

Distribution of Royalties for Songs Created by Husband After Divorce

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Abstract

Introduction: This study analyzes the distribution of royalties on songs created by husbands after divorce as a form of joint property in marriage. This issue is significant in Indonesia, considering that royalties are included as Intellectual Property Rights that can provide economic value for divorced couples, but are not yet fully protected and often trigger legal disputes.

Purposes of the Research: This study aims to explain the mechanism for the distribution of royalties from songs created by a husband after divorce as joint property and the legal consequences for wives who do not receive these royalties.

Methods of the Research: This study uses a normative legal research method with a statutory and conceptual approach. The analysis was conducted based on Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage, Law Number 28 of 2014 concerning Copyright, and Government Regulation Number 56 of 2021 concerning the management of royalties for song and/or music creations.

Findings of the Research: The results of this study reveal that royalties for songs created by the husband obtained during the marriage are included in joint assets that must be divided fairly in accordance with Article 35 and Article 37 of the Marriage Law. A wife who does not receive her share can file a lawsuit to obtain legal protection for the royalties. This division can also be carried out through deliberation, mediation, or court decisions to ensure justice for both parties.

Keywords: Royalties; Copyright; Joint Property.

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INTRODUCTION

The distribution of royalties for song creations after divorce is a legal issue that has not yet received adequate attention and regulation in judicial practice or academic literature in Indonesia. In the context of marriage, the song creations produced by one of the parties during the marriage are included in the joint property regime regulated by Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage in conjunction with Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 1 of 1974 (hereinafter referred to as the Marriage Law), especially Article 35 and Article 37 which stipulate that assets acquired during marriage are included in joint assets and can be divided fairly after divorce. However, the management and distribution pattern of song royalties as a form of Intellectual Property Rights (IPR) has not been fully described in the regulation.

This research is motivated by the increasing disputes related to royalties of copyrighted songs that arise when a married couple divorces, particularly regarding the status of royalties as joint property. Some previous studies have indeed discussed the legal protection aspects of copyrighted songs from the perspective of Copyright, including the mechanisms

for the collection and distribution of royalties based on the Republic of Indonesia Law Number 28 of 2014 on Copyright and the Government Regulation of the Republic of Indonesia Number 56 of 2021 on the Management of Copyright Royalties for Songs and/or Music. However, there has yet to be a specific study that photographs the status of royalties as joint property in the context of divorce and the legal implications of its management.

Research by Rahmawati (2021) discusses the protection of copyrighted works from the perspective of civil law and emphasizes that copyrighted works are included as objects of Intellectual Property Rights that can be inherited or used as collateral, but are not yet included in the realm of division of joint property after divorce¹. Similarly, the research by Nursyahbani (2023) reveals that musical works can be used as fiduciary collateral and as a significant source of royalties for their creators, but it has not examined the patterns of royalty distribution in marriage and divorce². Another study by Winarti and Rizka (2023) regarding the mechanism of protection for creative works from the perspective of Copyright law has also not elaborated on the status of royalties as joint property after divorce, although this need is significant given the growth of the music industry and the evolving patterns of creative work³.

This gap creates a need for more specific research related to the status of royalties as joint property after divorce, including the division mechanisms, legal implications for the party not receiving their share, and dispute resolution mechanisms that can serve as guidelines for practitioners and policymakers. The novelty of this research lies in focusing on the analysis of the status of royalties from musical works as joint property, which has not been specifically studied in previous research, thus contributing significantly to the development of civil law and Intellectual Property Rights in Indonesia. This research aims to explain the mechanism of dividing music royalties as joint property after divorce based on applicable laws and to analyze the legal implications of not distributing those royalties to the entitled partners. With this focus, the research is expected to bridge the academic and practical needs in ensuring fairness for the parties involved.

METHODS OF THE RESEARCH

This research falls into the category of normative legal research, which is a research method that emphasizes the study and analysis of legal materials related to the status of song royalties as joint property in the context of divorce. This method is used to understand and elaborate on the intentions of various related legal rules, particularly Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, and Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Copyright Royalties for Songs and/or Music. The approaches used consist of a statutory approach to trace and elaborate on the meanings of relevant legal norms, and a conceptual approach to examine and explain key concepts related to the status of royalties as joint property from the perspective of civil law. The legal materials used consist of primary legal materials, namely various relevant laws and regulations; secondary legal materials consisting of scientific papers, academic journals, and literature related to the division of royalties as joint

¹ Rahmawati, "Perlindungan Hak Cipta sebagai Aset Tidak Berwujud," *Jurnal Hukum dan Teknologi* 3, no. 2 (2021), p. 66.

² Nursyahbani, "Hak Cipta sebagai Jaminan Fidusia dan Tantangan Regulasi," *Jurnal Hak Atas Kekayaan Intelektual* 5, no. 1 (2021), p. 81.

³ Winarti & Rizka Nurul Rahmah, "Analisis Perlindungan Hak Cipta Musik dan Lagu di Indonesia," *Jurnal Sehat Rakyat* 4, no. 2 (2023), p. 81.

property after divorce; and tertiary legal materials consisting of legal dictionaries and encyclopedias as supplements to clarify the meanings of the concepts used in this research. The technique for collecting legal materials is carried out using the literature study or document study method, which involves reading, noting, and quoting various academic works, journals, court decisions, and regulations relevant to the issues being studied. Meanwhile, the method of legal material analysis used is the descriptive-qualitative method, which involves outlining the legal materials that have been collected, analyzing the intent and application of the relevant norms, and relating it to the context of the distribution of royalties for musical works as joint property. With this method, it is hoped that a comprehensive, systematic, and scientifically accountable overview regarding the status and mechanism of song royalty distribution after divorce, in accordance with the applicable positive law in Indonesia, can be obtained.

RESULTS AND DISCUSSION

A. Royalty Rights in the Perspective of Copyright Law and Its Relationship with Joint Assets

Royalties can be interpreted as a form of economic rights that arise from a creation, including musical works and songs, which grants the creator or copyright holder the authority to receive compensation from the use of that work by others. In the context of Indonesian law, royalties are explicitly regulated in the Republic of Indonesia Law No. 28 of 2014 on Copyright (hereinafter referred to as the Copyright Law), particularly in Article 1, number 21, which states that royalties are compensation for the utilization of a creation or related rights products received by the creator or copyright holder from others who use it.

Royalties can arise from various forms of utilization of works, ranging from performance, communication, duplication, to adaptation of creative works, including songs or music. Specifically, musical works and songs fall under the category of artistic works that receive copyright protection in accordance with Article 40 paragraph (1) letter d of the Copyright Law. This means that musical or song works created during marriage are not only protected in terms of morality and integrity of the work, but also provide economic value for the creator and can be categorized as a source of joint income for couples in a household.

The concept of copyright as communal property can also be traced from various legal provisions related to marriage and communal property. In the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage in conjunction with the Law of the Republic of Indonesia Number 16 of 2019 (hereinafter referred to as the Marriage Law), especially Article 35 paragraph (1), it is explained that all property acquired during the marriage period is included in communal property, unless there is a marriage agreement that stipulates otherwise. Thus, royalties from songs created by one party during the marriage can be categorized as communal property, considering that their economic value can continue to be received by the partner even after the work has been completed and commercialized.

This construction is also supported by the doctrines of academics and legal practitioners who interpret royalties as a form of 'fruit of labor' that falls under the category of joint income for spouses. According to Rahmawati, royalties from songwriting can be categorized as intangible assets whose economic value can be used to support household needs, thus it can fall under the regime of community property in accordance with the spirit

of Article 35 of the Marriage Law⁴. Similarly, Nursyahbani emphasized that the creation of songs, especially the royalties from such works, can be used as fiduciary guarantees or transferred for other purposes, indicating that its economic value is significant for the partners and families associated with the work⁵.

In the context of royalty division after divorce, Article 37 of the Marriage Law provides a foundation for the division of joint property based on the principles of fairness and mutual agreement. This article emphasizes that the division of joint property can be carried out in accordance with the laws of each religion or the agreement of the parties, but does not rule out the possibility for the court to decide a fair division pattern based on the contributions of each party to the acquisition of joint property. Conceptually, the value of royalties from songs can be included in this division pattern, as royalties are not merely the value of personal work, but can also be related to collaboration, support, or significant indirect contributions from the partner that enable the work to be created and commercialized.

The recognition of royalties as joint property can also be analyzed from various court decisions in Indonesia. One example is the South Jakarta District Court decision No. 10/Pdt.G/2021/PN.Jkt.Sel, which established royalties from musical works as a subject of the division of joint property after divorce. This ruling emphasizes that royalties are included in the economic value of creations obtained during the marriage and can be classified as joint property, as long as the works are produced and commercialized during the marriage. This decision also highlights that parties who do not receive a share of royalties from joint creations can file a lawsuit to obtain justice and protection from the court.

In addition, the mechanism for managing royalties is also guaranteed in the Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Copyright Royalties for Songs and/or Music, which emphasizes that every creative work of songs and music must be regulated and recorded by Collective Management Institutions (CMIs) to ensure fair royalty collection for creators or copyright holders. This provides a basis for spouses in a marital bond to claim royalties from creative works produced during the marriage as a form of joint property, especially if the work generates significant economic value and can continue to exist even after divorce. However, various obstacles and issues arise in the implementation of these rules, particularly regarding the proof of the status of creative works and the value of royalties that can be categorized as joint property.

Several academic studies, such as those presented by Winarti and Rizka Nurul Rahmah, emphasize that not all parties understand the value of royalties as a form of shared property, thus education and supervision from the relevant parties are needed to prevent discrimination or neglect of the value of the creations produced by the couple during marriage⁶. Furthermore, the risk arises when the party holding the intellectual property is not transparent in disclosing the royalty value received from the LMK or other parties, which can potentially lead to violations of the principle of fairness for the other parties.

In conclusion, it can be stated that the royalties from musical works are not solely the personal rights of their creators, but can also fall under the regime of jointly owned property, especially if the work is produced and commercialized during the marriage. The regulations

⁴ Rahmawati, *Loc. Cit.*

⁵ Winarti..., *Op. Cit.*, p.88

⁶ *Ibid.*

contained in the Copyright Law, the Marriage Law, and Government Regulation No. 56 of 2021 provide a normative basis for recognizing royalties as jointly owned property that can be claimed for division. In its implementation, there is a need for legal awareness from the parties involved, understanding from the judiciary, and cooperation with collecting management organizations to ensure that the division of royalties is conducted fairly, transparently, and in accordance with the value of the work itself.

B. Legal Regulations on the Distribution of Joint Property in the Form of Royalties Post-Divorce

Regulations regarding the division of joint property in the form of royalties from song copyrights after divorce fall within the realm of civil law that continues to evolve alongside changes in economic patterns, technology, and the value of intellectual works in the digital era. Conceptually, royalties from song copyrights are categorized as intangible assets, but they provide real economic value for the parties involved with the work. In the context of marriage, royalties from song copyrights earned during the marriage can be categorized as joint property, considering their economic value can be used to support household needs, even after the work has been created and commercialized.

The concept of joint property has found a clear place in the development of doctrine and civil law regulations in Indonesia. Soedharyo Soimin explains that joint property consists of all forms of wealth obtained from joint efforts during the marriage, including intangible assets that can generate economic value for the couple⁷. In other words, royalties from song creations can be categorized as joint property, especially if the work is produced and monetized while the couple is in a marriage. In this case, the song creation is not only a form of personal expression from its creator, but it can also be seen as a form of joint economic work involving the couple, particularly in terms of moral support, financial assistance, and household management that enable the work to come to fruition.

This concept is also in line with the view of Peter Mahmud Marzuki, who explains that in the context of creative works, the value of such works can endure continuously and provide long-term financial benefits for the parties involved⁸. The long-term value of this creation, including royalties, distinguishes it from other forms of joint property, which generally can deplete or diminish in value over time. Thus, royalties can be categorized as a form of intangible movable assets, whose economic value can continue to grow or even appreciate in value over time.

Currently, the application of rules regarding royalties as joint property can also be linked to the development of legal doctrine related to Intellectual Property Rights (IPR). Prof. H.R. Ridwan Khairandy argues that creative works with significant economic value can become part of joint property that can be inherited or used as collateral, considering that the value of such works can continue to grow and provide benefits for copyright holders and other related parties⁹. This perspective emphasizes that creative works, including royalties from song works, cannot solely be interpreted as the personal works of their creators, but also as a form of collective labor from a household. Additionally, in the context of applying positive rules, the mechanism for distributing royalties for creative works can refer to the value of substantive justice in accordance with Article 35 and Article 37 of the Republic of Indonesia

⁷ Soedharyo Soimin, *Hukum Perkawinan di Indonesia* (Jakarta: Sinar Grafika, 2002), p. 122.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2018), p.90.

⁹ H. R. Ridwan Khairandy, *Hukum Hak Kekayaan Intelektual di Indonesia* (Jakarta: Rajawali Press, 2017), p.105-106.

Law Number 1 of 1974 concerning Marriage in conjunction with the Republic of Indonesia Law Number 16 of 2019.

R. Subekti explains that the value of household economic work is not merely seen from physical labor or the value of tangible objects, but also from mental work, moral support, and support for partners that enables the work to be born and hold high value for the household in question¹⁰. Thus, royalties from creative works can be seen as a form of joint work that contains the economic value of household labor of partners, which must be considered in the division of joint property after divorce.

At the implementation level, court decisions regarding the distribution of royalties from creative works have also begun to emerge and provide examples for the application of this doctrine in Indonesia. One such example can be seen from the South Jakarta District Court Decision No. 10/Pdt.G/2021/PN.Jkt.Sel, which recognizes royalties from songs as a form of joint property that can be claimed by partners after divorce. This decision emphasizes that the value of royalties from musical works can grow over time, even after the partners are divorced, and therefore can still be an object of joint distribution based on the principle of substantive justice. However, the implementation of this concept is not without various obstacles, particularly regarding the proof of the royalty value that has not been received or cannot yet be measured.

In this context, academics like Munir Fuady explain that royalties as a form of economic rights from creative works can be classified as receivables that can be recorded as estimated values in the calculation of joint assets. In other words, royalties from musical works can serve as an estimated value of joint receivables that can be recognized and used as one of the values for the distribution of joint property. This can also prevent the party entitled to receive the value from the creative work from the risk of being harmed or not obtaining a value that is commensurate with the work.

At the doctrinal level, various academics also emphasize that the recognition of royalties as a form of communal property can have a positive effect on the development of the creations themselves. This was stated by Lawrence Lessig, who explained that recognizing the economic value of a creation can provide opportunities for the relevant parties to continue to maintain and appreciate the work as a form of collective effort that brings benefits to households and the wider community¹¹. In other words, the recognition of royalty values as joint property can have a positive impact on the growth and development of creative works and can provide long-term effects on the development of creative economic value. Furthermore, from the perspective of legal sociology, recognizing royalties for creative works as joint property can also eliminate economic discrimination patterns that often occur within households. As explained by Satjipto Rahardjo, the aim of applying substantive justice in the division of joint property, including creative works, is to provide a form of legal protection for parties who are not officially recorded as creators of the work but have made significant contributions to the success of the work itself¹². This is in line with the spirit of equality and the value of justice in marriage law in Indonesia.

Law enforcement is an effort to carry out legal protection, which here means law protection that provides a sense of security and certainty, or a feeling of being protected by

¹⁰ R. Subekti, *Hukum Perdata: Teori dan Praktek* (Jakarta: Intermesa, 2003), p. 198.

¹¹ Munir Fuady, *Konsep Hukum Hak Cipta* (Bandung: Citra Aditya Bakti, 2014), p. 48.

¹² Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (New York: Penguin, 2008), p.25-26.

laws and regulations (protection of human rights) from irresponsible acts¹³. This value is also relevant for parties entitled to the economic value of musical works, especially royalties that have not been disbursed or received from related parties. In this context, the application of legal protection values for divorced couples entitled to the royalties of creative works can have a positive effect on the development of fair household work patterns that align with humanitarian values.

Furthermore, from the implementation perspective, the recognition of royalties from creative works as joint property can have a positive effect on the development of the Intellectual Property Rights (IPR) system in Indonesia. This was stated by Christopher Heath, who mentioned that the value of a creative work is not only within the context of the personal value of its creator but is also related to economic value and the collective value of the parties involved in the creation process of that work¹⁴. In other words, royalties from the creation of songs can serve as an example of the value of collective work that can have a positive effect on the development of a fair and equitable intellectual property system for the parties involved.

At the practical level, the application of copyright royalties as shared property can also serve as an example for the development of more open and transparent economic cooperation patterns in households. In this context, the application of copyright royalties as shared property can prevent the occurrence of discrimination patterns or economic value gaps that could disadvantage certain parties within the household. This can positively impact the development of fair and proportional values of shared work for the related partners, especially for partners who provide moral, financial, or labor support for the creator of the work.

In conclusion, it can be stated that the legal arrangements concerning the distribution of royalties from creative works as joint property after divorce fall within the framework of substantive justice values recognized by Indonesian marriage law and the value of joint labor of the creative works themselves. The royalty value of a song's creative work is not only the personal value of the creator but also the joint value of the household that can be inherited or used as a shared economic value for the related couples. The recognition of this value has a positive effect on the development of the joint labor values of the household and the values of the creative works themselves as a form of collective labor from the legitimate household.

C. The Legal Consequences of the Wife not Receiving Royalty Rights as Joint Property

Disputes related to joint property often occur in marriage, where the husband and wife have equal standing and are entitled to the property acquired during the marriage. Conflicts usually arise when one party claims ownership rights over the property, including royalty income derived from copyright of songs or music. In Indonesia, the regulation of joint property in marriage is governed by Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law applies to couples who adhere to Islamic law.

In marriage, there are separate property and joint property. Both husband and wife have full rights over their respective separate property and are authorized to take legal actions regarding that property independently without the consent of their partner. However, for

¹³ Barzah Latupono, "Perlindungan Hukum dan HAM Terhadap Pekerja Perempuan di Malam Hari (Karaoke) di Kota Ambon" SASI, 18, no. 1 (2012), p. 10.

¹⁴ Satjipto Rahardjo, *Ilmu Hukum* (Jakarta: Sinar Grafika, 2002).

joint property, any legal action must have the mutual consent of both husband and wife in accordance with Articles 35 and 36 of the Marriage Law. Therefore, if the property owned by each party before marriage is not agreed upon as part of joint property, the ownership of that property remains with each individual as personal property, thus that property remains individually owned. However, if agreed upon as joint property, its use must be approved by both parties. Meanwhile, property acquired during the marriage, even if only the husband is working and the wife is not, is still recognized as joint ownership by both the husband and wife.¹⁵

If a wife does not receive the royalty rights that should be considered part of the joint ownership in a household, then there are several legal consequences that may arise. Here is the explanation based on Indonesian law: 1) Violations Against the Principle of Justice in Joint Property: In the Indonesian legal system (especially according to the Compilation of Islamic Law and the Civil Code), the results of work or creations during marriage are essentially joint property, unless there is a marriage agreement (separation of property agreement). Royalties received during marriage, even if they originate from the work of one party, are included in joint property as they are considered the result of joint effort. Jika istri tidak mendapat bagian: a) This can be categorized as neglecting the wife's rights to joint property; b) It has the potential to become a property dispute if there is a divorce or a demand for the division of shared assets. 2) Civil Lawsuit by Wife: The wife has the right to file a petition to the Religious Court (if the marriage is subject to Islamic law) or the District Court, to demand: a) Division of royalties as part of joint property; b) Compensation if there has been a unilateral transfer or use of royalty rights. 3) The Risk of Cancellation or Transfer of Rights over Royalties: If the royalties have been transferred or used as collateral without the wife's consent, such action can be deemed legally flawed and can be annulled due to the lack of agreement from both parties as co-owners of the joint property.¹⁶

Several issues often arise regarding royalties on copyright in joint property disputes. It is very important to determine a fair distribution of intellectual property assets that accurately reflects the contributions made by both husband and wife throughout the duration of the marriage. The importance of adopting the principle of fair distribution, where the court will divide marital property fairly among the parties, taking into account various factors, should be remembered that fair does not always mean equal.¹⁷

Copyright essentially protects every work that is created¹⁸, because copyright is the exclusive right of the creator, this right arises automatically based on the principle of declaration after the creation is brought into a tangible form without reducing the parameters set by legislation. Copyright as an exclusive right encompasses moral rights and property rights; however, it should be noted that "exclusive rights" are rights that are only held by the creator, so third parties may not use these rights without the creator's permission.

In Indonesia, joint property includes all wealth acquired during the course of marriage, regardless of whose name is listed in the ownership of the assets. However, wealth owned before marriage, such as inheritance, gifts, and similar assets known as property brought

¹⁵ Barzah Latupono, "Pertanggungjawaban Hukum Ayah Terhadap Anak Setelah Terjadinya Perceraian" *SASI* 26, no. 2 (2020): 242-250.

¹⁶ Sudikno Mertokusumo. *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2003), p. 76.

¹⁷ Rizqullah, U & Fuad, F. "Perbandingan Hukum Dalam Pembagian Royalti Sebagai Harta Bersama Dalam Perkawinan: Indonesia, Malaysia, dan Amerika Serikat" *UNES Law Review* 7, no. 1 (2020): 158-168.

¹⁸ Besar Besar *et al.*, "E-Sport Dalam Perspektif Hukum Hak Kekayaan Intelektual" *Halu Oleo Law Review* 5, no. 2 (2021): 185-186,

before marriage, is not considered part of the joint property because it is regarded as an exception. Disputes related to property in marriage can be resolved by referring to the provisions set by the applicable laws, one of which is stated in Chapter VII of Law Number 1 of 1974 concerning Marriage, which regulates the property in marriage in Article 35. This article states that: 1) All property acquired during the marriage is considered joint property; 2) Property that each partner owned before the marriage is categorized as separate property.

Property acquired individually by a husband or wife in the form of gifts or inheritances remains the property of each, unless both parties have agreed to other provisions: 1) Regarding joint property, the husband and wife may only take legal actions if agreed upon by both; 2) As for their individual property, both the husband and wife have the full right to take legal actions regarding their own assets.

If the marriage of the husband and wife ends in divorce, then each party will receive half of the joint property (gono gini) that they acquired during the marriage, unless otherwise stipulated in a marriage agreement (Article 37 of Law No. 1 of 1974 on Marriage in conjunction with Article 97 of the Compilation of Islamic Law).¹⁹ Only jointly acquired property can be divided between husband and wife, while pre-marital property remains each person's personal ownership. Additionally, it should be noted that debts incurred during the marriage will also be divided fairly. The court will consider various aspects, such as who bears the debt, the purpose of the debt, and each party's ability to repay it, as regulated in Article 93 of the Compilation of Islamic Law.²⁰

The distribution of royalties often means that during the division, the wife does not receive a share of the royalty payment profits. It is based on the court's ruling regarding divorce considerations. When it is proven in court that during the course of the marriage, the wife has fulfilled her duties as a wife by managing and also taking care of household chores, referring to Articles 85-97 of the KHI. Therefore, the division of the husband's created song royalties must be accepted by the wife.

Referring to Article 95 of Law Number 28 of 2014 concerning Copyright, the Religious Court does not have jurisdiction to handle cases related to Copyright issues. However, Law Number 28 of 2014 concerning Copyright does not include provisions regarding joint property, but rather emphasizes that Copyright is considered movable property included in intangible assets, in accordance with the provisions of Article 16 paragraph (1) of Law Number 28 of 2014 concerning Copyright. On the other hand, the regulations governing joint property, Articles 35-37 of Law Number 1 of 1974 concerning Marriage, linked with Articles 85 to 97 in the Compilation of Islamic Law, state that joint property is considered as intangible movable property that has economic value.²¹ If the wife does not receive a share of the royalties during the trip, the usual step to be taken is mediation with the husband in discussing the division of joint assets. If a middle ground is not found in the royalty distribution process, and mediation is deemed unsuccessful, the wife can take legal action by continuing this matter to the evidence hearing in court. Certainly, in examining the evidence provided, the proof of ownership, in which the wife as the Plaintiff must demonstrate that the contested assets are joint property. The property does not consider the

¹⁹ Barzah Latupono "Penyelesaian Perkawinan Yang Tidak Memenuhi Syarat Perkawinan Melalui Isbath Nikah" *Jurnal Hukum & Pembangunan*, 49, no. 4 (2019), p. 963

²⁰ Beri Risky. "Konsep Pembagian Harta Bersama Menurut Hukum Islam Dan Undang-Undang Perkawinan" *Lentera: Indonesian Journal of Multidisciplinary Islamic Studies* 2, no. 1 (2020): 63-74.

²¹ Sonny Dewi Judiasih, *Harta Benda Perkawinan*, (Bandung: Refika Aditama, 2015), p. 67

party that generates it (whether it is the husband, wife, or both together). As a result, the husband and wife can manage the shared property jointly, or one of them can do so with the consent of the other party. This provision applies as long as the marriage is in effect.

With the development of time, the form of shared property is increasingly evolving and diversifying. Based on existing developments, intangible assets such as royalties from copyrights according to Article 16 Paragraph 1 of the Copyright Law can be classified as property that is included in shared property during marriage. Therefore, in the event of a divorce, the division of shared property does not only include tangible items such as houses, cars, etc., but also encompasses intangible items such as copyright royalties, which are the main objects of this research.

Copyright royalties are part of the community property that should be separated after a divorce between husband and wife, which can become a legal issue regarding who the subsequent owner of those royalties is. According to civil law provisions based on the Marriage Act, the issue of community property between husband and wife is separated after divorce, generally with each receiving $\frac{1}{2}$ share. This provision becomes difficult to enforce when referring to the creator or holder of related rights according to the provisions of what royalties are, which are fundamentally only obtained by the creator or owner of related rights in accordance with the Copyright Law and Government Regulation Number 56 of 2021. Therefore, regarding royalties that are considered joint property during marriage, they should be regarded as jointly owned by the husband and wife, but based on other provisions, they should only be considered attached to whoever holds the copyright. The division is 50% of the net income from royalties received by the Defendant of the Convention (Virgoun Teguh Putra) from three songs by Virgoun, namely, Surat Cinta Untuk Starla, Bukti, and Selamat.

The judicial process should be conducted in the Commercial Court because royalties are part of copyright. However, if the parties in dispute are a married couple who have divorced and are Muslim, then based on Article 50 paragraph (2) of Law Number 3 of 2006 which amends Law Number 7 of 1989 concerning Religious Courts, the dispute must be resolved through the Religious Court. After going through several stages, Economic Rights over royalties can be transferred in accordance with Article 16 paragraph (2) letter f of Law Number 28 of 2014 concerning Copyright. This article states that the Economic Rights of Copyright can be transferred entirely or partially based on reasons permitted by legislation. The transfer referred to in letter f is the transfer that is conducted through a court decision that has obtained permanent legal force.

According to applicable regulations, the division of joint property during a divorce must be done fairly between husband and wife. The Marriage Law states that property acquired during the marriage is joint property. In addition, Article 91 of the Compilation of Islamic Law reinforces the recognition of royalties as part of joint property, explaining that joint property includes tangible and intangible assets, including rights and obligations, movable and immovable property, as well as securities.

In summary, the main points of the laws regarding jointly owned property in Chapter XIII of this Compilation of Islamic Law can be outlined as follows: 1) Joint property is separated from each individual's personal property: a) Personal property remains the personal property and is fully controlled by its owner (husband or wife); b) Joint property becomes the joint right of husband and wife and is completely separate from personal

property. 2) Joint property is established from the date the marriage is conducted: a) From then on, joint property is automatically formed; b) Regardless of who earns it; c) Regardless of whose name it is registered under. 3) Without mutual consent, a husband or wife may not isolate or transfer property; 4) Debts incurred for mutual benefit are charged to joint property; 5) In serial or polygamous marriages, joint property is separated between the husband and each wife; 6) If the marriage ends (by death/divorce): a) Joint property is divided in half; b) Each receives half of the share; c) In the event of death, the share becomes inheritance²²

According to M. Idris Ramulya in his book, joint property is the wealth acquired during the marriage of husband and wife, whether through joint efforts or individual efforts. Meanwhile, M. Yahya Harahap argues that all property obtained during the marriage falls within the jurisdiction of joint property determined through judicial processes. In the development of this concept, the matrimonial property that falls under the jurisdiction of joint property includes, among others: 1) Property acquired during the marriage falls under the jurisdiction of joint property, regardless of who purchased it, in whose name the property is registered, or where the property is located; 2) Property that is purchased and built after divorce using funds from joint property also falls under the jurisdiction of joint property; 3) All property that can be proven to have been acquired during the marriage is considered joint property; 4) Income derived from joint property as well as personal property is included in the jurisdiction of joint property. The personal income of the husband or wife, as long as there is no separation of property agreement, automatically mixes and becomes joint property according to the law. This mixing applies unless the husband and wife make a marital agreement stating otherwise. Harta yang diperoleh selama masa perkawinan termasuk dalam yurisdiksi harta bersama, tanpa memperhatikan siapa pembelinya, atas nama siapa harta itu tercatat, atau di mana lokasi harta tersebut.²³

Therefore, based on those provisions, the royalties obtained during the marriage, which are the economic rights from copyright, can be said to be joint property. However, the issue faced relates to the legal consequences of royalties received as joint property after divorce, where one party is not the creator and/or owner of the copyright. If connected to the definition of joint property, then after the husband and wife officially divorce, the income earned by one party after the divorce is no longer considered joint property.²⁴

CONCLUSION

The legal consequence if a wife does not receive royalty rights as joint property under Indonesian civil law is the violation of the principles of justice and economic rights protection in marriage. The wife has the right to file a claim in court, and if it is proven that the royalties were earned during the marriage, then those royalties must be shared fairly. Failure to provide royalties to the wife can lead to financial loss, injustice, and undermine legal protection of women's rights in marriage in Indonesia. These disputes are usually resolved through civil litigation in court, where the wife is entitled to a fair share according to the law, typically 50% of the joint property. However, if there is a prenuptial agreement stating that royalties are not included in the joint property, the distribution of rights may differ. However, if there is no such agreement, the wife's rights to royalties

²² Kholil Nawawi "Harta Bersama Menurut Hukum Islam dan Perundang-Undangan Di Indonesia", *Jurnal Ilmu Syariah* 1, no. 1 (2013), p. 14

²³ M. Natsir Asnawi, *Hukum Harta Bersama Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi, dan Pembaruan Hukum*, (Jakarta: Kencana, 2020), p. 36

²⁴ Happy Susanto, *Pembagian Harta Gono-Gini Saat Terjadi Perceraian*, (Jakarta: Visimedia, 2008), p. 42

still apply and she is entitled to claim her share. In divorce cases, if the wife files for divorce against the husband, and during the marriage, a song was created which was then commercialized and generated royalties, the wife is entitled to include claims regarding the division of those royalties in the divorce petition. The royalties from that work can be considered joint property, as long as the song was created and generated income during the marriage. This provision is in line with Law Number 1 of 1974 on Marriage, specifically Article 35 paragraph (1), which states that all property acquired during marriage, including income, assets, and economically valuable intellectual property rights, constitutes joint property that can be divided between the husband and wife in the event of divorce.

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