonesian copyright law properly interpreted provides automatic protection to unregistered works, the practical assertion of those rights presents challenges:

Many creators are unaware that copyright protection is automatic and does not require registration. This misunderstanding leads creators to believe their unregistered works have no legal protection, causing them to refrain from pursuing claims even when infringement occurs. Public education about the automatic nature of copyright protection could bridge this information gap. Proving ownership of unregistered works is more burdensome than proving ownership of registered works. Registration creates an official record that strongly evidences ownership. The absence of such a record increases the evidentiary burden. While this burden is not insurmountable, it may exceed the resources of individual creators, particularly those with limited means. The absence of clear statutory provisions addressing the special circumstances of unregistered works creates ambiguity about which procedures and remedies apply. While the same legal framework should apply to both registered and unregistered works, unclear statutes may encourage courts to apply requirements that are inapplicable or to deny relief based on failure to register. Clarifying legislation would reduce this enforcement gap.

Based on the findings of this research, several policy implications emerge regarding how copyright protection for unregistered works might be strengthened:

*Public Awareness:* Governments and copyright societies should implement programs to educate creators about automatic copyright protection. Many creators register their works unnecessarily because they incorrectly believe registration is required. Public education could reduce unnecessary administrative burden and registrations. *Presumptions Of Ownership:* The Copyright Law could be amended to provide that the creator named as the author of a work is presumed to be the copyright owner unless proven otherwise. This presumption would shift the evidentiary burden and reduce litigation costs for creators asserting their rights. *Clarity In Statutory Language:* The Copyright Law could include explicit provisions stating that copyright protection extends to unregistered works and that registration is optional, not prerequisite. Clear statutory language would eliminate ambiguity and provide guidance to courts interpreting the law. *Digital Protection Measures:* As copyright infringement increasingly occurs through digital means, legal protections for technical measures (such as encryption or digital rights management) that creators use to protect their works would strengthen practical enforcement. The WIPO Internet Treaties provide models for such protections that Indonesia might consider adopting. *Affordable Dispute Resolution:* Given that many creators have limited resources, making copyright dispute resolution more affordable through small claims procedures or

mediation mechanisms would improve practical access to enforcement mechanisms. Alternative dispute resolution could complement traditional litigation while reducing costs.

#### D. Conclusion

Intellectual Property Regulations in Indonesia establish a framework for legal protection of copyright. This protection is based on the concept of exclusive rights as fundamental rights possessed by creators. These exclusive rights serve as a guarantee for all creators, where Article 1 paragraph 1 of this regulation specifically protects song creators. Because the term registration has been modified in Law Number 28 of 2014, various forms of copyright infringement in creative arts fields, such as music, occur frequently in Indonesia. Repressive legal protection is legal protection aimed at resolving disputes in the handling of legal protection by general courts or administrative courts in Indonesia, which falls within the category of legal protection. The principle of this legal protection is protection against government actions that is based on recognition of concepts of copyright protection.

The research reveals that while Indonesian copyright law provides automatic protection to song creators regardless of registration status, significant gaps exist between theoretical protection and practical enforcement. Unregistered works face particular challenges in proof of ownership and enforcement of rights, though the legal foundation for protection remains solid. Future legislative clarifications and policy measures addressing these practical gaps would strengthen protection for all creators, particularly individual musicians and songwriters who may lack resources to navigate complex legal procedures.

#### Reference:

- Amanda Swari, P Dina, and I Made Subawa. "Legal Protection for Songs Uploaded Without Creator's Permission on YouTube Sites." *Kertha Semaya Journal* 6, no. 10 (2018).
- Darnia, Meriza Elpha, Cindy Dhede Monica, Munawardi Munawardi, and Refi Aprillia. "Perlindungan Hak Kekayaan Intelektual Di Era Digital." *JERUMI: Journal of Education Religion Humanities and Multidiciplinary* 1, no. 2 (2023). doi:10.57235/jerumi.v1i2.1378.
- Dewi, Anak Agung Mirah Satria, and Anak Agung Mirah. "Legal Protection of Copyright Against Song Cover Versions on Youtube." *Magister Udayana Law Journal* 6, no. 4 (2017): 509.
- Dharmawan, N K Supasti, and et al. *Harmonization of Indonesian Intellectual Property Law*. Bali: Swasta Nulus, 2018.
- Ibrahim, Muhammad Yusuf. "PERLINDUNGAN HUKUM KEKAYAAN INTELEKTUAL DI INDONESIA." *MIMBAR INTEGRITAS: Jurnal Pengabdian* 2, no. 1 (2023). doi:10.36841/mimbarintegritas.v2i1.2651.
- Kartika, Camelia. "Implementation of Copyright Legal Protection for the Arema Indonesia Logo Against Empowerment Practices by Attribute Producers in Malang City." Malang: , 2011.
- Law Number 19 of 2002 Concerning Copyright (2002).
- Law Number 28 of 2014 Concerning Copyright Article 1 Paragraph 1 (2014).
- Mahfuz, Abdul Latif. "Problematic Hukum Hak Atas Kekayaan Intelektual (HAKI) Di Indonesia." *Jurnal Kepastian Hukum dan Keadilan* 1, no. 2 (2020). doi:10.32502/khdk.v1i2.2592.

- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2021.
- Purbawati, R. "Copyright Protection for Song Streaming in Joox." *Yurisdiksi* 2, no. 2 (2019): 620–23.
- Rohmatulloh, Rohmatulloh, Anton Aulawi, and Alamsyah Basri. "Legal Awareness of Serang City Musicians Regarding Music Copyright in Light of Law No. 28 of 2014 Concerning Copyright." *Pro Patria: Journal of Education, Citizenship, Law, Social and Political Studies* 5, no. 1 (2022).
- Sujayanthi, Ni Wayan Masyuni. "Factors Causing Non-Registration of Copyright by Academic Artists Producing Works of Art at the Faculty of Performing Arts, Indonesian Institute of Arts Denpasar." *Segara Widya (Research Results Journal)*. Denpasar: , n.d.
- Susanti, Diah Imaningrum. "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia." *Media Iuris* 5, no. 3 (October 31, 2022): 401–28. doi:10.20473/mi.v5i3.40174.
- Virginia, Mira Lady, and Desak Putu Dewi Kasih. "Copyright Protection Against Illegal Distribution of E-Books on the Internet." *Kertha Semaya: Journal of Legal Studies* 9, no. 7 (2021): 1165.
- Yanto, Oksidelfa. "Bern Convention and Copyright Protection." *Surya Kencana Dua Journal: Dynamics of Legal Issues and Justice* 6, no. 1 (2016).