

PRODUCER'S ROLE IN MUSIC LICENSING FOR SHORT MOVIES

Esther Natasia Wongso¹
Annita²

Abstract: *The licensing process of copyrighted materials, especially songs and music for a film, is one of the responsibilities that a producer should fulfill, aside from other responsibilities like financing the film and managing all the needs of the cast and crew. However, the knowledge and awareness about copyright and music licensing are still very low in Indonesia. In this research, the writer will find out about the process of music licensing for a short movie. Through this research, we will look into the music licensing process for film, and national and international film festivals.*

Keywords: *Producer, Music Licensing, Short Movie*

¹ Esther Natasia Wongso adalah mahasiswa peminatan cinematography di Fakultas Seni & Desain, Universitas Multimedia Nusantara

email: tasiawongso@gmail.com

² Annita merupakan staff pengajar di Fakultas Seni & Desain, Universitas Multimedia Nusantara

email: annita@umn.ac.id

Introduction

An article stated that Indonesia was listed as one of the top nations violating copyright alongside many other nations in the world. Reading that article made the writer realized that the knowledge and understanding about copyright were and still are very low, here in Indonesia. This took the writer to write a research on copyright that focused mainly on music licensing, contract and license, and negotiation. This research aims to look at the music licensing process in Indonesia, so there will be more people in Indonesia that know and understand the process. The more people know about this process, the smaller possibilities for copyright violations, where creativities were pirated, taken, and used by other parties without the consent of the copyright owner.

Literature Review

A. Copyright

Being the key person on a film production, either its short or feature-length, a producer holds a huge responsibility for the film production to go smoothly as planned and finished on time as scheduled. Worthington stated that a producer is someone who holds on to the vision that usually collides with insufficiency of finance and time. Furthermore, he argues that a producer must

have the ability to organize, motivate, and has a broad knowledge of all areas of production such as financial, legal, and technical issues in the production.

One of the aspects of law that should be noted is music licensing, which is a branch of intellectual property. Bernard and Rabim said that the World Intellectual Property Organization (WIPO) stated that the intellectual properties refer to creations of the mind: innovation, literary and artistic works, symbols, names, images, and designs used in commerce. WIPO itself is one of the 17 organizations administered by the United Nations (UN). Located in Geneva, Switzerland, WIPO is devoted to encourage creativity and promote copyright protection to the world.

Furthermore, Bernard and Rabim stated that WIPO divided the intellectual property into two parts, copyright and industrial property. Copyright focused mainly on literary and artistic works such as novels, poems, plays, films, musical works, artistic works such as drawings, paintings, photography, and sculpture, and architectural design. Whereas industrial property focus more on patents, trademarks, industrial designs, and geographical indications. Each country has its own organization governing intellectual property rights. The Directorate General of Intellectual Property Rights

administered under the Ministry of Justice and Human Rights governed the Indonesian intellectual property organization.

WIPO stated that there is a special privilege for the owner of the copyright as well as their heirs to permit or prohibit the following:

- Reproduction in different forms of media such as publications of books and sound recordings
- Public performance or appearance in a play or stage musical
- Recording a drama or on CD or DVD
- Broadcasting through radio, cable television, and satellite
- Translation into any other language outside of the original language of the film or books
- Adaptation, for instance from novel to film or from film to stage musical or vice versa

B. *Dangdut*

Lockard stated *dangdut* music that was rooted from the Malay music began to develop in the 1960s. According to him, the Malay rhythm relates very closely to the musical elements from India and combined with the musical rhythm of the Arabs. He argued that the beat from the

tabla and flute from India harmonize with the singer, music, and rhythm is a typical cadence of Malay that began the shift from the Malay rhythm to *dangdut*.

Similar to Lockard, Weintraub stated that *dangdut* started in the late 1950s and early 1960s. According to him, that time President Soekarno prohibited the film and music distributions from America and Europe, but opened the doors widely to the musical film distributions from India and the Middle East. He argues that *dangdut* is a cultural dialogue where pop music from different countries joined together with the Indonesian culture.

C. Music Licensing

Music licensing is a process that takes a lot of time, with a cost that varies upon the agreement of both parties. The music licensing process is actually divided into three stages, which is the music clearance, the music licensing, and the making of the contract.

Music clearance is the first step that must be undertaken. Honthaner stated that music clearance is a process of securing permission to use the composition or recording of another person. According to him, in this stage a producer or the applicant will be doing three things. First, he will make sure who the copyright owner of the material that he

would use. Later, he would negotiate the permission to use material that discusses the territory and the media where the exhibition and distribution plan will be implemented. Lastly, he would pay the license in accordance with an agreement with the copyright owner.

After going through the stage of music clearance, the next step is the music licensing. Music licensing is the permission granted by the copyright owner or the related rights holder to announce or reproduce the product created or rights related to specific requirements. Bernard and Rabim stated that permission could be divided into two types: royalty free and rights-managed agreement. The royalty free agreement is a type of license with a fixed cost no matter how much the material was used. This permission is usually granted for things that are more general, such as stock shot of notable places or public domain. Unlike royalty free agreements, rights-managed agreement is a type of license that is more complex. This permission is only granted with a distinct amount of time, in certain places, in a specific geographic area, with responsibilities that were assigned. Certainly the cost for this kind of license is more expensive than the royalty free.

In right-managed agreements there are some elements that are mostly to be found, such as:

- One-time use. This permission is intended for the use of footage, photographs, and music within specific projects and cannot be used for other projects, although the project was produced by the same person
- Exclusive rights. Permission to use the material created by the copyright owner that was granted to the license without any other parties getting similar permission
- Non-exclusive rights. This permission opens the door for copyright owner to provide a permission for several parties who want to use the same material on different projects
- Limited market. This permit limits the delivery of the project by setting where the project can be released or distributed
- Limited time. The period time in this permit is limited to a specific amount of time after which the film or project permitted cannot be distributed without the renewal of the permission by its owner
- Limited geographical area. This permission sets specifically where the

project can be aired. When a producer asks permission only to screen the project in theaters throughout Indonesia, then if there is an offer to screen the project in a television channel outside of the specified country, a new license must be made.

- Quit claim. The copyright owner gives permission of all the rights to the licensee along with the responsibility to seek and ascertain whether there are things related to the laws that have to be dealt with. If there is, the licensee must deal with it
- Indemnify. With the permission like this, the copyright owner will not be burdened with any claims, when there are violations of the law that occurred associated with the licensed material

After passing the two stages above, the last stage is the making of the contract. According to Blum, contract is a verbal or written agreement created between two parties. This contract can only be made between the parties without any kind of coercion from any other party.

Here in Indonesia, music licensing has two terminologies, which are "music licensing" and "music using". The term "music licensing" is used when someone

wanted to use a new arrangement of song from another party. While the term "music using" is utilized when someone asks permission to use a song without any changes in the arrangement.

Method

This research is a qualitative research. The writer did a literature study by reading the literature supporting this research, documenting the important data, as well as discussing legal matter with a lawyer. In this research, the writer used a license and contract that was signed by the writer and the copyright owner (the second party) as an instrument to get hands-on data and documentation.

Discussion

After going through the licensing process in Indonesia, the writer finds out that not all terms in the theory that the writer reads in the literature can be applied in Indonesia. The writer found that the data about songwriters, singers, addresses, or phone numbers of the parties that can be reached were not responding well. Doing permits for two songs to two different parties, the writer finds two different level of difficulties. The first song is a popular, famous song that was created by singer-songwriter that is more senior and notorious in the industry. The writer has no difficulty

identifying its creator. In fact the difficulty lies in finding the phone number that can be contacted by the writer. This occurs because there are so many organizations that take care of music licensing in Indonesia. Due to the lack of these data, the writer then decided to look it up through the websites. The writer then found the website of a dangdut organization in Indonesia. After looking at that website, the writer found a column for questions. The writer asks how is the music licensing process of a song that the writer wants to use for a short film. After a few hours, the people from that organization replied to the questions asked by the writer via email. In that email, that person described clearly to whom the writer must request permission, where the location of the organization that administers dangdut music, as well as the phone number that can be reached.

In contrast to the first song, the second song is a song that is more obscure than the first one. The song was written by a songwriter who is more inexperienced and infamous. On this second track, the writer finds that it's more problematic to identify its creator than to find a phone number. This identification problem led to the claim from the singer who stated that the second track, a song that she sang, belongs to her as the rightful copyright owner. Claims

such as this can happen due to two factors, namely, education and economy. Most of the singers, especially *dangdut* singers, came from an underprivileged family background. From a conversation with a man who had worked in the *dangdut* music industry, 90% of the *dangdut* singer come from poor families and has low education. Only the remaining 10% are able to get higher education.

Certainly the singer's lack of knowledge about copyright, especially music licensing, can affect the film production. When a producer is less cautious, he could just ask permission to the party that actually does not hold the rights to the song or music at all. Without the correct license, the film cannot be broadcasted and screened to the public. In addition to the detriment of the film production, it is actually also a huge disadvantage for the singer. Their nescience makes them give permissions, which in fact they do not have, so the song they sing can be promoted into a variety of media in various places. They give consent without any discussions about the details of the location, the time, the geographical areas, as well as other responsibilities. Without the evidence substantiating the singer's right for the song, the music licensing process that could run smoothly, becomes more complicated.

Furthermore, during the negotiating process, the writer found that those who worked in the *dangdut* music industry prefer royalty in a nominal form. *Dangdut*, as a creator's work-of-art, falls into the category of right-managed agreements that requires a more detailed and complex agreement. Royalty is also one of the discussions in this negotiation process.

According to the legal consultant that the writer encountered, royalties can be given in two ways. First royalties is given in the form of nominal, and second in the form of gratuities or percentage. In nominal royalties, a person must pay a certain amount of money before the song used in the film is released to the public, while gratuities royalties may be given after the film received capital and profit. Obviously both have their own advantages and disadvantages. Nominal royalties look like a bet. When the film is received very well by the public and is a huge success, then a producer will get a hefty profit because he only pay a royalty with stable rates. However, when the film was unsuccessful or cannot be marketed, the producer loss big time, since the producer has to pay the royalty according to the agreement. In gratuities form, a producer can play it safe. If no profit is obtained, the producer does not have to pay royalties, as the percentage is counted only after there is a profit. However, if a producer gets an ex-

tensive amount of profit, then he must pay the settled gratuities. For example, in the agreement written the producer will deliver 10% profit to the copyright owner, then if the producer gets a 100 dollars profit, he should give the 10 dollars to the copyright owner. The greater the profit gained by the producer, the greater the royalty to be paid.

After contacting the *dangdut* organization, the writer met with the organization's legal director and submitted an application letter for the license. The letter noted the details of the license. The process of negotiating license is very agile, considering all the points negotiated are specified in the application letter. For the royalty, the legal director said that the royalty of the first song is a nominal royalty. However, because the first song is a notable song, then its price is quite expensive. Because the film the writer produced is a non-commercial and low-budget project, the writer negotiates the price to make it more fitting with the budget prepared. After negotiating, the director finally allowed the writer to use the first song with a price that corresponded with the budget.

After the negotiation process of the first song, the author also asks for the license of the second song. The second song was not included in the list of songs that are taken care by this organization. According to the legal director of the organization, the organization only takes care of the se-

nior songwriters' royalties that generally create songs for singers who are better known in society. This is done because most of the songs written by an unfamiliar songwriter hasn't been sung and is a lot harder to get royalties. Therefore, as a song that was created by a more infamous songwriter, the second song licensing process is managed directly by the songwriter. The contact number of the second song's songwriter was given directly by the original singer of this song to the writer. As a newer songwriter, he doesn't even know at all about the organization and has just found out when the author was discussing with him. Just like the first song, the licensing process of the second song is also instantaneous. The requested form of royalties is also the same, the nominal royalty.

From the author's observations during the negotiation process, the authors can conclude that most parties who work in the *dangdut* music industry prefer to earn royalties in the form of nominal. As already disclosed earlier, most people who work in the *dangdut* industry only concerned with ways to earn money as much as possible.

The last step is the process of creating contracts. In Indonesia there has been no clear standard about the form of a contract or license that is valid legally. This is evident when the author

does the deal with two different parties. For the first song, the signature was signed directly in the application letter the writer provides on the first meeting with the legal director. The signature is affixed by the original singer-songwriter of the first song, the legal director of organization, along with the organization's stamp. Because the license is different from what the writer has ever seen, the writer then consults with a legal consultant. He stated that the letter was legally valid in Indonesia. According to him, in Indonesia as long as a licensee asks permission, pay royalties, and get a signature, the letter is legitimate. He highlighted that in Indonesia what is considered asking permission or licensing is paying royalties. As long as the licensee has done it, he will be safe from the demands of the other party.

Learning from the experience of licensing the first song, the writer sought assistance to a legal consultant to give directives of the license the writer creates so it could be made correctly and valid legally. The legal consultant points out a few things that the writer should note and put in the license of the second song, namely:

1. The date

In the process of making a contract or license, it is important to include the date the agreement is signed. With

the date, the validity of a letter can be accounted for.

2. The related parties

Related parties are divided into at least two parties. The first one is the giver of the consent or the licensor, while the second one is the applicant or the licensee, or vice versa. The parties giving permission can consist of one person or more. In this point the full name of each parties, the position of each parties, and the company or production house they have is described in detailed.

3. The object of the agreement

The object of the agreement is the matter being the object in this license, the details of which this object is to be used later, as well as the geographic area where the film will be screened. This is one of the points that have been said by Bernard and Rabim regarding license for limited market and the limited geographical area

4. The rights and obligations

The rights and obligations are divided into two parts, or in a contract are divided into two sections. The first part discusses the rights and obligations of the first party. The next section discusses the obligations of the second

party. The next point explains the rights of the second party (producer) to use this song in the project, as well as the obligation to pay royalties according to the listed nominal for a certain amount of time that has been set since the agreement was signed.

5. The copyright owner's statement of the song ownership

The statement of the copyright ownership is a statement that confirms that the applicant or licensee will not be blamed for all the problems concerning copyright of the song. All the responsibilities will be charged to the licensor. This point is a form of application of the music licensing theory, indemnify disclose by Bernard and Rabim

6. The duration of the agreement

The duration of agreement is the length of time the contract or license will be valid and effective. This is the same as what Bernard and Rabim say about limited time.

7. The dispute settlement

The settlement of disputes point explained that this agreement shall be a subject to the provisions and applicable laws in Indonesia. In

addition to that it was described as well that all sorts of disputes shall be solved conversationally.

8. The other provisions

Other provisions clarify general points in the agreement. One of the points explained that all this agreement is not transferable to another party. In addition it also explained that if any changes or additions to the agreement outside the agreement that has been written into the contract, then a new contract must be made which cannot be detached from the contract that was made earlier.

9. The signature

Signature is one of the most important aspects in a letter of permit or license. Signature indicates their validity. The signature's places are divided into two, for the first and the second party. The signatures were affixed above a postage stamp and were made into at least two copies, or according to the parties who signed the contract. Later it will be distributed to the parties concerned and both contracts have the same legal force.

After the second songwriter sign the license, the writer found that the standards are not clear. It opens the door

to the differences in the legal force of each existing licenses. The weak license in the eyes of the law, such as the first song of the license, is usually obtained from a larger company or organization that requires a longer and more complex process with a greater cost. The organization or company is usually going to make a license that is considered valid by most people, although sometimes the license did not follow the correct standards. This is done so that the licensee who have limited funds do not require a lot of time and money to get it. The company will usually pass through the procedures in force in the company.

A legitimate license that is more powerful by the law, such as the second song, can be obtained after a consultation with a lawyer or a legal consultant. Usually the lawyer or consultant will provide a referral to any words and clauses that are used and will guarantee the legal security for the licensee without harming the licensor. Surely a license like this would need a longer time to make with a larger cost due to the services of a lawyer or a legal consultant.

In this research, the writer found that the legally stronger license was signed by the party who do not understands the law, while a legally weaker license was signed by the party who understands the law better.

Conclusion

From the analysis that has been done, the writer can draw a conclusion that in order to get music license are some processes that must be traversed. First, the music clearance process is to find out who the copyright owner, as well as negotiating the fee for the license. Second, the process of music licensing in order to know the details of the place, time, and geographic area in which the project will be screened, as well as the rights and responsibilities that were assigned to the two sides. Lastly, the process of making a contract that contains any details that have been discussed in the previous stages.

After passing these stages, the writer can provide some advice to readers and other potential producers to first of all, make sure that the script is ready and will have no changes before starting the process of music clearance and licensing. Second, to properly make sure who the copyright owner is, before negotiating with the second party. Third, make a contract or letter of permission that has the correct legal basis and in accordance with applicable laws in the country where the licensing is done. Fourth, consult with a legal consultant or lawyer for each of the things listed in the contract or license so it will be in compliance with applicable laws in countries where the licensing is done. Fifth, negotiate that fee which cor-

responds to the funds that have been set. Preferably the funding for the license does not exceed the budget available.

For readers, students, and other prospective producers who want to do a further research about copyright, writer can give an advice to bring up the topic about the music licensing process of the pop or jazz song to see the differences and similarities with the licensing process of the dangdut song. Other topic that can be developed is the process of obtaining the copyright of song composed specially for a film project.

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