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Moral Rights Protection of Music Creators' Reputation Under the Berne Convention 1886

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Abstract: Berne Convention for the Protection of Literary and Artistic Works 1886 is one of the main pioneers regarding the protection of works as copyright internationally. The establishment of the agreement is intended to provide standardization for each state party internationally as an effort to protect every work in the world. One of the protection efforts is through moral rights attached to the creator or owner of the work who has the right of attribution to take ownership claims to a work and the right of integrity to prevent his work from being misused which can have an impact on his honor or reputation. Moral rights violations, especially in musical works, often occur in the world even though the economic rights have been transferred and also during major events such as presidential candidate campaigns. However, the application of law enforcement and sanctions provided by this agreement to perpetrators of moral rights violations are regulated in the domestic law of each state party through the harmonization of these regulations. The research method used is a normative juridical approach.

Keyword: Berne Convention, Moral Rights, Reputations, Violations.

INTRODUCTION

The Berne Convention for the Protection of Literary and Artistic Works 1886 ("Berne Convention") represents one of the primary initiators and pioneers of multilateral agreements protecting copyrighted works. Historically, the Berne Convention was first negotiated in 1858 and 1885, before being agreed upon and becoming binding in 1886 with the first ten countries becoming signatories (Gabriel, 2020: 3). Since its ratification and implementation, the Berne Convention has undergone several revisions and amendments, including Paris 1896, Berlin 1908, Berne 1914, Rome 1928, Brussels 1948, Stockholm 1967, and Paris 1971, which were fundamentally aimed at adapting to global developments in the rapidly expanding scope of copyright to protect each member state of the Berne Convention in prioritizing protection for all works worldwide (Gabriel, 2020: 3-4). In its development from 1886 to 2022, the Berne Convention has been ratified by 181 countries (WIPO, 2024).

Regarding the main purpose of establishing the Berne Convention, it was founded on copyright ideology discovered in documents from 1840 concerning apprehensions that works or creations made available to the public could be misused and left unprotected in terms of usage restrictions (Gabriel, 2020: 4). This aligns with the provisions written in the preamble of the Berne Convention, which stipulates that the contracting states, based on their collective desire to protect as effectively and universally as possible the rights of creators over their literary and artistic works, should receive equal treatment in the international arena (Berne Convention, 1886). Furthermore, the pioneers of the Berne Convention strongly prioritized creators' rights, as demonstrated in the declaration made at the meeting of Berne Convention member states in Geneva in 1986, reaffirming their commitment to protecting creators' rights over their works as a component of human rights to be granted recognition and protection not only in their respective countries but also internationally (Ricketson and Ginsburg, 2015: 4).

In the first century of the Berne Convention's implementation, this innovative international legal framework opened numerous pathways for the development of human thought from Europe to Asia and persisted despite world wars in providing protection for every creation to ensure creators' rights (Ricketson and Ginsburg, 2015: 20). Based on this, there are five main objectives of the Berne Convention: the implementation of international standardization of copyright law, the elimination of time constraints that impede international copyright protection, the provision of universal protection for all creators or artists worldwide, the provision of effective copyright protection without procedural barriers in its enforcement, and the promotion of international copyright protection (Hatch, 1989: 174).

Regarding the implementation of the Berne Convention, this agreement has had significant impact on literary and artistic work practices worldwide. This can be observed from the statement by Ronald Reagan, President of the United States, in 1988, who declared that the Berne Convention had established international standards to protect creators' works to the fullest extent possible (Hatch, 1989: 171-173). Furthermore, the Berne Convention can only apply to certain creations as stipulated in Article 2 of the Berne Convention (1886):

The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

Based on the above provisions, the term "musical compositions with or without words" encompasses music created by authors as one of the forms of work protected by the Berne Convention. Furthermore, this agreement can only be applied to subjects regulated in Article 3 of the Berne Convention (1886):

- a) Creators who are nationals of one of the contracting states, for their works, whether published or unpublished;
- b) Creators who are not nationals of one of the contracting states, but whose works are published in the territory of a contracting state; and/or
- c) Creators who are not nationals of one of the contracting states, but who are resident in the territory of a contracting state.

Therefore, the Berne Convention fundamentally divides its applicability into two types: personal (nationality) and geographical (publication location), thus providing a balance

between private and public interests in protecting these creators' rights (Manghutay, 2012: 560).

One of the main provisions pioneering creator rights protection in the Berne Convention is the regulation of moral rights. This is established in Article 6bis of the Berne Convention, which stipulates that independently of the creator's economic rights, even after their transfer, the creator maintains the right to claim ownership of a work to prevent actions that may harm their honor or reputation, such as distortion, mutilation, and/or other modifications that could diminish the creator's standing (Berne Convention, 1886: Art. 6bis(1)). These rights remain inherent to the creator regardless of whether their economic rights have expired or the creator has deceased (Berne Convention, 1886: Art. 6bis(2)). Violations of moral rights of a creator whose work is protected by the Berne Convention will impact their honor or reputation. In this context, reputation can be understood as the general public's opinion of another person (the creator) concerning matters of honor and dignity based on their previous actions (Cambridge Dictionary, 2024). Moral rights violations affecting a creator's reputation can result in reputational loss, negative shifts in public perception, and material losses such as decreased sales that can damage their standing as a creator (Frankel, 2023: 209). Moreover, the impact on a creator's reputation can also cause immaterial harm to their dignity, which is considered more detrimental than material or economic losses, as these impacts can persist long-term (Aplin and Mohamed, 2019: 277).

Therefore, this article will focus on examining cases and events within the scope of copyright, particularly concerning musical products, regarding violations of creators' moral rights and creators' efforts to protect their moral rights based on the Berne Convention.

METHOD

The author employs a research methodology based on a normative juridical approach through the examination of applicable and relevant regulations pertaining to the discussion in this article. The research utilizes both primary and secondary legal materials for data collection and analysis. In this context, the primary legal materials encompass applicable legal regulations, while the secondary legal materials include other written references such as books, journals, and relevant electronic resources that align with and relate to the research problem. Specifically, the research focuses on moral rights violations in musical works and the legal remedies available to creators in protecting their moral rights under the Berne Convention. The article comprehensively applies a normative juridical research approach in analyzing moral rights as regulated within the Berne Convention framework.

RESULTS AND DISCUSSION

Violations of Creator's Moral Rights in Musical Works

As previously mentioned, moral rights are regulated under Article 6bis of the Berne Convention. Fundamentally, this regulation is intended to enable creators to assert their rightful ownership over their works (WIPO, 1978: 41). An example of moral rights application can be observed in cases where works have been published by third parties; in such instances, these third parties are prohibited from making alterations or taking other actions that could impact either the work or its creator (WIPO, 1978: 42). Within the Berne Convention, these prohibited actions are categorized as distortion, mutilation, modification, or other derogatory actions that may affect the creator's honor or reputation. Regarding distortion, this constitutes actions taken to reverse or alter the facts or identity of a creation, causing it to deviate from the output intended by the creator for its intended audience (Khalista et al., 2021: 2). Mutilation refers to actions performed on a product (in this case, music) to modify it through additions, deletions, or adjustments that impact the creator's honor or reputation (Copyright User, 2024). This is similar to modification, which also involves changing a creation such as music; however,

modifications do not always result in negative impacts that damage the creator's honor or reputation.

From the creator's perspective, they have the right to apply identifying marks such as their name and other indicators to demonstrate that the work belongs to them, thereby preventing others who lack ownership rights from claiming the work as their own (Bober-Kotarbińska, 2022: 155-156). For instance, violations of moral rights that can affect the creator's honor or reputation include modifications to works such as music that has been created by the author but altered in such a way that the integrity of the creation impacts the creator's reputation, changes the intended perception of the creator, or conflicts with the creator's beliefs about their work (Bober-Kotarbińska, 2022: 157-158).

For example, consider the case of *Confetti Records v. Warner Music UK Ltd.* in 2003 (Royal Courts of Justice, 2003). In this case, a musical work titled 'Burnin' created by Andrew Alcee had been sold to Confetti Records. Subsequently, Confetti Records sought to license the song to Warner Music UK Ltd. for the purpose of producing a rap version of Alcee's 'Burnin' by a band called The Heartless Crew. However, the song was overlaid with lyrics that portrayed themes of violence and drug culture. Based on these modifications, Andrew Alcee claimed that his right of integrity concerning his honor and reputation had been violated as part of the moral rights he retained over his creation. This claim was founded on the basis that his original composition was potentially being associated with and promoting a culture of violence and drugs.

In analyzing the case of *Confetti Records v. Warner Music UK Ltd.* from 2003, we can examine Andrew Alcee's creator's rights over his musical work through several key aspects. First, the sale of the musical work to Confetti Records indicates that while the economic rights previously held by Andrew Alcee were transferred, his moral rights remained intact as stipulated by the Berne Convention. Second, to establish that his moral rights had been violated, Alcee needed to demonstrate that he had suffered damages that impacted his honor or reputation. Third, this case could be categorized as either mutilation or modification, as the original work created by Andrew Alcee had been altered and supplemented by parties who had purchased the economic rights. If Andrew Alcee could prove that these actions had impacted his honor and reputation, the case would qualify as a violation of his moral rights. However, the presiding judges held a different view, finding insufficient evidence that his honor and reputation had been affected (Royal Courts of Justice, 2003: para. 162). This decision was based on the fact that the lyrics in question were not clearly audible enough to prove that the alterations had damaged Alcee's honor or reputation. Furthermore, the judicial decision can be considered appropriate given that the determination of whether a creator's moral rights have been violated should ultimately be made through court decisions (WIPO, 1978: 42).

Another case involving musical works as moral rights violations can be examined through the use of musical compositions during United States presidential campaigns (Kasper and Schoening, 2016: 55-57). For instance, consider the use of the song 'More than a Feeling' by Tom Scholz of Band Boston during Mike Huckabee's campaign. Scholz filed a request to cease the use of the song, arguing that its deployment in Huckabee's campaign contradicted the values that Band Boston had long championed. This case exemplifies a moral rights violation as another form of action that can impact a creator's reputation. The unauthorized use of musical works by third parties to gain public attention, when inconsistent with the creator's values and beliefs, constitutes such a violation. In this context, a creator's values and beliefs encompass their political views and their rights to support their preferred candidates in political contests. When the use of their work conflicts with these aspects, it can affect the creator's reputation through public perception resulting from how their work is used. Therefore, moral rights violations of musical works can occur in campaign settings because they can influence the creator's reputation regarding their political orientation as perceived by the broader public.

When examined in relation to the moral rights provisions of the Berne Convention, the two cases discussed above exemplify the application of these regulations. As stipulated in Article 6bis of the Berne Convention, moral rights encompass the creator's right to claim ownership over their works, such as musical compositions, when actions arise that could impact their honor or reputation. In these instances, the musical creators in the previous cases had filed claims to halt the use of their musical works by third parties. Although not all moral rights violation claims can be proven, the Berne Convention has established a protective framework for creators to safeguard their honor or reputation from threatening actions.

The approach to resolving moral rights violations must consider aspects of restorative justice, as proposed by Wala and Firmansyah (2024: 248-249), which emphasizes the restoration of conditions and balance of rights between parties. In the context of protecting music creators' moral rights, a restorative approach can serve as an effective alternative resolution mechanism because it aims not only to impose sanctions but also to restore the honor and reputation of creators affected by such violations. This aligns with the objective of moral rights protection under the Berne Convention, which prioritizes comprehensive protection for creators' interests.

Protection of Creator's Moral Rights Under the Berne Convention 1886

According to Article 6bis of the Berne Convention, there are two types of moral rights inherent to creators: the right of attribution and the right of integrity (Suhl, 2001: 1211-1212). First, the right of attribution is defined as the right to claim ownership over a work or the product of one's labor, as stated in Article 6bis of the Berne Convention: "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work..." (Suhl, 2001: 1212). For example, this can be implemented by marking a creation with the creator's name or other identifying marks that indicate the work belongs to its creator. This is intended to prevent misappropriation of ownership and to deter unauthorized parties from claiming the work as their own. Regarding the right of integrity, it is fundamentally aimed at protecting the creator's work from actions specified in the Berne Convention, namely "...to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation." Therefore, the moral rights regulated under the Berne Convention ensure that every creator can be protected from actions that could potentially assault their moral rights, specifically concerning their personal honor and/or reputation.

Upon further examination, the moral rights protection provided by the Berne Convention can be categorized more broadly. This can be implemented through several approaches as follows:

- a) Explicitly attributing ownership of a work to its creator and no other party;
- b) Prevention of distortion, mutilation, or other alterations to a work;
- c) The right to choose when a work may be published to the general public; and
- d) The right to withdraw their work from public circulation after publication (Suhl, 2001: 1205-1206).

However, the regulation of each of these points remains delegated to the stating countries to regulate them in more detail through their domestic laws. This is because fundamentally, the Berne Convention does not provide explicit regulations to establish clear sanctions or law enforcement for moral rights violations (Schere, 2018: 779). The efforts made by the Berne Convention in enforcing its provisions, more specifically regarding moral rights, have been regulated in Article 36 of the Berne Convention, which affirms that:

"(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention. (2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention" (Berne Convention, 1886: Art. 36).

Based on this, every state party to the Berne Convention has an obligation to enforce the provisions of the Berne Convention through its national law. This includes regulations concerning moral rights attached to creators of works that should be regulated in a nation's domestic law and not contradict Article 6bis of the Berne Convention. Furthermore, the regulations in the Berne Convention also emphasize that every creator must be treated equally by the state parties to the agreement regardless of whether they are citizens or not (Scherer, 2018: 777-778). This becomes the basic principle and main objective of the Berne Convention's establishment in creating international legal standardization in providing protection for works. The Berne Convention gives freedom to each country to create more adequate and concrete legal products, provided they do not conflict with the predetermined standards (Austin, 2005: 135).

Furthermore, the sanctions that can be imposed on perpetrators of moral rights violations will align with the form of enforcement of the Berne Convention provisions. This is because there are no internationally binding sanctions specifically regulated in the Berne Convention if there are violations of its provisions (Ginsburg, 2016: 46). In line with what has been previously described, the sanctions that can be imposed on violators of creators' moral rights will be adapted to each country's domestic legal regulations (Ginsburg, 2016: 49). Therefore, the formation and regulation of each provision contained in the Berne Convention aligns with its main objective, which is to provide standardization of copyright regulations for works by harmonizing the domestic regulations of the state parties to the agreement.

The regulation of moral rights in Indonesia has been regulated through Law Number 28 of 2014 concerning Copyright ("Copyright Law"). Based on Article 5 paragraph (1) of the Copyright Law, the regulation of moral rights owned by creators aligns with those regulated by the Berne Convention (Pratama, 2016: 346). This is because fundamentally, these moral rights include attribution rights to maintain ownership of their work even after death and integrity rights to claim compensation or other demands if there is material loss based on violations or alterations to works that may harm their honor or reputation (Copyright Law, 2014: Art. 5(1)). This regulation serves as an example of Indonesian domestic law as a state party to the Berne Convention in regulating moral rights provisions that align with the agreement's standards.

Additionally, sanctions regulated in the Copyright Law have also been established. In general, creators can protect their moral rights by implementing copyright management information and/or electronic copyright information (Copyright Law, 2014: Art. 6). Furthermore, there are prohibitions for other parties from removing, changing, or damaging such management information or electronic information (Copyright Law, 2014: Art. 7(3)). In this case, referring to Article 112 of the Copyright Law, any violation of these prohibitions that leads to a violation of moral rights protection without rights for commercial use may be subject to imprisonment for a maximum of 2 (two) years and/or a maximum fine of IDR 300,000,000 (three hundred million rupiah) (Copyright Law, 2014: Art. 112).

Regarding other examples, the regulation of moral rights can also be examined based on United States domestic law through the Visual Artists Rights Act 1990 ("VARA"). In this case, VARA has more specific and limited regulations as it only protects one group of creators who produce visual art works (Copyrights Law, 2023). This includes works such as paintings, drawings, prints, sculptures, and photographs that exist in a single copy or limited edition of 200 or fewer, whether signed and numbered. However, this does not include other works such as posters, maps, globes, films, electronic publications, and applied arts. Furthermore, the regulation of moral rights in VARA also aligns with the provisions contained in the Berne Convention. This is examined based on the rights of attribution and integrity for visual artists, regarding actions that impact their honor and reputation.

Based on this, the regulation of moral rights through the Copyright Law in Indonesia and VARA in the United States serves as examples of implementing the Berne Convention provisions. These two domestic legal regulations have regulated moral rights to provide protection for works that fall within the scope of copyright. Moreover, their regulations also align with the standardization of provisions, particularly regarding moral rights in the Berne Convention. Any violations that occur against the creator's moral rights will be subject to the domestic legal regulations of the Berne Convention member states according to their jurisdiction. Therefore, the presence of the Berne Convention is intended to establish a standard for the protection of copyrighted works worldwide, as well as to harmonize domestic regulations in the international arena.

CONCLUSION

Fundamentally, the regulation concerning creators' moral rights over works such as music has been established in Article 6bis of the Berne Convention. These regulations encompass attribution rights for creators to claim ownership over a work and integrity rights to prevent actions that may impact the creator's honor or reputation, such as distortion, mutilation, modification, and other actions that have such impacts. For example, actions such as altering or adding elements to someone's work that result in influencing public perception of the work's creator can be categorized as a form of moral rights violation as regulated in the Berne Convention because it impacts their honor and reputation.

Violations of one's moral rights can be examined through various cases and events worldwide. In this case, specifically, moral rights violations of musical creations can be analyzed through the case of *Confetti Records v. Warner Music UK Ltd.* and the U.S. presidential campaign events. First, filing a claim for moral rights violation in the *Confetti Records v. Warner Music UK Ltd.* case after the transfer of economic rights is permissible. This is because moral rights remain independently attached from economic rights over the work based on the Berne Convention. However, it should be emphasized that the determination of a moral rights violation will generally be subject to proof through court decisions. Second, regarding moral rights violations in U.S. presidential campaigns, this can be categorized as a moral rights violation because the music creators objected to their works being used in campaigns. These objections arose because the parties using their creations held beliefs and values that conflicted with the creators' political orientation and reputation. Based on this, claims to cease the use of songs in such campaigns are also permitted by the Berne Convention as a further implementation of moral rights, specifically the right of integrity.

Regarding the protection efforts provided by the Berne Convention concerning moral rights, fundamentally, the Berne Convention does not explicitly regulate binding law enforcement and what sanctions will be imposed on violators of these moral rights. However, the provisions regulated in the Berne Convention align with the main objective of establishing this agreement, which is to provide international standardization in providing copyright protection for works. Based on this, the effort implemented in the Berne Convention is by harmonizing the domestic regulations of each state party to the agreement, to create standardized protection for existing works through the domestic laws of the signatory states.

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