

**Progressive Legal Analysis of The Copyright Infringement Case of Agnes
Monica Versus Ari Bias**

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ABSTRACT

The introduction above shows that this study has the aim of comprehensively analyzing from a progressive legal perspective in the case of copyright infringement of Ari Bias Versus Agnez Mo. This research is a qualitative study with a descriptive approach, namely an approach that has special characteristics, namely using descriptive sentences in explaining one by one the main topics used in this study. The data used in this study are secondary data that researchers obtained from various credible sources such as books, scientific articles, credible websites, and various other sources commonly used in research. The data were analyzed by stages of data collection, data selection, data reduction, and drawing conclusions. The conclusion in this article show

Keywords: *progressive legal, copyright, infringement case*

INTRODUCTION

The definition of Copyright literally comes from two words, namely rights and creation. In the Big Indonesian Dictionary, the word "right" means an authority given to a certain party that is free to use or not. While the word "creation" or "creation" refers to human work using reason, feelings, knowledge, imagination and experience. So it can be interpreted that copyright is closely related to human intellect. The principle in differentiating copyright protection from the protection of other Intellectual Property Rights is that copyright protects literary works and artistic works with all forms of their development in this world. For example, literary works can be in the form of textbooks, song lyrics, writings and others, while artistic works can be in the form of songs/music, dances and others (Margono, 2010).

The definition of Copyright law is contained in Law Number 28 of 2014 concerning Copyright Article 1 which contains (Nurdayati dkk, 2021): Paragraph (1) "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions." Paragraph (2) "The creator is a person or several people who individually or together produce a creation that is unique and personal." Paragraph (3) "A creation is every creative work in the fields of science, art, and literature that is produced by inspiration, ability, thought, imagination, accident, skill, or expertise expressed in a tangible form." Paragraph (4) "The Copyright Holder is the creator as the owner of the Copyright, the party who legally receives the right from the creator, or another party who further receives the right from the party who legally receives the right.

The definition of copyright in the law contains a declarative principle, meaning that legal protection will automatically obtain copyright without the need for prior copyright registration. The Copyright Law explains the requirements that

must be met to obtain copyright protection, namely, tangible, personal, and original in the created work. The declarative principle in the definition of copyright in the law indicates that legal protection for copyright will be granted automatically without the need for prior copyright registration. In the context of the Copyright Law, there are conditions that must be met for a work to obtain copyright protection. First, the work must be tangible, meaning that the work has been published, either physically or in a format that can be documented. In addition, the work must also be personal, reflecting the personal expression and creativity of its creator. These conditions indicate that copyright protects works that originate from personal thought and imagination (Nasywaa, 2023).

Originality of a work is a crucial requirement for obtaining copyright protection. This means the work must possess a sufficient degree of novelty, distinguishing it from similar works that already exist. In other words, copyright protects not only ideas but also the implementation of those original ideas. With these requirements, the Copyright Law provides a clear legal basis for protecting creators and encouraging creativity and innovation. Automatic recognition of copyright facilitates the protection process and encourages the development of art, culture, and science (Asril, 2020).

In Article 40 number 1 of Copyright Law Number 28 of 2014, protected creations are creations in science, art, and literature as follows (Disemadi, 2022): a. Books, pamphlets, typographical versions of published written works, and all other written works b. Lectures, lectures, speeches, and other similar creations c. Teaching aids made for educational and scientific purposes d. Songs and/or music with or without lyrics e. Drama, musical drama, dance, choreography, puppetry, and pantomime f. Fine art works in all forms such as paintings, drawings, carvings, calligraphy, sculpture, statues, or collage g. Applied art works h. Architectural works i. Maps j. Batik art works or other motif art k. Photography, photography works l. Matographic works m. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, traditional cultural expressions n. Compilations of creations or data, whether in formats that can be read by computer programs or other media o. Compilation of traditional cultural expressions during the compilation is an original work p. Video games q. Computer programs.

The creation above is a work made by the creator, a creator is someone who creates a work of a personal nature. The creator himself is the copyright holder of the work that has been created, copyright can be owned by the creator or the party who legally receives the rights from the creator, or also can be another party who receives the work from the party who previously legally received the copyright. Computer programs are included in protected creations. In Article 40 of the Copyright Law it is stated explicitly, to protect the work of the creator in the form of computer programs. Law enforcement officials should have to pay more attention to how legal violations occur in the field of computer programs. Because in today's era, computers are very necessary for work and in the field of education (Gidete, 2022).

Based on this, the researcher aims to analyze a copyright case that has recently become a major topic in this country, namely the copyright infringement case

surrounding the song between Ari Bias and Agnez Monica. The researcher aims to analyze this case comprehensively from a progressive legal perspective.

RESEARCH METHODS

The introduction above shows that this study has the aim of comprehensively analyzing from a progressive legal perspective in the case of copyright infringement of Ari Bias Versus Agnez Mo (Sugiyono, 2019). This research is a qualitative study with a descriptive approach, namely an approach that has special characteristics, namely using descriptive sentences in explaining one by one the main topics used in this study (Manzilati, 2017). The data used in this study are secondary data that researchers obtained from various credible sources such as books, scientific articles, credible websites, and various other sources commonly used in research (Hasan, 2002). The data were analyzed by stages of data collection, data selection, data reduction, and drawing conclusions with a more complete explanation below (Rukin, 2019).

RESULT AND DISCUSSION

Copyright

The definition of Copyright literally comes from two words, namely rights and creation. In the Big Indonesian Dictionary, the word "right" means an authority given to a certain party that is free to use or not. While the word "creation" or "creation" refers to human work using reason, feelings, knowledge, imagination and experience. So it can be interpreted that copyright is closely related to human intellect. The principle in differentiating copyright protection from the protection of other Intellectual Property Rights is that copyright protects literary works and artistic works with all forms of their development in this world. For example, literary works can be in the form of textbooks, song lyrics, writings and others, while artistic works can be in the form of songs/music, dances and others (Margono, 2010).

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Progressive Legal Analysis Of The Copyright Infringement Case Of Agnes Monica Versus Ari Bias

Progressive Law of Prof. Satjipto Rahardjo Satjipto Rahardjo, or Prof. Tjip, is someone who is nicknamed the Begawan of Indonesian legal sociology who first put forward the idea of progressive law. This idea then surfaced and became a very interesting study to be studied further. What was initiated by Prof. Tjip offers a new perspective, spirit, and way to overcome the paralysis of law in Indonesia. The law should be able to keep up with the times, be able to respond to changes in the times with all the foundations therein, and be able to serve the interests of society by relying on the moral aspects of the human resources of law enforcement itself (Turiman, 2015).

Judging from its emergence, progressive law is not something that happens by chance, not something that is born without a cause, and also not something that falls from the sky. Progressive law is part of a never-ending process of searching for truth. Progressive law-which can be seen as searching for its identity-starts from the empirical reality of how law works in society, in the form of dissatisfaction and concern about the performance and quality of law enforcement in the Indonesian setting at the end of the 20th century. In the process of his search, Prof. Tjip then concluded that one of the causes of the decline in the performance and quality of law enforcement in Indonesia is the dominance of the positivist paradigm with its inherent formality (Rahardjo, 2009).

In the view of progressive law, this is what is called a policy that does not provide social benefits to society, and it seems as if economics is merely a death knell for the interests of society in general. This is because the mainstream Indonesian economy tends to be positivistic, veering towards the interests of neo-liberalism alone. It is therefore not surprising that the agenda for implementing such an economic system, first and foremost, is to globalize law, tailored to pragmatic interests, namely capital accumulation. This means that the legal mechanisms created are centered on the neo-liberal school of economic development, even entering the realm of legal positivism. The progressive legal paradigm strongly rejects this mainstream, which is centered on positivistic legal rules/mechanisms, and progressive law reverses this understanding. Honesty and sincerity are the crown of law enforcement. Empathy, concern, and dedication to delivering justice are the spirit of law enforcement. Human interests (their welfare and happiness) are the orientation and ultimate goal of law. Law enforcers are the spearhead of change (YAMANI, 2016).

In the court decision on case number 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst which contains several considerations of the Panel of Judges. The Panel of Judges decided that Agnes Monica was proven to have violated the copyright of the song "Bilang Saja" owned by Ari Bias by using the song commercially without permission in three concert performances held in Surabaya, Jakarta, and Bandung in

May 2023. In the lawsuit filed by Ari Bias, as the creator and copyright holder of the song "Bilang Saja", Agnes Monica has used the song commercially without permission in three performances organized by PT Aneka Bintang Gading. In his petition, Ari asked for compensation of IDR 1.5 billion for material losses and IDR 1 billion for immaterial losses (moral rights) (Rizki, 2025).

During the trial, Agnes Monica's side filed two objections to Ari Bias's lawsuit. First, Agnes Monica claimed that the lawsuit was filed against the wrong party (Exceptiono Error In Persona) because the name listed in the lawsuit did not match the official name registered on the Resident Identity Card (KTP). Second, Agnes Monica stated that the lawsuit was vague/unclear (Obscur Libel) because the compensation claim filed was not based on law. However, the Panel of Judges rejected both exceptions. The Judges were of the opinion that the error in writing the name did not result in a formal defect in the lawsuit, because Agnes Monica had received the court summons well. In addition, the Judges stated that Ari Bias's lawsuit had met the formal and material requirements, including a clear legal and factual basis (Rahardjo, 2002).

In its decision, the Panel of Judges considered two main points in the main case. First, the legal ownership of the copyright for the song "Bilang Saja" by Ari Bias. Second, the commercial use of the song without permission by Agnes Monica. Based on the evidence presented, including the Copyright Registration Letter from the Directorate General of Intellectual Property (DJKI), the Judge stated that Ari Bias was the creator and copyright holder of the song "Bilang Saja". In addition, video evidence and concert posters showed that Agnes Monica had performed the song in three performances without permission from Ari Bias. Therefore, the Panel of Judges granted part of Ari Bias's lawsuit and decided that the use of the song "Bilang Saja" by Agnes Monica without permission violated Article 9 paragraphs (2) and (3) of Law Number 28 of 2014 concerning Copyright. This article requires anyone who uses a work commercially to obtain permission from the creator or copyright holder (Rizki, 2025).

However, this decision has recently drawn criticism from legal practitioners in the field of intellectual property. This decision is considered inappropriate if compensation (as royalty payments) is charged to Agnes Mo as a singer. Royalty payments should be charged to the concert organizer. Moreover, Article 23 paragraph (5) of the Copyright Law provides an exception that not every use of a song creation requires the creator's permission. The policy states "Anyone can make Commercial Use of a Creation in a performance without first asking permission from the Creator by paying compensation to the Creator through a Collective Management Institution (LMK)." The determination of rates must also look at the unity of the Copyright Law to the Decree of the Minister of Law and Human Rights Number: HKI.2.OT.03.01-02 of 2016 concerning the Ratification of Royalty Rates for Users Who Utilize Creations and/or Related Rights Products of Music and Songs. The determination of the royalty rate is calculated from the ticket price, production costs, and other things that are the responsibility of the organizer. For example, the royalty rate for a music concert with

ticket sales is calculated based on the gross proceeds from ticket sales multiplied by 2% plus free tickets multiplied by 1% (Rizki, 2025).

In the author's opinion, the court's decision in case number 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst violates the existing norm in the copyright law that the one who must pay royalties is the concert organizer. In this decision, the author has the assumption that this decision is in line with progressive law where the judge dares to penetrate positive law for the welfare of songwriters. In addition, the author also views that the welfare of songwriters in Indonesia is still not guaranteed and the existing honorarium is tens of times higher than that of singers. On this basis, from a progressive legal perspective, the court's decision in case number 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst is in line with the progressive law initiated by Prof. Tjipt.

CONCLUSION

In the author's opinion, the court's decision in case number 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst violates the existing norm in the copyright law that the one who must pay royalties is the concert organizer. In this decision, the author has the assumption that this decision is in line with progressive law where the judge dares to penetrate positive law for the welfare of songwriters. In addition, the author also views that the welfare of songwriters in Indonesia is still not guaranteed and the existing honorarium is tens of times higher than that of singers. On this basis, from a progressive legal perspective, the court's decision in case number 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst is in line with the progressive law initiated by Prof. Tjipt.

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