

## Resolution of Music and Song Copyright Disputes Through Arbitration in Providing Legal Protection for Owners

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### Keywords

Music and song copyright disputes, arbitration, legal protection

### ABSTRACT

The *Resolution of Music and Song Copyright Disputes Through Arbitration in Providing Legal Protection for Owners* in Indonesia is traditionally managed by the Commercial Court, which is often criticized for being slow, costly, and inefficient, thereby failing to offer optimal legal protection for creators. This situation highlights the need for alternative dispute resolution methods. This study analyzes the challenges of resolving copyright disputes through the Commercial Court and examines arbitration as a faster, more effective alternative for protecting music and song creators' rights in Indonesia. Using a normative legal research approach with legislative and conceptual methods, the research involved literature studies of primary and secondary legal materials. Data were analyzed qualitatively through descriptive analysis and deductive reasoning to assess legal synchronization, case studies, and a comparison between litigation and arbitration. Findings show that Commercial Court processes take 160 to 250 days on average, entail high costs, and involve complex bureaucracy, often resulting in inadequate protection for creators. In contrast, arbitration, especially through the Intellectual Property Arbitration and Mediation Agency (BAM HKI), provides a faster resolution (typically 90–180 days) and is conducted by intellectual property specialists, though its rulings require district court enforcement. The study concludes that arbitration is a viable and strategic alternative to litigation for music copyright disputes. It recommends raising awareness and encouraging the use of BAM HKI among creators and policymakers to improve accessible, efficient, and specialized legal protection, thereby strengthening Indonesia's intellectual property landscape.

## INTRODUCTION

According to doctrine and law, music and songs fall within the scope of Intellectual Property Rights, specifically copyright. Intellectual Property Rights is the term commonly used for *Hak Kekayaan Intelektual* (HKI), which refers to the rights that arise from intellectual efforts that produce a product or process beneficial to humanity. Essentially, Intellectual Property rights stem from the creative activities of human intellectual capabilities expressed to the public in various forms that benefit and support human life and possess economic value (Blackaby & Partasides, 2015).

The urgency of this research is paramount in the current digital era, characterized by a significant surge in music and song copyright infringement cases (Blackshaw, 2018). The ease of digital reproduction and distribution has exacerbated violations, leaving creators

increasingly vulnerable (Mistelis & Brekoulakis, 2023). Concurrently, the existing legal protection framework is perceived as suboptimal, failing to provide swift and effective redress (Kreindler & Schäfer, 2021). The conventional litigation process through the Commercial Court is often protracted, costly, and bureaucratic, hindering creators' access to justice. This inefficiency underscores the critical need for alternative dispute resolution mechanisms that are efficient, accessible, and capable of providing tangible legal protection for creators whose economic livelihoods and moral rights are at stake (Dinwoodie & Dreyfuss, 2020; Gervais, 2022).

Resolving business disputes, including disputes over music and song copyright through arbitration, is necessary and an absolute requirement for creators as a form of legal protection. This ensures that creators truly experience justice and that their rights over their musical and lyrical works are well protected (Rahmatian, 2024). This is because the resolution of disputes over copyright violations so far, conducted through the Commercial Court, has yet to provide creators adequate and optimal legal protection (Sag, 2019).

This study introduces a novel perspective by focusing on arbitration as an underutilized yet promising mechanism for resolving music and song copyright disputes in Indonesia. Unlike extensive research on litigation pathways, this paper delves into the potential of arbitration, specifically through the nascent Intellectual Property Arbitration and Mediation Agency (BAM HKI), to offer a more effective means of legal protection for songwriters and composers (Wejnert, 2002).

Nainggolan, (2011) stated that copyright protection has never been effectively implemented since Indonesia's independence. Creators in various fields have long been "moaning" that their rights as creators are constantly being seized or denied by irresponsible individuals. Meanwhile, legal protection for creators is something fundamental. Suyud Margono stated, "The most fundamental aspect of protecting intellectual property rights is that a person who has devoted their efforts to creating/discovering something has a natural/fundamental right to own and control what they have created." This understanding implies reasonableness and fairness, so stealing someone's effort without first asking for their permission would seem unreasonable and unfair (World Intellectual Property Organization, 2020).

Much attention and criticism have been directed at the process and mechanisms of resolving civil disputes generally, including disputes over music and song copyright, which have traditionally been handled through the Commercial Court. It takes a relatively long time when the process and mechanism for resolution must be carried out through the execution of a legally binding decision due to the losing party in the case not being willing to voluntarily comply with the content of the court's decision that has become legally binding. Not only time but also the costs and processes are felt to be convoluted and bureaucratic (Grimmelmann, 2016; Lemley & Casey, 2021; Leval, 2020).

To describe how the portrait of dispute resolution through the court institution looks, Hatta Ali, (2012), the Chief Justice of the Supreme Court of the Republic of Indonesia, quoted the opinion of Rusli Muhamad, who stated, "Currently, the judicial system in Indonesia still does not meet the expectations of the public." There are still many criticisms being voiced, often leading to despair among those seeking justice within the judicial system in Indonesia.

This is understandable because the community wants the judicial institutions to provide justice to the people (Ricketson & Ginsburg, 2021).

In the context of dispute resolution through the courts, Danny Zacharias stated, "From the perspective of delivering justice to those seeking it, there has been a tremendous disaster in the provision of justice all this time." "People have to wait quite a long time without clarity on when their case will have legal force and be executable, not only facing material losses but also enduring ongoing moral pressure."

This necessitates scientific studies on matters related to the resolution of music and song copyright disputes, which can provide legal protection to creators, mainly through arbitration institutions.

Therefore, this research aims to analyze the urgency of legal protection for music creators, examine the obstacles in resolving copyright disputes through the Commercial Court, and explore the effectiveness of arbitration as an alternative solution. The ultimate objective is to demonstrate how arbitration can provide more efficient and optimal legal protection for creators. The benefits of this study are expected to contribute to legal science by enriching the discourse on alternative dispute resolution in intellectual property and provide practical recommendations for policymakers and creators in seeking justice.

## **METHOD**

The research method used in this study was normative legal research employing a legislative approach, including both statutory and conceptual analyses. The study focused on laws and regulations related to intellectual property rights, specifically copyright in music and songs. Secondary data were obtained through literature studies. Data analysis was conducted using qualitative descriptive methods with deductive reasoning. The legal materials collected were systematically identified, classified, and interpreted to address the research problems. This involved interpreting legal principles and norms, synchronizing laws and regulations, analyzing court decisions, and comparing the effectiveness of dispute resolution mechanisms through the Commercial Court and arbitration. The entire analysis aimed to build arguments, draw conclusions, and provide recommendations regarding the resolution of music and song copyright disputes through arbitration.

## **RESULTS**

### **The Necessity of Legal Protection for Creators**

Among the many creations protected by law, one of them is songs or music, which, according to the Explanation of Article 40 of Law No. 28 of 2014 on Copyright, is emphasized that songs or music, with or without lyrics, are interpreted as a unified whole work of creation. A song is a variety of rhythmic sounds or singing that has meaning, while music is notes or sounds arranged in such a way that they contain rhythm.

Abdulkadir Muhamad stated that every asset, including Intellectual Property Rights, must have a legitimate owner and, therefore, needs to be protected. Everyone is required to respect others' intellectual property rights. Others should not use intellectual property rights without the owner's consent unless otherwise stipulated by prevailing customs. Suppose the doctrine of legal protection for Intellectual Property Rights is to be effective. In that case,

national law must absorb it into binding legal provisions (the rule of law) that apply to everyone (Theresia Maria Gene in Salim & Nurbani, 2014).

Mc Keough and Stewart, as quoted by Aprillyana et al., explain that copyright protection is a concept in which creators (artists, musicians, filmmakers) can utilize their works without allowing others to imitate them.

The current enforcement landscape in Indonesia is quite concerning, specifically regarding music and song copyright. There has been a violation that, on the surface, indicates negligence on the part of law enforcement officials. The government's political will is lacking in taking firm action against copyright violators in music and songs, ultimately leading to a lack of appreciation for someone's creations, resulting in insufficient legal protection for the creators.

Along with the development of science and technology, which is directly proportional to the increasing needs of society, products related to music creation and songs have made a significant contribution to the improvement of the community's economy. This statement is inseparable from the existence of music and songs that are loved worldwide across all layers of society. Even Megawati Sukarnoputri once expressed that music has become essential to life. Even the universities it houses can unify people in one language, music. It may be hard to imagine what the world and life would be like without music. We can only guess how dry life would be without it.

In everyday life, one can witness the intense use of musical works and songs in all aspects (listened to, broadcasted, performed, and so on) through various media, including television, radio, social media, the internet, mobile phones, and others. It is not uncommon, or in most cases, the use of musical works and songs is related to commercial activities carried out by the users. However, copyright infringement, particularly in music and songs, occurs without significant legal resolution. In their commercial activities, many business actors broadcast and use musical works and songs without asking for permission and paying royalties to their creators. Every musical work and song should have legal protection, namely copyright protection, to provide clarity and legal certainty regarding the relationship between the created musical works and songs and their creators or copyright holders or those who use the creations.

In civil matters, there is a ruling in a commercial court case at the Central Jakarta District Court in case No. 17/Copyright/2005/PN.Com.Jkt.Pst dated June 18, 2005, which sentenced a hotel business operator to pay compensation to the creator amounting to IDR 10,000,000 (ten million rupiah) per year to the creator due to the use or performance of songs or music without the permission of the creator or copyright holder at their place of business. Thus, it can be said that the threat of punishment imposed on copyright violators, both criminal and civil, does not create a deterrent effect on those who infringe copyright.

Looking at the portrait of copyright violations in music and songs in Indonesia today, the protection and enforcement of intellectual property rights violations in general has become a severe issue in Indonesia. Specifically in the field of copyright, Indonesia has been criticized by the international community for the weak legal protection of copyright for songs or music. According to a United States Trade Representative (USTR) report, before 2000, Indonesia was the only ASEAN country classified as a Priority Watch List. In 2000, based on a recommendation from the International Intellectual Property Alliance (IIPA), the USTR agreed to place Indonesia on the Watch List. However, in 2001 and 2002, the IIPA recommended to

the USTR and WIPO to keep Indonesia on the Priority Watch List, which was subsequently approved because the level of piracy in the Indonesian market regarding copyrights and trademarked goods was among the highest in the world.

### **Resolution of Music and Song Copyright Disputes**

Normatively, Article 95 paragraph (1) of Law Number 28 of 2014 concerning Copyright stipulates that copyright disputes can be resolved through Alternative Dispute Resolution, Arbitration, or Court. The explanation states that copyright disputes include disputes arising from unlawful acts, licensing agreements, and disputes regarding tariffs in the collection of compensation or royalties. Alternative Dispute Resolution involves resolving disputes through mediation, negotiation, or conciliation.

As explained above, resolving disputes over copyright infringement of music and songs through the Commercial Court requires relatively high costs, as well as a considerable amount of time and a convoluted and bureaucratic process or mechanism, especially when it comes to facing the execution of legally binding decisions from the Commercial Court. In addition, the existence of Commercial Courts that are not yet widespread and accessible throughout Indonesia means that particularly creators living far away in districts or rural areas, they cannot resolve their disputes through the commercial court.

Article 101 of Law Number 28 of 2014 concerning Copyright stipulates that a decision or lawsuit must be pronounced by 90 (ninety) days from the date the lawsuit is registered. However, if the time frame cannot be met, with the approval of the Chief Justice of the Supreme Court, the time frame may be extended for 30 (thirty) days. Furthermore, Article 102 paragraph (1) stipulates that only a cassation can be filed against the decisions of the Commercial Court. The cassation decision must be pronounced no later than 90 (ninety) days from the date the Supreme Court receives the cassation application. Moreover, the existence of a legal effort for Judicial Review as an extraordinary legal remedy that can be pursued against the cassation decision in copyright cases further extends the duration of copyright dispute resolution. It increases the costs that must be incurred, making it feel like it does not provide creators benefits, legal protection, or justice.

Here is an explanation of the duration of the dispute resolution process for copyright infringement conducted through the Commercial Court according to Law Number 28 of 2014 on Copyright.

- a. 90 (ninety) days in the Commercial Court.
- b. 14 (fourteen) days for the cassation application.
- c. 14 (fourteen) days to submit the Cassation Memorandum starting from the date the cassation application is registered.
- d. 7 (seven) days for sending the Cassation Memorandum to the Cassation Respondent.
- e. 14 (fourteen) days as the deadline for submitting the Counter Cassation Memorandum starting from when the Cassation Respondent receives the Cassation Memorandum.
- f. 7 (seven) days for submitting the Counter Cassation Memorandum to the Cassation Applicant from when the Cassation Applicant receives the Counter Cassation Memorandum from the Cassation Respondent.
- g. Starting from the above time frame, the documents must be sent to the Supreme Court in 14 (fourteen) days.

Based on the calculations above, at least 160 (one hundred sixty) days are required in the Commercial Court, plus 90 (ninety) days at the cassation level, bringing the total to 150 (one hundred fifty) days, not including the time needed for notification and the delivery of case files from the Supreme Court to the proposing Commercial Court, plus the time for notifying the cassation decision to the parties involved, which according to the law must be communicated to the parties no later than 7 (seven) days after the District Court Clerk receives the cassation decision.

The following is a table of the resolution of music and song copyright disputes through the Commercial Court, illustrating the duration required to settle a dispute over music and song copyright infringement from the first level to the Supreme Court of the Republic of Indonesia.

**Table 1: Overview of Copyright Dispute Resolution for Songs or Music in Commercial Courts**

No	Case Identity	The content of the decision	Total time *)	Description
01	Case No. 17/Copyright/2005/Commercial Court Jakarta dated July 18, 2005 in conjunction with No. 38 K/N/HaKI/2005 dated October 26, 2005 between YKCI (P) vs Hotel Sahid Jaya (Defendant) and PHRI. (T.II)	To sentence Defendants I and II jointly to pay a royalty of Rp. 10,000,000 per year, along with a penalty of 200% and interest of 2% per year on the royalty.	189 days	Peace after being compensated in the amount of IDR 60,000,000.00.
02	Case No. 48/Copyright/2005/Commercial Court Jakarta dated December 21, 2005 between YKCI (P) vs Karaoke Circuit and The Club Discotheque. (T)	The lawsuit has been declared inadmissible.	105 days only in the Commercial Court	In kracht at the Commercial Court level
03	Case No. 70/Copyright/2005/Commercial Court Jakarta Pst dated March 1, 2006 between YKCI (P) vs PT. Pratama Original Production (T)	A default judgment with compensation amounting to Rp. 216,036,000, and interest of 2% per month from July 2001 until fully paid.	77 days only in the Commercial Court.	Inkracht at the Commercial Court level
04	Case No. 254 K/Pdt.Sus/2009 dated May 28, 2009 in conjunction with No. 62/COPYRIGHT/2008/Commercial Court Jakarta dated February 18, 2009 between Kaharudin (Plaintiff) vs PT. Emi Indonesia. (T)	In the Commercial Court = n.o In Cassation: Orders the Commercial Court to examine the main issue of the case.		PK No. 192 PK/Pdt.Sus/ 2010 (refuse PK)

Source: Supreme Court of the Republic of Indonesia, 2014

The total time referred to in the table above is the accumulation of the time taken to resolve disputes in the Commercial Court up to the Supreme Court, thus excluding the time for notifying the content of the decision and executing the court's decision that has permanent legal force.



The increasingly concerning situation for creators whose rights and creations are violated, with dispute resolutions conducted through the Commercial Court, arises when the defeated party is unwilling to voluntarily comply with the legally binding decision of the Commercial Court. In such cases, enforcement must be carried out by seeking assistance from the District Court, which is similar to the execution of legally binding court decisions based on Indonesian civil procedural law. This only adds to the time and costs that creators must incur, and often, the expected economic value does not match the expenses that must be borne, from the Commercial Court level to cassation in the Supreme Court of the Republic of Indonesia.

Starting from the disappointments and obstacles, as well as the unfavorable realities of dispute resolution through the Court (Commercial), as outlined above, modern society, especially business actors, have increasingly turned their attention to alternative dispute resolution methods outside of the Court, such as Arbitration and other Alternative Dispute Resolution mechanisms. Suparman, (2012), believes that the court is considered unprofessional in handling business disputes, needs more independence, and that the judges have lost their moral integrity in carrying out their profession. As a result, the judicial institutions that concretely carry out the duties of upholding the law and justice when receiving, examining, adjudicating, and resolving each dispute submitted are considered ineffective and inefficient places for dispute resolution.

For comparison, it is recorded that in the period from 2007 to 2012, there were 252 cases registered with the Indonesian National Arbitration Board (BANI), with the following percentages for the duration of dispute resolution:

- 150-180 days: 14%
- > 180 days: 5%
- 90-180 days: 30%
- < 90 days: 51%

Arbitration institutions and alternative dispute resolution in resolving copyright disputes related to music and songs have yet to be widely embraced. It has not been extensively practiced, so it has not yet become standardized among the public. Even Achmad Zen Umar Purba stated: The choice of dispute resolution through arbitration and other alternatives is indeed mandated by regulations in the field of Intellectual Property Rights, namely, among others, Article 84 of the Trademark Law, Article 47 of the Industrial Design Law, Article 124 of the Patent Law, and Article 39 of the Integrated Circuit Layout Design Law. So far, the public has not considered alternative institutions for resolving disputes in intellectual property rights.

Although dispute resolution through arbitration generally brings many advantages and benefits for business actors, for music and song creators, dispute resolution through arbitration is perceived as biased. It does not provide adequate legal protection for creators because it is seen as neither quick, inexpensive, or straightforward. For music and song creators, the costs of arbitration are relatively high, and the enforcement of arbitration awards must still be carried out through the District Court based on the provisions for the enforcement of awards as regulated in civil procedural law, both HIR and RbG.

Institutionally, the Indonesian National Arbitration Board has set the arbitration case fees, with a registration fee of IDR 2,000,000 (two million rupiah) payable when filing the arbitration request. Meanwhile, administrative fees, examination fees, and arbitrator fees vary

depending on the case value, starting from 10% for cases valued below IDR 500,000,000 (five hundred million rupiah) to 0.50% for cases valued above IDR 500,000,000,000. (lima ratus miliar rupiah).

### **Intellectual Property Arbitration and Mediation Agency**

Based on the above considerations, particularly the belief among music and song creators that dispute resolution through the Commercial Court has not been favorable and does not provide maximum legal protection for creators whose rights have been violated, the Intellectual Property Arbitration and Mediation Agency (BAM HKI) was established institutionally on April 21, 2011, in Indonesia. It is located in Jakarta, with its office at STC Senayan Building, 5th Floor, No. 26, Asia Afrika Street, Gate 9, Gelora Bung Karno, Jakarta.

The formation and establishment of BAM HKI as an association has received both support and opposition among practitioners and academics. Two significant perspectives surround its establishment: one that supports and considers this institution necessary and another that believes there is no need for a new dispute resolution body. If you want to take advantage of dispute resolution outside of court, you can utilize the National Arbitration Board of Indonesia. "This takes a niche," said Gunawan Suryomurcito. On another occasion, Gunawan Suryomurcito stated that before the declaration of the establishment of BAM HKI, the initiators first gathered opinions from stakeholders. As a result, a unique IP arbitration body is indeed necessary. The main reasons are the lengthy court proceedings and the issue of judicial mafia. Once it reaches the court, money talks.

Intellectual Property practitioner Ali Imron said he is tired of dealing with court cases. Sometimes, the decision cannot be used as a basis. It is not uncommon for judges' decisions to contradict each other, even when the cases are the same. If that's the case, which one can be used as a reference? It shows that the law has not been functioning well. With the establishment of the Intellectual Property Arbitration Body, dispute resolution can be completed quickly and cheaply. Moreover, the arbitrator will be a professional, so they hope to deliver a fair decision for all parties involved (Panjaitan & Sinaga, 2011).

In contrast, Turman Panggabean stated that BAM HKI is optional. The reason is that the case brought to arbitration is based on an agreement. Intellectual property rights usually take the form of a licensing agreement. Meanwhile, the current issue is a lawsuit to cancel or remove a trademark/copyright.

Regardless of the pros and cons of establishing BAM HKI, A. Zen Umar Purba expressed five considerations for the formation of BAM HKI, namely:

1. Alternative Dispute Resolution (ADR), particularly arbitration, has become widespread. 1. Almost all international business contracts contain arbitration provisions.
2. The increasing awareness of intellectual property rights today is an asset for companies that need legal protection.
3. Several laws regarding intellectual property rights mention the possibility of using alternative dispute resolution.
4. The Intellectual Property Rights Agency will be able to contribute to law enforcement efforts in general. A significant criticism of implementing the intellectual property system in Indonesia today is the need for law enforcement partners.



5. The world body that deals with intellectual property, WIPO (World Intellectual Property Organization), has a similar institution, namely the WIPO Mediation and Arbitration Center.

## CONCLUSION

Music and song copyright disputes can be resolved through Alternative Dispute Resolution, arbitration, or the Commercial Court, but court proceedings have often failed to provide adequate legal protection for creators. Arbitration, particularly through the Intellectual Property Arbitration and Mediation Agency (BAM HKI), is viewed as a promising alternative that better safeguards creators' rights. To ensure maximum legal protection, future research should explore how to reduce litigation costs and improve accessibility, enabling creators from diverse regions to effectively utilize dispute resolution mechanisms and protect their intellectual property.

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