



## REVIEW OF REVERSIONARY RIGHTS IN THE SOLD-FLAT AGREEMENT OF SONG CREATION ASSOCIATED WITH LAW NUMBER 28 OF 2014 ON COPYRIGHT

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### ABSTRACT

The copyright reversion provision or known as reversionary right contained in Article 18, 30, and 122 Law of the Republic Indonesia Number 28 of 2014 on Copyright is a legal substance that has been regulated by various countries in the world. This provision is intended to provide justice for creators whose rights are often violated in the implementation of copyright transfer agreements with a sold-flat mechanism. Indonesia Copyright Law is not specifically determined an implementing rules or guidelines to exercise this rights of reversions provisions. In its application, there have been rejections from record producer company such as in the case of Constitutional Court Decision Number 63/PUU-XIX/2021. This article is placed to review the implementation of reversionary rights provisions in Indonesia by analyzing national dan international provisions and court decisions with normative juridical methods and comparative law, as well as analytical and exploratory descriptive approaches. The implementation of reversionary rights provisions in Indonesia will raise challenges of weak legal understanding and disruption of rejection by record producers, which will weaken aspects of the implementation process. The provisions of the stages of the submission notifications process and documentation of reversionary rights in writing applied by the United States and the Netherlands can be something that Indonesia develops in strengthening the implementation process of reversionary rights provisions. To exercise and enforce their reversion rights, songwriters can renegotiate the agreement with the record producer, file for compensation with the commercial court, or also join the Collective Management Organization.

**Keywords:** Reversionary Rights; Copyrights; Sold-Flat Agreement.

### I. INTRODUCTION

Music or songs as a creation has more value than just its artistic aspect, but also has a very promoting economic value. Music itself as a work of art is defined as a form of expression of the heart that is usually issued in the form of a sound language (song).<sup>1</sup> Due to by the development of science and digital technology and the internet, music and songs have become commodities in business activities that offer income opportunities for artists and music industry players to utilize their work. Starting from karaoke, concerts, album sales, streaming platforms, and song licenses are sources of income that are massively demanded by the public. In the implementation of business activities in the music industry is inseparable from the role of copyright as the legal protection of works of art. Based on Article 1 Paragraph (1) Law of the Republic Indonesia Number 28 of 2014 on Copyright, Copyright defined as an an exclusive right of the author vested automatically on the basis of declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance

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<sup>1</sup> Sanusi, Bintang, *Hukum Hak Cipta*, Bandung: PT Citra Aditya Bhakti, 1998, p. 96

with the provisions of laws and regulations. Copyright gives exclusive rights to the creator to prohibit other parties from utilizing these rights without permission, which includes moral rights and economic rights.<sup>2</sup> Moral rights are the right to defend the personal interests or reputation of the creator, relating to the good name, ability, and integrity, which is attached to the lifetime of the creator. And economic rights relating to the right to obtain economic benefits for the work of creation.

To then optimize the economic value of copyright, the creator in this case the songwriter needs to transfer a part of or all of his rights as a form of permission (*license*) to other parties to use his work, in exchange (royalties) for the use. Article 16 Law of the Republic of Indonesia Number 28 of 2014 on Copyrights determines the transfer of copyright can be done through inheritance, grants, and written agreements. Written agreements are the reason that is often done in the transfer of copyright.<sup>3</sup> In practice, the transfer of copyright through a written agreement is often done through a sold flat agreement or also known as buy-out mechanism. This type of agreement has become common practice, especially in the transfer of ownership of music and song copyrights.<sup>4</sup> The sold flat agreement is an agreement that requires the Author to hand over his Work through a full payment by the purchaser so that the economic rights of the works is entirely transferred to the purchaser without a time limit.<sup>5</sup> This form of agreement is used by creators to obtain a quick economic benefit by receiving a certain amount of payment at the beginning of the agreement.

Besides these advantages, the implementation of the sold-flat agreement has the consequence of losing all exploitation rights over the creator's copyrighted work to the buyer after the initial payment, for absolutely for a lifetime, without receiving further royalties after the work is produced and sold. In the context of the music industry, through a sold-flat agreement, the right to produce a song will be fully transferred to the record company. And the record company can freely produce and duplicate songs according to market demand without the need to ask permission from the creator and the creator only receives the limited payment given at the beginning of the transaction.<sup>6</sup>

These consequences in practice lead to injustice, where creators often did not get fair compensation for their work due to the imbalance of negotiating positions when faced with record production companies. Due to a limited knowledge and experience, as well as economic demands put creators under pressure to transfer all or part of their rights during the copyright term as a condition for their works to be produced and distributed by publishers or producers.<sup>7</sup> In addition, the real economic value of the copyrighted work tends to be difficult to be known at the outset of the agreement so that the economic benefits are limited.<sup>8</sup> There are also circumstances where the publisher or producer no longer commercializing the copyrighted work before the expiry of the copyright term. However, because the property rights have been transferred, the creator can no longer access his work to be reused or developed.<sup>9</sup>

In the protection of Intellectual property law regime, this problem can be accommodated by the application of reversionary rights. Reversionary rights is a term used in the copyright law regime to refer to the context of returning copyright to the creator after a certain period of time after the rights

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<sup>2</sup> Article 4 Law of The Republic Indonesia Number 28 of 2014 on Copyright

<sup>3</sup> Article 16 point (2) Law of The Republic Indonesia Number 28 of 2014 on Copyright

<sup>4</sup> Towse, Ruth, "Copyright Reversion in The Creative Industries: Economic and Fair Remuneration", *The Columbia Journal of Law & The Arts*, Vol. 4, Number 3, 2023, P. 478

<sup>5</sup> The Eludation of Article 18 Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

<sup>6</sup> Ahmad M. Ramli, *Hak Cipta, Disrupsi Digital Ekonomi Kreatif*, Bandung: PT Alumni, 2018, p. 66-67

<sup>7</sup> Joshua Yuvaraj, (et.al), "U.S. Copyright Termination Notices 1977-2020: Introducing New Datasets", *Journal of Empirical Legal Studies*, Vol. 19, Issue 1, March 2022, p. 251-252

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

have been transferred to another party.<sup>10</sup> This mechanism is intended to help creators get a fairer return for their works. The emergence of this principle began in the context of the printing industry of written works or books, namely in the legal product of the government of the United Kingdom, namely Section 11 Statue of Anne 1710 relating to the return of the right to print and make copies of book works to the creator after 14 years.<sup>11</sup> Through this provision, creators are given the opportunity to transfer new rights from a stronger bargaining position after their work has gained a substantial audience.<sup>12</sup>

The concept of copyright reversion has been broadly applied internationally with a various mechanisms in many countries with common law as well as civil law systems.<sup>13</sup> As of 2019, it is known that around 55% of the United Nations member states have implemented this provision in their copyright legislation. In 2020, there were 150 provisions on reversion rights spread among countries in the European Union states.<sup>14</sup>

There are some of leading countries of intellectual property rights such as the United States with a common law system, using the term Termination Right which is comprehensively regulated in Section 203 Title 17 of The United States Code.<sup>15</sup> In the Netherlands, with their civil law system, applies this provisions through Article 25 (e) of the Dutch Copyright Act and its application is used as one of the references by European Union countries.<sup>16</sup> The applicability of the norm of reversionary rights can usually be caused by 2 (two) legal causes, namely the expiration of the time limit for the implementation of the agreement or legal causes in the form of creations that are not sufficiently used or not as agreed (non-use clause). Furthermore, the process of returning copyright to the creator can occur automatically after the conditions of legal causes are met or through administrative actions such as filing procedures for returns.<sup>17</sup>

In Indonesia, this provision was first implemented through the amendment of the Indonesia Copyright Law in 2014 which is contained in 3 articles namely Articles 18, 30, and 122 Law of the Republic Indonesia Number 28 of 2014 on Copyrights. Article 18 states that<sup>18</sup>:

*“The Works of books, and/or all other written works, songs and/or music with or without text that are transferred in a sold flat agreement and/or indefinite transfers, are to be reverted to the Author when the agreement reaches a period of 25 (twenty five) years.”*

Similar provisions apply to the Performer’s Work.<sup>19</sup> In Article 122 Law Number 28 of 2014 on Copyrights which regulates the transitional rules, for the sold-flat agreement made at the time before the enactment of Law of the Republic Indonesia Number 28 of 2014 on Copyrights. The application of the reversionary rights norm in the Indonesian Copyright Law is intended to accommodate the problems that often experienced by 'songwriters' and 'book authors' who do not get an optimal economic income from the works that have been created, while on the other hand their works are still

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<sup>10</sup> Sarjono, Agus, “Sifat Hukum Hak Cipta Sebagai Kebendaan Sui Generis”, Technology and Economics Law Journal, Vol. 1, Vol. 2, July,2022, p. 126.

<sup>11</sup> Section 11 Statue of Anne 1710.

<sup>12</sup> Ginsburg, Jane C. & Lionel Bently, “The Sole Right... Shall Return to the Authors”: Anglo-American Authors’ Reversion Rights from the Statue of Anne to Contemporary U.S. Copyright”, Berkeley Tehcnology Law Journal, Vol. 25, 2010, p. 1479

<sup>13</sup> GOV.UK, “Rights Reversion and Contract Adjustment, <https://www.gov.uk/government/publications/economics-of-streaming-contract-adjustment-and-rights-reversion/rights-reversion-and-contract-adjustment#contents> downloaded on 28/02/2023.

<sup>14</sup> Ibid.

<sup>15</sup> Brian D. Caplan, “Navigating US Copyright Termination Rights”, WIPO Magazine, [https://www.wipo.int/wipo\\_magazine/en/2012/04/article\\_0005.html](https://www.wipo.int/wipo_magazine/en/2012/04/article_0005.html) , downloaded on 13/01/2023.

<sup>16</sup> GOV.UK, Loc.cit.

<sup>17</sup> Ibid.

<sup>18</sup> Article 18 Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

<sup>19</sup> Article 30 Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

being used and circulated in the market. The application of this norm is intended as a manifestation of progressive law that supports the development of the creative economy and the national digital economy, as well as the process of changing business patterns of music, songs, and books in the current digital transformation.<sup>20</sup>

The application of reversionary rights substance in the Law Number 28 of 2014 on Copyrights has caused conflict between the record producer and the creator. One of the record label companies in Indonesia, PT Musica Studio challenged these provisions and filed a request for judicial review the Constitutional Court of Republic of Indonesia. PT Musica Studio as the applicant claims that the enactment of these articles has the potential to cause harm to their economic rights to copyrighted songs that have been obtained through the sold-flat system, and also contrary to the principle of freedom of contract and the principle of legal certainty.<sup>21</sup> These articles are considered to have positioned the phonogram producer who buys the copyright of the song as if it were just a lease, due to the obligation of copyright reversion. The applicant also said that the provision is not in line with the rules of equal treatment before the law because it does not contain the terms of restoration of rights or compensation for the buyer when the copyright is returned to the creator and performer.<sup>22</sup> Furthermore, it is argued that these articles are contrary to the provisions of Article 63 paragraph (1) Law Number 28 of 2014 on Copyrights of which regulates the protection of economic rights for Phonogram Producers which is valid for a period of 50 years since the Phonogram is fixed. Therefore, the provisions contained in these 3 articles are considered contrary to the constitutional rights guaranteed by the 1945 Constitution, namely Article 28D paragraph (1) regarding the right to fair legal certainty and Article 28H paragraph (4) regarding property rights.<sup>23</sup>

In Decision Number 63/PUU-XIX/2021, the Constitutional Court decided to denied the applicant's petition entirely. The principal petition of PT Musica Studio as the applicant is considered unreasonable according to law. And the norms in Article 18, Article 30, and Article 122 of the Copyright Law are maintained and remain in effect because they do not conflict or are in accordance with the provisions in Article 28D paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The government decided to maintain the concept of copyright reversion to the creator or reversionary rights in the Indonesia Copyright Act as a form of protection by the state for the creators whose rights are often violated in a sold-flat agreement, as well as ensuring the implementation of the principle of good faith in a business relationship related to the transfer of economic rights in copyright.<sup>24</sup>

The reversionary rights provisions are regulated generally in the Law Number 28 of 2014 on Copyrights. In connection with the case of the Constitutional Court Decision No. 63/PUU-XI/202, the questions that arise are how the norm of copyright reversion is implemented in reality by the creator and related rights holders such as record producers? and what things should be considered by the creator or the parties involved in implementing this reversionary right so that it can then avoid legal conflicts? In the Elucidation of Article 18 Law of the Republic Indonesia Number 2014 on Copyrights, the definition of a sold-flat agreement is given as well as the definition of the object of other written

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<sup>20</sup> Ahmad M. Ramli, *Lagu-Musik dan Hak Cipta*, Bandung:PT Refika Aditama, 2022, p. 5

<sup>21</sup> Fitri Novia Heriani, "Kabar Baik untuk Musisi! MK Tolak Gugatan Musica Studi Terkait Hak Cipta", *Hukumonline.com*, <https://www.hukumonline.com/berita/a/kabar-baik-untuk-musisi-mk-tolak-gugatan-musica-studio-terkait-hak-cipta-lt638897f27cd70/?page=2>, downloaded on 11/02/2023.

<sup>22</sup> ptu

<sup>23</sup> Fitri Novia Heriani, *Loc.cit.*

<sup>24</sup> Ahmad M. Ramli, *Op.cit.*, p. 14.

works whose rights can be returned.<sup>25</sup> As for the further provisions, the Copyright Law does not delegate an implementing regulation related to the reversionary rights provisions contained in Articles 18, 30 and 122. The implementation of these norms will entirely depend on the interpretation of the parties involved and the general public.

Copyright protection in Indonesia recognizes the copyright registration protection system. This registration mechanism is not an obligation in copyright protection, but its existence has an important role in protecting the rights of creators and copyright holders. Although it's a part of administrative aspect, the process of copyright registration formalities can provide legal certainty related to ownership claims over protected copyright objects and facilitate copyright licensing.<sup>26</sup> The formality of recording the transfer of copyright in helping to identify information to the public regarding copyright ownership.<sup>27</sup> In addition, the recording mechanism can be used as a basis for the creator or copyright holder in utilizing his work for economic purposes.

Ula Furgal in his publication "Reversion Rights in The European Union Member States", elaborated that provisions relating to procedural aspects and formalities in copyright reversion are issues that are rarely considered in the European Union. This causes creators to have no guidance in exercising their rights. The United States in applying termination rights by requiring an active action from the creator to apply for the return of copyright with some provisions and stages that need to be considered. In the Netherlands, reversionary rights are enforced in the context of copyrighted works that are not sufficiently exploited as they should and the creator needs to apply for the dissolution of the copyright transfer agreement. In Indonesia, it is known that the enforcement of reversionary rights occurs automatically after the agreement reaches a period of 25 years without the need for a notice of termination of the agreement on the part of the creator, or in Ahmad M. Ramli names it a passive stelsel system.<sup>28</sup>

The Provisions of reversionary rights scheme have been implemented for decades and it is not new in the copyright law protection regime.<sup>29</sup> However, this topic is one of the aspects of copyright legal protection that is rarely be the focus of research and studies, particularly its application in operational aspect and legal protection practices. The number of cases relating to this provision is still very little heard, but in a few years the number will continue to grow along with the times and technology.<sup>30</sup> In this article, the author will elaborate the implementation process of automatic reversion system in copyright reversion specifically in the context of song creation in the sold flat Agreement. In addition, this article will also compare the legal provisions related to reversionary rights between Indonesia, the United States and the Netherlands. Furthermore, it will also review the legal actions that can be taken by the creator to exercise the reversionary rights in Indonesia.

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<sup>25</sup>The Eludation of Article 18 Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

<sup>26</sup>Stef van Gompel, "Copyright Formalities in The Internet Age: Filtering of Protection or Facilitators of Licensing", Amsterdam Law School Legal Studies, Paper No. 2014-30, p. 1430-1431

<sup>27</sup>Bhumika Khatri, "Resurrecting Copyright Formalities: No 'Deadly' Human Rights Implications", LLM Research Paper, Faculty of Law Victoria University of Wellington, 2016, p. 6

<sup>28</sup>Ahmad M. Ramli, *Op.cit*, p. 13

<sup>29</sup>Heal, Paul J., "Copyright Reversion to Authors (And the Rosetta Effect): An Empirical Study of Reappearing Books", *Journal of Law, Technology, & Policy*, Forthcoming, University of Illinois College of Law Legal Studies Research Paper, No. 20-18, 2020, p. 5

<sup>30</sup>Reovner, Ashely, "Reversionary Rights: Unusual Ways to Have a Second Bite a the Copyrights Apple", *Chicaho-Kent Journal of Intellectual Property*, Studentorgs.kentlaw.iit.ed, <https://studentorgs.kentlaw.iit.edu/ckjip/reversionary-rights-unusual-ways-second-bite-copyright-apple/>, downloaded on 17/01/24

## II. RESEARCH METHODS

This article was written using two research approaches: the normative juridical approach, which focused on legislations or other prevailing laws, and the comparative legal approach, which examined provisions on reversionary rights in Indonesia, the United States, and the Netherlands.<sup>31</sup> Descriptive analytical and exploratory research specifications are used in this article, by providing an explanation of the legal regulations and provisions regarding reversionary rights in the copyright law regime, as well as describing its implementation process in Indonesia.

The data collection technique used was the document study method through searching for written documents, written laws, and regulations, including court decisions. The data result was then analyzed using qualitative approach methods. Stages of research include literature review of primary legal sources such as provisions on copyrights and civil law, legislation of foreign countries, and various international treaties and conventions. Furthermore, secondary legal sources in the form of scientific literature, tertiary legal sources such as legal dictionaries, and electronic literature are also part of the research analysis.<sup>32</sup>

## III. DISCUSSION AND RESULT

### A. Application of Copyright Automatic Reversion System in Indonesia

The general provisions regarding reversionary rights in the Copyright Law in Indonesia stated that the works of books, and/or all other written works, songs and/or music with or without text that are transferred in a sold flat agreement and/or indefinite transfers, are to be reverted to the Author when the agreement reaches a period of 25 years.<sup>33</sup> Furthermore, the term "sold-flat agreement" is defined as an agreement that obliges the Creator to hand over his/her Creation through full payment by the buyer so that the economic rights to the Creation are fully transferred to the buyer without time limit.<sup>34</sup>

The provision stipulates that the implementation of copyright transfer agreements on book works or other written works (collections of poetries, general dictionaries, and daily newspapers) or musical works/songs with or without text, specifically those that are implemented on a sold flat agreement or indefinite time will be limited to 25 years. In the book of "Lagu-Musik dan Hak Cipta", Ahmad M. Ramli elaborated that, the reversion of copyright in the Indonesian Copyright Act occurs immediately or automatically (automatic reversion) without requiring an active notification of the cancellation of the agreement or in this case he referred it as a passive stelsel system.<sup>35</sup>

In copyright, music and songs are considered as the same object/work although the definition is quite different.<sup>36</sup> In addition to economic rights and moral rights, in the object of copyright songs are known two other derivative rights, namely performing arts and mechanical rights. Performing rights are related to the right to play, perform, play, and broadcast songs commercially. Mechanical rights relate to the right to mechanically duplicate songs and transfer them in phonograms or master recordings (sound recording).<sup>37</sup> Through the implementation of the sold-flat agreement, all copyrights

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<sup>31</sup> Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2012, p. 118

<sup>32</sup> Ibrahim, Johnny, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2006, p. 323

<sup>33</sup> Article 18 Law of The Republic Indonesia Number 28 of 2014 on Copyrights

<sup>34</sup> Eludation of Article 18 Law of The Republic Indonesia Number 28 of 2014 on Copyrights

<sup>35</sup> Ahmad M. Ramli, *Lagu-Musik dan Hak Cipta*, PT. Rafika Aditama, Bandung, 2022, p. 13

<sup>36</sup> Hulman Panjaitan dan Wetmen Sinaga, *Performing Right: Hak Cipta atas Karya Musik dan Lagu, serta Aspek Hukumnya*, Jakarta: UKI Press, (2017), p. 123

<sup>37</sup> Rischy Akbar Santosa, et.al, "Perlindungan Hak Komersial Pencipta Lagu Terhadap Pemanfaatan Lagu Tanpa Ijin untuk Kepentingan Komersial (Studi di: Komunitas Musik Hero Community Semarang)", *Diponegoro Law Journal*, Vol. 5, Vol. 3, 2016, p. 2-3

owned by the songwriter in the form of mechanical rights and performance rights will be transferred to the record producer without time limit. The record producer acts as a copyright holder who will only control part of the exclusive rights in the form of economic rights to enjoy the commercial value of copyright. This transfer does not include moral rights that are eternally belongs to the creator.<sup>38</sup> The songwriter will still have the right to continue to be recognized as the creator, the right to maintain and prohibit other parties from changing his creation without permission, and others. Thus, the song's copyright certificate will remain in the name of the creator and cannot be transferred even if it is sold.

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In general, after an agreement is reached and payment is made for the song, the record producer obtains all mechanical rights and performance rights to the copyrighted work. In exercising mechanical rights, the record producer performs a mechanical recording process of the song by combining the recording of instruments with vocals (mixing) to create a master recording product. Through the production process of this master recording, a secondary or derivative right arises from the copyright of the song in the form of sound recording rights attached to the record producer and the right to perform works owned by singers and music players.<sup>40</sup> Then the record producer has the freedom to commercialize songs and master recordings produced according to market demand without the need to ask permission from the creator and the creator only receives payment to the extent that has been given at the beginning of the transaction.<sup>41</sup>

After a period of 25 years has been fulfilled, the Law Number 28 of 2014 on Copyrights determines that copyright will automatically revert back to the creator. Automatic transfer can be said to be similar to the principle of declarative copyright protection as stipulated in Article 1 paragraph (1) Law of the Republic Indonesia Number 28 of 2014 on Copyright. Where the creator does not need to perform certain formalities to get the protection of its rights. Copyright protection arises automatically when a work has been realized or expressed in a tangible form that can be seen, heard, and read, and meets the criteria as an original work and not a copy.<sup>42</sup> This reversion rights makes the record producer no longer hold the copyright to the song creation exclusively and the songwriter becomes the rightful holder of all exclusive rights to his song creation and is entitled to royalties and economic rights to his song creation.<sup>43</sup> This return provision cannot be waived by the parties to the agreement and automatically the exclusive right to exploit the copyright of the song transferred through the sold-flat agreement will be re-owned by the creator.<sup>44</sup>

After the end of the 25-year period, the creator will gain have all exclusive rights to the song. However, it should be noted that the copyright in the song owned by the songwriter will remain attached to the related rights product, i.e. the phonogram recording owned by the recording company which will be valid for 50 years from the fixation of the phonogram. These two rights are very much linked, because related rights in a phonogram recording can be considered as the result of copyrightable creations.<sup>45</sup> The previously unlimited full economic rights of the record producer will be limited to his position as the owner of the related rights to the phonogram recording. This limitation

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<sup>38</sup> Article 5 point (2) Law of The Republic Indonesia Number 28 of 2024 on Copyrights

<sup>39</sup> Erna Tri Rasmala Ratnawati, "Akibat Hukum Perjanjian Jual Beli Hak Cipta Dengan Sistem Jual Putus (Sold Flat)", *Jurnal Widya Pranata Hukum*, Vol. 1, No. 2, September, 2019.p. 156-160

<sup>40</sup> Otto Hasibuan, *Op.Cit.*, p. 156-160

<sup>41</sup> Ahmad M. Ramli, *Op.Cit.* p. 66-67

<sup>42</sup> Khwarizmi Maulana Simatupang, *Op.Cit.*, p. 70

<sup>43</sup> Ahmad M. Ramli, *Op.cit.*, p. 6

<sup>44</sup> Article 63 point (1)(b) Law of The Republic Indonesia Number 28 of 2014 on Copyrights

<sup>45</sup> B.A.R.R Ariyatna & W.A. Sanath Sameera Wijesinghe, "Protecting Copyrights and Related Rights in the Digital Dilemma: Some Challenges", *Journal of Business Management and Economic Research*, Vol. 2, Issue 1, 2018, P.47

is as contained in Article 63 paragraph (1) Law Number 28 of 2014 on Copyrights which includes: 1) duplication of phonograms in any way or form, 2) distribution of original phonograms or copies thereof, 3) rental to the public of copies of phonograms, and 4) provision of phonograms with or without cables that are accessible to the public.<sup>46</sup> The return of exclusive rights caused by right of reversion gives several obligations to the record producer including:

- a. The record producer isn't allowed to use the song creation without the authorization of the creator;
- b. The record producer isn't allowed to take actions that may hinder the creator in obtaining his economic rights
- c. The record producer is obliged to give compensation (royalty) to the songwriter for the use of the song creation in the master recording used.

The provisions in the Law Number 28 of 2014 on Copyrights do not specifically regulate the actions that songwriters must take after the return becomes effective. Thus, the songwriter has the freedom to determine the steps taken and this will be returned to the agreement with the record producer in accordance with the principle of freedom of contract in Article 1338 of the Indonesia Civil Code. Songwriters have the flexibility to consider these options according to their personal desires and relevant business considerations. Some steps that songwriters can consider such as<sup>47</sup>:

- a. continue the collaboration with the copyright buyer and renew the agreement through a license mechanism;
- b. utilize and manage his/her copyright independently by cooperating directly with the Collective Management Organization;
- c. or abandon his copyright.

The application of the concept of reversionary rights in Indonesia as stipulated in Articles 18, 30 and 122 Law Number 28 of 2014 on Copyrights 2014 on Copyright is based on the justification that there is an inherent natural relationship between the creator and his copyrighted work. This concept is a manifestation of the concept of natural law and personality theory applied by the copyright law regime in the civil law system applied European countries. The natural law theory views that a creator has absolute rights over the creation that cannot be separated from him.<sup>48</sup> The sacrifice of effort, time, knowledge, and costs that have been spent, making the creator has a natural right to own and control the results of his work.<sup>49</sup>

Based on the personality theory developed by Hegel, it is described that a person's self-identity will be emitted from the work of his creation, as a form of extension of the character and personification of the creator.<sup>50</sup> Copyright has an eternal nature that cannot be revoked and will continue to flow as an inheritance to the creator, even after the economic rights are transferred to other parties.<sup>51</sup> Further in line with that, based on the principle of alter ego put forward by Eddy Damian outlined that a work produced from intellectual ability is a form of manifestation of alter ego (reflection of a personality) or the quality of taste, passion, and creative reasoning of the creator.<sup>52</sup> Thus, ownership of the moral rights and economic rights of the creator over his creation becomes inviolable.

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<sup>47</sup>Kretschmer, Martin, "Short Paper: Copyright Term Reversion and the 'Use-it-Or-Lose-it' Principle", *International Journal of Music Business Research*, Vol. 1, No. 1, April, 2012, p. 46

<sup>48</sup>Agus Sadjono, *Op.Cit.*, p. 255

<sup>49</sup>Eddy Damian, *Hukum Hak Cipta*, 5<sup>th</sup> Edition, PT. Alumni, Bandung, 2019, p. 41-44

<sup>50</sup>Justin Huges, "The Philosophy of Intellectual Property", *Georgetown University Law Center and Journal*, 1988, p. 28-30.

<sup>51</sup>Haryono dan Agus Sutono, "Pengakuan dan Perlindungan Hak Cipta Tinjauan Secara Filosofis dan Teoritis", *Jurnal Ilmiah CIVIS*, Vol. 4, No 2, July, 2017, p. 56.

<sup>52</sup>Eddy Damian, *Op.Cit.*, p. 41-44

<sup>53</sup> Those three principles are justifications for legal protection given to the existence of an inseparable relationship between the creator and his work. So that the transfer of copyright can not on going for unlimited time and the relationship between the two needs to be restored as a form of appreciation and respect for the sacrifices that have been given by the creator.

The application of the reversionary rights norm in Indonesia is aimed at creating better protection for "songwriters" and "book authors" who often do not receive a decent and fair wage. This norm also regulates the implementation of copyright transfer agreements through a sold-flat agreement to be in line with the values of justice in accordance with the principles of copyright law, and supports the development of the national creative economy in the era of digital transformation.<sup>54</sup> Based on the Theory of Hukum Pembangunan proposed by Mochtar Kusumaatmdja, to exercise the law into reality, it requires not only the principles and rules of law that govern, but also it is required the institutions and processes aspects.<sup>55</sup> To ensure the effectiveness of the application of reversionary rights contained in Articles 18, 30, and 122 Law Number 28 of 2014 on Copyrights in practice, institutional support from the Directorate General of Intellectual Property Office as the organizer of intellectual property policies in Indonesia is needed, as well as support for the process aspects that include the legal culture of society, such as social customs and how the law is perceived to ensure that the law is implemented properly.

The substance of the reversionary rights provision in Articles 18, 30, and 122 Law of the Republic Indonesia Number 28 of 2014 are seems quite simple, without being followed by standard conditions in its enforcement. However, in practice, the implementation of this norm will not be easy because there are several problems or challenges. First, the limited understanding of the law owned by songwriters is often the main problem for creators in enforcing their rights.<sup>56</sup> The existence of reversionary rights norms in the copyright law regime is one of the provisions that is still little used in practice, both in countries with common law and civil law systems.<sup>57</sup> To implement this reversionary right requires a decent and comprehensive understanding of the law, especially intellectual property law and also music industry practice. Potential ignorance of this provision can make the parties, especially songwriters, unaware that the copyright ownership status of their work has been restored.

Secondly, there is the potential for the exercise of the right of reversion to be disrupted by the refusal of the record producer. Although, the automatic reversion system provides convenience in terms of the effectiveness of its enforcement, but in implementation or reality it is not enough to guarantee that the copyright buyer will agree to return the exclusive rights to the creator because the potential rejection from copyrights buyer of the exercise of the right of reversion is always opened.<sup>58</sup> Given the implementation of this norm is not an easy thing for the record producer, because it requires additional transaction costs to renegotiate for the continued use of the work with all creators involved.

<sup>59</sup> This potential rejection can be seen in the judicial review case of Law Number 28/2014 on Copyright

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<sup>53</sup> Mahadiena Fatmashara, Muhamad Amirulloh, Laina Raifani, "Perlindungan Hukum Hak Cipta Terhadap Logo Instansi Pemerintah dihubungkan Dengan Prinsip Alter Ego", Jurnal Poros Hukum Padjadjaran, Vol. 2, No. 1, (November, 2022), p. 100

<sup>54</sup> Ahmad M. Ramli, *Op.Cit*, p. 5

<sup>55</sup> Mochtar Kusumaatmdja, *Konsep-Konsep Hukum Dalam Pembangunan*, Bandung: Alumni, 2006, p. vi

<sup>56</sup> Katerina Ronauli, et.al "Pelaksanaan Perjanjian Lisensi Hak Cipta Atas Lagu Antara Pencipta Lagu Dengan Produser Rekaman". *Diponegoro Law Journal*, Vol. 5, No. 3, 2016. P.10

<sup>57</sup> Rita Matulionyte, "Empowering Authors via Fairer Copyright Contract", *University of New South Wales Law Journal*, Vol. 42, Issue. 2, June, 2019, p. 708

<sup>58</sup> Joshua Yuvaraj, "Implementing Copyright Revocation in Ireland and Malta: Lessons for lawmakers", *Journal of Intellectual Property Law & Practice*, 2023, Vol. 18, No. 7, p. 541

<sup>59</sup> Paul J. Heald, et.al, "The Impact of Implementing A 25-Year Reversion/Termination Right in Canada", *Journal of Law, Technology, & Policy University of Illinois*, No. 20-18, p. 32

in the Indonesia Constitutional Court Decision Number 63/PUU-XIX/2021. Record producers such as PT Musica Studio have objected to the enforcement of this provision which requires the return of copyright to musician Rudy Loho for the Copyright Transfer Agreement dated May 8, 1995.<sup>60</sup>

In addition, related rights owner Association of Indonesian Record Producers (ASPRINDO) also expressed objections if they lose ownership of the company's assets in the form of master recordings of songs obtained from the sold-flat agreement with the creator. In commercializing song copyrights, record producers often collaborate with other third parties such as film companies, advertising companies, telecommunications providers, digital platform providers, and collective management organization. License agreements with third parties can increase the complexity of implementing copyright returns.

With potential those challenges, the reversionary right provisions contained in Articles 18, 30, and 122 Law Number 28 of 2014 on Copyrights showed weaknesses in the process aspect. It is important to ensure that legal rules not only provide protection, but also that the law can be exercised so that creators can enjoy their rights. Therefore, in practice, creators need to be facilitated with legal support that guarantees the legal certainty of their return rights as well as transparent guidelines that can be used as guidelines for the implementation of the right to return song creations. Which of these things will facilitate implementation in its operational aspects. Thus, the desired goal of realizing order and justice in the practice of buying and selling song creations can be achieved.

### **B. Provision Comparison of Reversionary Rights between Indonesia, the United States, and the Netherlands**

As described in the introduction section of this article, the concept of reversionary rights is not a new thing in the copyright law protection regime and this provision has been broadly applied in various countries with common law and civil law legal systems, although its application varies according to the legal system applied and the conditions of each country's customary.<sup>61</sup> The enforceability of the norm of reversionary rights usually can be caused by 2 main legal causes, namely the expiration of the time limit for the implementation of the agreement or legal causes in the form of creation that is not sufficiently used or not as promised (non-use clause). The process of enforcing the return of copyright to the creator can occur automatically after the conditions of the legal cause is met or through administrative actions such as the reversion rights filing procedure.<sup>62</sup>

Examples of countries with common law and civil law systems that have comprehensively regulated reversionary rights in their copyright legislation are the United States and the Netherlands. The United States uses the term termination rights to refer to the concept of copyright reversion to the creator which is contained comprehensively and in detail in Section 203 of the US Copyrights Act 1976. In the European Union, the Netherlands became one of the references through Directive (EU) 2019/790 of the European Parliament and of the Council of April 17, 2019 on copyright and related rights in the Digital Single Market and amending Directives 90/9/EC and 2001/29/EC.<sup>63</sup> Regulations in both countries that are pioneers in copyright protection in each of the common law and civil law systems can be used as a comparison with regulations in Indonesia to be used as a relevant reference to complement and develops the existing provisions. Here are further explanations of the provisions of reversionary rights in some countries:

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<sup>60</sup> Constitutional Court of Republic Indonesia Decision Number 63/PUU-XIX/2021, p. 19

<sup>61</sup> The Resurrection of Reversionary Copyrights: Redwood Rides Again, *Oxford Journal of Legal Studies*, 198, p. 296-298

<sup>62</sup> GOV.UK, Loc.cit.

<sup>63</sup> GOV.UK, Loc.cit.

## 1. Reversionary Rights Provisions in The United States

In the United States, the term reversionary rights is referred as "termination rights". The provisions of this copyright reversion are regulated in Section 203 Title 17 of the United States Code which includes 2 sub sections (A) which regulates the Conditions for Termination and Sub Section (B) which regulates the effect of Terminations. In Section 203 (a) (1) of Title 17 of the United States Code it is specified that the right of termination applies to exclusively or non-exclusively transfers for all copyrighted works under this copyright made on or after January 1, 1978. It does not apply to copyrighted works created in a work-for-hire. This termination rights provisions were designed to empower authors by giving them the ability to reclaim what they may have lost through naïve transaction and lack of bargaining power.<sup>64</sup>

Section 203(a)(3) of Title 17 of the United States Code states that termination can be done after the expiry of 35 years of the assignment agreement made during the termination period, which is 5 years up to 40 years.<sup>65</sup> Submission of the right to terminate can be done by the creator, or his heirs/representatives for the deceased creator.<sup>66</sup> For copyrighted works created collectively, the right of termination must be exercised by the majority of the creators or their heirs/representatives.<sup>67</sup> Furthermore, in Section 203 (a)(2) Title 17 The United States Code, the United States provides specific requirements related to which parties can represent the creator as heirs or representatives who have an interest, this will also be adjusted to the composition of the distribution of interest.

To exercise the right of termination, the creator or his/her heirs need to submit a written notice signed in proportion to the number of creators or their heirs or representatives, stating the effective date of the termination. The notice must be submitted not less than 2 years and not more than 10 years before the effective date. A copy of the notice must be registered at the Copyright Office before the effective date of termination, and also meet the criteria set by the Register of Copyrights.<sup>68</sup> In the context of song creation, the notification letter must contain the following matters<sup>69</sup>:

- a) The name and addresses of every grantee (person/entity) or their successors in-interest whose rights are being terminated;
- b) the name of the songs or sound recording to which notice applies;
- c) The date of the execution of grant of rights;
- d) The filing registration number from the U.S. Copyright Office;
- e) The termination date;
- f) The date and the title of the agreement that memorializes the original grant of rights;
- g) a brief statement identifying that the transfer of copyright is the object to be terminated;
- h) in the case of a deceased creator, it is necessary to include the name of the heir or authorized representative accompanied by a description of the relationship with the creator.

In The Section 203 (b) Title 17 United States Code is determined regarding the effect of terminations. Terminations will cause all rights protected by the Copyright Act to be terminated and returned to the creator or his heirs, including the creator or his heirs / representatives who did not sign the notice. As for derivative works prepared before the termination is carried out, it can be applied

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<sup>64</sup>Farkas, Andreas, "I'll Be Back? The Complications Heirs Face When Terminating A Deceased Author's Online Copyright Licences", *Estate Planning And Community Property Law Journal*, Vo. 5:411, 2018, P.418.

<sup>65</sup>Section 203 (a)(3) Title 17 of the United States Code

<sup>66</sup>Section 203 (a) (1) Title 17 United States Code.

<sup>67</sup>Section 203 (a) (1) Title 17 United States Code.

<sup>68</sup>Section 203 (a) (4a & 4b) Title 17 United States Code.

<sup>69</sup>Donnelly, Bob, "Everything You Need to Know About Copyright Reversions", *St. John's Entertainment, Art, and Sports Law Journal*, Vol. 1, Number 1, 2012, p. 23-24

according to the time when the termination has not yet taken effect.<sup>70</sup> And for further transfers will only be valid if made after the termination date is in effect signed by the parties receiving terminations interest in the same amount and proportion.<sup>71</sup> Affirmed in Section 203 (b)(6) the transfer of copyright will continue to apply according to the term of copyright protection unless until a termination takes effect.

## 2. Reversionary Rights Provisions in Netherland

The provisions of reversionary rights in Netherland law regulated by the copyrights contract law contained The Dutch Copyright Act (Auteurswet)<sup>72</sup> and the Act of 18 March 1993 The Protection of Performers, Producers of Phonograms or First Fixations of Films and Broadcasting Organizations which regulates the rights of performers and producers of phonograms. Article 25e (1) of The Dutch Copyright Act provides that the creator may dissolve the agreement in whole or in part if the other party does not exploit the copyrights to the work to a sufficient extent within a reasonable period of time after the conclusion of the agreement assignment, or after the initial performance of the exploitation act, the assignee no longer exploits the copyright to a sufficient extent. The foregoing sentence does not apply if it is attributable to the creator that the copyright is not sufficiently exploited within the term or if the other party has such an overriding interest in maintaining the agreement that the creator's interest must deviate according to standards of reasonableness and fairness.

The right to dissolve the agreement only arises after the creator gives notice in writing of a reasonable period of time to the other party for exploitation of the work and such exploitation does not take place within the stipulated period. By the request of the creator, the copyright assignee shall give a written statement regarding the scope of exploitation before the expiry of the stipulated period.<sup>73</sup> The agreement dissolved by a written statement from the creator to the other party. At the request of the creator, the dissolution can be decided by the court.<sup>74</sup> Article 25e (6) of The Dutch Copyright Act states that if the copyright has been transferred to the assignee, the creator may exercise the rights arising by notifying the other party in writing of the dissolution as soon as possible. In the event that the assignee or third party fails to return the copyright within a reasonable period of time, the court at the request of the creator may fix the amount of damages to be charged to the assignee or third party. Under Article 25h of The Dutch Copyright Act the provisions contained in Article 25e cannot be waived by the parties.

Under Article 2b of the Act of 18 March 1993 The Protection of Performers, Producers of Phonograms or First Fixations of Films and Broadcasting Organizations, The reversionary rights provisions contained in Article 25e contained in Chapter Ia of the Dutch Copyright Act applies *mutatis mutandis* to the rights of performers.

## 3. Reversionary Rights Provisions in Indonesia

In Indonesia, there is no exact term to refer the concept of reversionary rights, but such context has been contained in 3 articles in the Law of the Republic of Indonesia Number 28 of 2014 on Copyrights, namely Article 18 which determines that the works of books, and/or all other written

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<sup>70</sup>Section 203 (b) (1) Title 17 United States Code.

<sup>71</sup>Section 203 (b) (3) Title 17 United States Code.

<sup>72</sup>Kluwer, Wolters, "What does the new Dutch Copyright Contract Law have to offer", <https://copyrightblog.kluweriplaw.com/2016/01/13/what-does-the-new-dutch-copyright-contract-law-have-to-offer/>, downloaded on 1/01/24.

<sup>73</sup>Article 25e (4) The Dutch Copyright Act

<sup>74</sup>Article 25e (5) The Dutch Copyright Act

works, songs and/or music with or without text that are transferred in a sold flat agreement and/or indefinite transfers, are to be reverted to the author when the agreement reaches a period of 25 years. In the Eludation of Article 18, it is stated that what is meant by other written works are manuscripts of poetry collections, general dictionaries, and general daily newspapers. The sold flat agreement defined as an agreement that requires the creator to hand over his/her creation through full payment by the grantor so that the economic rights are transferred entirely to the buyer without time limit.

Article 30 of the Copyright Law stipulates that the same provisions apply mutatis mutandis to the works of performers. Article 122 of the Law Number 28 of 2014 on Copyrights is the transitional provisions governing the return of copyright on the sold-flat agreement made before the enactment of the the Law Number 28 of 2014 on Copyrights, it stated that:

- 1) For a sold-flat agreement that has reached 25 (twenty-five) years at the time the Law Number 28 of 2014 on Copyrights is enacted, the creation rights will return to the creator within 2 (two) years.
- 2) For a sold-flat agreement that has not reached 25 years, the copyright will return to the creator after the agreement reaches 25 years plus 2 (two) years since the agreement was signed.

The copyright reversion in Indonesia occurs automatically after the sold-flat agreement reaches a period of 25 (twenty-five) years. This means that after that period, the copyright of the song will automatically return to the creator without the need for active notification of termination of the agreement or in this case Ahmad M. Ramli referred it as a passive stelsel system.

Furthermore, the provisions that serve as a comparison of the legal framework in Indonesia with other countries regarding reversionary rights are based on several aspects, namely as follows:

**Table 2.1 The Comparasion of Reversionary Rights Provisions between Indonesia, United States, and Netherlands**

Aspects	COUNTRIES		
	The United States	Netherlands	Indonesia
Legal Cause	The expiration of a period of 35 (thirty-five) years from the date of execution of the copyright transfer agreement.	The copyright has not been sufficient exploited to extent within a reasonable period of time since the copyright transfer agreement was signed or since the first act of exploitation. <sup>75</sup>	The expiration of the 25-year term of sold-flat agreement. And an additional 2 (two) years for a sold-flat agreement made before the Law Number 28 of 2014 on Copyrights has not yet taken effect. <sup>76</sup>
Reversions Procedures	Within a period of at least 10 years and a maximum of 2 years	The creator submits a written notice to the other party to	The copyright reversions occurs automatically after the period of 25

<sup>75</sup> Article 25e Dutch Copyright Act

<sup>76</sup> Article 18, 30, dan 122 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

	<p>before the effective date of termination, the creator or his heirs or also authorized representatives, submit a notice in writing to the copyright recipient.<sup>77</sup> The party exercising the right of termination shall first make a reasonable search for the ownership of the copyright being terminated. Where it is believed that the transferee has been transferred to another party, notice is given to that party.<sup>78</sup> Such notice must be filed with the United States Copyright Office in order to take effect and have legal effect.<sup>79</sup></p>	<p>undertake sufficient exploitation measures within the prescribed period. If an sufficient exploitation request is not achieved, the creator dissolves the agreement in writing in accordance with Article 6:267 of the Dutch Civil Code or in court by request of the creator.<sup>80</sup> If the copyright has been transferred by the other party to another third party, the creator can exercise the rights arising from the dissolution of the agreement after giving written notice to the third party as soon as possible.<sup>81</sup></p>	<p>(twenty-five) years expires. The decision to continue the utilization of copyrighted works is made through adjustments to the agreement of the creator and other parties.</p>
Requirements	<p>The work created is not a work made made for hire.<sup>82</sup> The written notice must be signed in proportion to the number of creators or their heirs or representatives of their interests and meet the requirements of form,</p>	<p>The work created is not a work made made for hire).<sup>84</sup> Dissolution of the agreement on collective copyrighted works must be done based on the consent of other creators. If there are creators who do not agree and it harms other creators</p>	<p>The copyright reversion applies to the transfer of copyright in books and/or other written works, songs and / or music with or without book text in a sold-flat agreement or an agreement without a time limit.<sup>86</sup></p>

<sup>77</sup> Section 203 (a) (3) & (4) Title 17 of the United States Code

<sup>78</sup> Section 201 (10) Code Federal Regulations Title 31 Patents, Trademarks, and Copyrights

<sup>79</sup> Section 203 (a) (4a & 4b) Title 17 United States Code.

<sup>80</sup> Article 25e (3) & (4) Dutch Copyright Act

<sup>81</sup> Article 25e (6) Dutch Copyright Act

<sup>82</sup> Section 203 (a) (3) & (4) Title 17 of the United States Code

<sup>84</sup> Article 7 Dutch Copyright Act

<sup>86</sup> Article 18 dan 30 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

	content, and service set forth in the provisions of the Register of Copyright. <sup>83</sup>	proportionally, then the dissolution can only occur by the law. <sup>85</sup>	
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The United States applies a longer period than Indonesia, namely 35 (thirty-five) years from the date of execution of the copyright transfer agreement. Indonesia applies a period of 25 (twenty-five years) from the signing of the copyright sold-flat agreement with consideration of the life expectancy of Indonesian rate which is 73.3 years for women and 69.4 years for men.<sup>87</sup> The Netherlands applies the legal cause of return of copyright to the creator for unexploited copyrighted works commonly applied in the European Union. In Indonesia, lawmakers specifically impose the return of copyright to the creator in the context of the implementation of copyright transfer agreements through the mechanism of sold-flat of books and music. Because the law and the time limit period of copyright utilization in the transfer of copyright will adjust to the legal regulations and needs that apply in each country.

From the aspect of the enforcement mechanism, the United States and the Netherlands have similarities by requiring active action from the creator to file a reversion claim and then it documented in writing documents. Regulations in the United States require the recording of notification documents of termination of copyright transfer in the United States Copyright Law Office, as confirmed in Section 203 (a) (4a & 4b) Title 17 United States Code. As for the Netherlands as specified in Article 25e of the Dutch Copyright Act, the creator is required to submit an order to exploit the copyright in writing to the copyright recipient. Furthermore, the agreement is terminated by a written statement from the creator to the other party in accordance with the provisions of Article 6:257 of the Civil Code and at the request of the creator, the dissolution of the agreement may also be decided by the court. The creator is also obliged to give written notice to the third party regarding the dissolution of the agreement as soon as possible.<sup>88</sup> The United States and the Netherlands in their regulations regulate the return of copyright is not applied to works made in the employment relationship (made for hire).

Compared with Indonesia provisions, copyright reversion occurs automatically without any obligation for the creator to take any particular action. A sold-flat agreement for a song will be canceled automatically through the provisions of Articles 18, 30, and 122 of Law of the Republic of Indonesia Number 28 of 2014 on Copyrights. The automatic return system or passive stelsel makes the return of copyright is not optional for the creator, and is an obligation that cannot be avoided by the parties in the sold-flat agreement. Through this approach, it can be ensured that the return of copyright must occur and the creator gets the opportunity to renegotiate and get the opportunity to get economic value for his work more fairly.

Based on at the comparison, the reversionary rights provisions in Indonesia are currently regulated through three articles without being followed by detailed implementing rules that contain instructions on how creators can exercise their reversionary rights. As explained earlier, the

<sup>83</sup> Section 203 (a) (4) Title 17 United States Code.

<sup>85</sup> Article 25e (2) The Dutch Copyright Act

<sup>87</sup> Constitutional Court of Republic Indonesia Decision Number 63/PUU-XIX/2021, p. 80

<sup>88</sup> Article 25e (6) The Dutch Copyright Act

implementation process of reversionary rights in Indonesia will meet the challenges of limited legal understanding and disruption of rejection from record producers. In this case, the position of the creator needs to be strengthened in exercising the reversionary rights.

The United States and the Netherlands in their provisions regulate the steps that need to be taken by creators in exercising and enforcing their reversionary rights. Both countries also regulate the mechanism of copyright returns that are documented in written form, which are then also given verification through parties who have the authority with the recording mechanism that the United States applies. This approach can be something that Indonesia develops in strengthening the legal framework of reversionary rights. The things that can be adopted in the legal framework of reversionary rights in Indonesia, namely:

- 1) Guidance as a recommendation to the creator or his heirs to trace the use & ownership of copyright facilitated by the authorized institution, namely the Directorate General of Intellectual Property (DGIP) Ministry of Law and Human Rights of Republic of Indonesia.
- 2) Directive guidelines as a recommendation to the creator to submit a written notification to the copyright recipient made before the effective date of the return.
- 3) The implementation of the mechanism of recording the return of copyright that can be done by the creator or his heirs, which will then contain the name of the creator or heirs entitled to the return, information on the implementation of the transfer agreement, the title of the work and the registration number of the creation record, as well as a brief statement that copyright becomes the object returned in accordance with the provisions and the return of copyright is effective on the due date.

By the following additional guidance, it expected to help identify the parties involved and have an interest, and the involvement of parties who have the authority to provide verification will ensure that the process of enforcing the right of return can be clearer, fairer, and provide legal certainty for all parties involved. Furthermore, in this section the author will offer a standard operating procedure for the return of copyright to the creator that can be done by the creator or his heirs in order to be considered by the Directorate General of Intellectual Property of Republic Indonesia in strengthening the implementation of the reversionary rights provisions in operational aspect in Indonesia, which is done in the following stages:

- 1) The creator or his heirs identify the due date for the implementation of the copyright sold-flat agreement expires and information related to the current use and ownership of the copyright, and preparing the evidences to prove the work was completed by them and the evident of the sold flat agreement.
- 2) The creator or his/her heirs submit a written request to the Directorate General of Intellectual Property of Republic of Indonesia by attaching evidence of the sold-flat agreement, a copy or excerpt of the copyright certification and a notification request document.
- 3) The Directorate General of Intellectual Property of Republic Indonesia examines the application by ensuring that the copyright object and the implementation of the sold-flat agreement will expire in accordance with the provisions of Articles 18, 30, and 122 of the Copyright Law.
- 4) Issuance of a letter recording the return of copyright to the creator and deletion of recording the transfer agreement if any.
- 5) Submission of written notification to the copyright recipient by attaching a document recording the return of copyright made before the effective date of the return of copyright.
- 6) Implementation of the right to return copyright to the creator.

### **C. Legal Actions that can be exercised by Creator to Obtain the Reversionary Rights in Indonesia**

The enforcement of the return of copyright to the creator after the expiration of the 25-year contained in Articles 18 and 122 of the Law Number 28 of 2014 on Copyrights, will change the legal status of the sold-flat agreement. Although a sold-flat agreement has been executed by fulfilling the subjective and objective requirements contained in Article 1320 of the Indonesian Civil Law Code, the 25-year creates legal limitation. The implementation of the sold-flat agreement of song creations that are carried out for more than 25 years will conflicted with Articles 18 and 122 of the Copyright Law. The implementation of an agreement cannot be based on a cause that is contrary to the law, this is as confirmed in Article 1335 of the Indonesia Civil Code. It states that an agreement without cause, or based on a forbidden cause has no legal force. A cause is prohibited if it is prohibited by the law, or contrary to decency or public order.<sup>89</sup> And an agreement is not only binding with things that are emphasized in it, but also decency, custom, and law. In this case the implementation of an agreement cannot be contrary to the things specified by the Law Number 28 of 2014 on Copyrights as well as decency in copyright law. Thus, the sold-flat agreement will not fulfill the objective requirements of the agreement, namely the lawful cause after a period of 25 years, and the agreement will be null and void with the consequence that the agreement is deemed never to have existed.<sup>90</sup> In In this context, an agreement or contract entered into by record producer with a third party third party, which used the sold-flat agreement over song creation that was previously implemented as the basis of rights, will also be invalid and not have no binding legal force binding.

In a master recording owned by a record producer will still be attached to the copyright of the song creation owned by the creator, because the related rights to sound recording is a secondary right that arises from the copyright of the song owned by the creator.<sup>91</sup> It needs to be ensured that the creator gets a fair return from any utilization of his copyright song attached to the sound recording work owned by the record producer. To carry out the implementation of reversionary rights contained in Articles 18 and 122 of the Law Number 28 of 2014 on Copyrights and obtain royalty compensation for song creations used by other parties, the author has offered a standard form of operational procedure for the return of copyright to the creator in the previous section. Furthermore, to implement and enforce the right of reversion of song creations can be exercised by some legal action, namely as follows:

a. Renegotiating and adjusting a new agreement

In renegotiating, the songwriter and record producer can determine a new agreement regarding the continuation of cooperation between the two. If it's possible, the creator can decide to take over the entire management and utilization of copyright or continue cooperation with the record producer through a license agreement mechanism. A license agreement grants controlled access to a creator's work or related product by another party, outlining the permitted uses and limitations under specific terms.<sup>92</sup>

Through the license agreement, the songwriter as a licensee determines clear boundaries related to the rights and obligations owned by the record producer as a licensee.<sup>93</sup> In addition, limitations can be emphasized regarding the period of implementation, the scope of the place where the song creation

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<sup>89</sup> Article 1337 Indonesia Civil Law Code

<sup>90</sup> Gatot Supramono, *Hak Cipta dan Aspek-Aspek Hukumnya*, Jakarta: Rineka Cipta, 2012, p. 37-38

<sup>91</sup> Agus Sardjono, *Op. Cit.* p. 261

<sup>92</sup> Article 1 paragraph (2) Law of the Republic Indonesia Number 28 of 2014 on Copyrights

<sup>93</sup> Katerina Ronauli, et.al., *Op.cit.*, p. 3

can be announced and reproduced, and most importantly the amount of royalty that the creator will receive.<sup>94</sup> In determining the matters contained in the license agreement, the songwriter can follow the standards of the professional organization of singers or musicians in Indonesia.<sup>95</sup> Furthermore, the license agreement needs to be registered with the Directorate General of Intellectual Property of Republic Indonesia to have legal consequences to third parties.<sup>96</sup>

b. Filing for compensation through the Commercial Court

In a condition where the copyright reversion has been effective and the record producer or other third parties use the copyright belonging to the creator or commit an offense, then the creator or his heirs can take repressive legal protection action in litigation in the Commercial Court.<sup>97</sup> Creators have the right to financial compensation through the courts if there are some parties violate their copyright reversion rights, resulting in economic losses. This applies to both civil and criminal cases with final judgments.<sup>98</sup> Based on the provisions in Article 96 of the Law Number 28 of 2014 on Copyrights, creators and/or their heirs who suffer losses of economic rights are entitled to compensation. The compensation is given and included at the same time in the ruling of the court. The party charged with compensation is obliged to pay compensation no later than 6 months after the court decision is legally binding.<sup>99</sup>

Based on Article 99 point (4) of Law Number 28 of 2014 on Copyrights, to prevent greater losses, the creator can request an interlocutory decision to the Commercial Court to request the confiscation of the work and to stop the activities of announcing, distributing, communicating, and/or duplicating the work. If the creator dissatisfied with the decision of the Commercial Court, they have the right to appeal the decision to Supreme Court of the Republic of Indonesia within a 14- day window following the decision's announcement.<sup>100</sup>

c. Joining a Collective Management Organization

Songwriters can manage their economic rights by with a help of Collective Management Organization (CMO). Collective Management Organization helps creators manage royalties from the commercial use of songs in various activities, such as restaurants, seminars, and others. The public as users will be required to pay royalties for the commercial use of songs in their business activities, which are collected by the National Collective Management Organization (NCMO) and distributed through CMO directly to the songwriters.<sup>101</sup> Creators will need to grant power of attorney and register with CMO in order to receive royalties collected by NCMO.<sup>102</sup> Joining an CMO ensures the creator receives royalties and has control over the economic rights of his/her creation. In Indonesia, there are 8 Collective Management Organizations that have been approved by the Ministry of Law and Human Rights of The Republic Indonesia, such as Karya Cipta Indonesia (KCI), Wahana Musik Indonesia (WAMI), and many others.

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<sup>94</sup>Tim Lindsey, *Op.Cit.*, p. 116

<sup>95</sup>Katerina Ronauli, Ety Susilowati, Rinitami Najtriani, *Op. Cit.*, p. 11

<sup>96</sup>Article 83 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

<sup>97</sup>Article 95 paragraph (1) Law of the Republic Indonesia Number 28 of 2014 on Copyrights

<sup>98</sup>Article 95 paragraph (1) Law of the Republic Indonesia Number 28 of 2014 on Copyrights

<sup>99</sup>Article 96 Paragraph (3) Law of the Republic Indonesia Number 28 of 2014 on Copyrights

<sup>100</sup>Article 102 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

<sup>101</sup>Article 10 paragraph (1) Government Regulation No. 56 of 2021 concerning the Management of Royalties for Copyright of Songs and/or Music

<sup>102</sup>Article 20 paragraph (4) Regulation of the Minister of Law and Human Rights No. 36/2018 on Procedures for Application and Issuance of Operational Licenses and Evaluation of Collective Management Organization.

#### IV. CONCLUSIONS

In Indonesia, the enforcement of copyright reversion to the creator (reversionary rights) through the automatic reversion system in Articles 18, 30, and 122 of the Copyright Act is not specifically determined by an implementing regulation that can be used as a guide for the parties, especially songwriters in implementing the reversionary rights. The legal rules of reversionary rights in Indonesia are made to provide better protection to songwriters and book authors who often do not receive a fair and just wage due to broken sold-flat agreements. Challenges in its implementation arise if the creator does not have a good understanding of the law and there is a disruption of rejection from record producers as in the case of Constitutional Court Decision Number 63/PUU-XIX/2021. Thus, these challenges make the provisions of copyright reversion need to be strengthened in the process aspect so that the law can be realized in reality.

Compared to the United States and the Netherlands, both countries apply the provisions of copyright returns with the requirements of the stages that need to be passed by documenting the return of copyright in writing, as well as providing verification through an authorized party with a recording mechanism that the United States applies. This approach can be something that Indonesia develops in strengthening the position of the creator in exercising his right of return. The author offers a Standard Operating Procedure (SOP) for the Copyright Reversion to The Creator, covering copyright tracing, recording the return of rights, examination by the Directorate General of Intellectual Property of Republic Indonesia, and delivery of written notification to the copyright buyer. Thus, it is hoped that this guide can strengthen the process aspect in realizing the legal rules of copyright returns.

The return of copyright to the creator specified in Article 18 and 122 of the Law Number 28 of 2014 on Copyrights results in a change in the legal status of the sold-flat agreement to break into no permanent legal force, because the objective requirement of 'lawful cause' is not met due to restrictions of the limitation in regulated by Law Number 28 of 2014 on Copyright. There are several the legal actions that can be taken by the creator or his heirs to exercise and enforce the right of return include: 1) adjusting the agreement with the record producer to enter into a license agreement with a more proportional reward, 2) applying for compensation for infringement of economic rights through the Commercial Court, and 3) joining the Collective Management Organization (CMO).

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