

The Role and Function of Notaries in Realizing Legal Certainty of Copyright as Marital Property

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ABSTRACT

The regulation of copyright as marital property in Law No. 28 of 2014 concerning Copyright is not explicitly regulated, but indeed in the provisions of Article 16 of the Copyright Law, it seems to be open to interpretation that copyright in this case is in the form of economic rights that are indeed obtained during the marriage and constitute movable property that is also part of the joint property that must be divided upon the termination of the marriage due to divorce. Law No. 1 of 1974 concerning marriage also does not clearly regulate the position of copyright as part of joint property, but it is clearly stated in the Marriage Law that property acquired during marriage is joint property, which must be divided between husband and wife when the marriage ends due to divorce. Legal certainty regarding copyright as part of joint property already exists, but it is still considered insufficiently concrete. There is no clear and concrete regulation regarding the mechanism for dividing copyright as joint property. Copyright brings two consequences, namely moral rights and economic rights in the form of royalties, public. Meanwhile, joint property stipulates that all acquired joint property must be divided into two, and this is where the conflict lies. The absence of clear rules has resulted in legal uncertainty regarding the period of distribution of economic rights to copyright as joint property, even though it has been decided by the court.

Keywords: Copyright, Marriage, Marital Property

I. INTRODUCTION

The regulation of copyright in Indonesia is stipulated in Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law), which aims to provide clear rules regarding creative activities in Indonesia.¹ The provision of copyright regulations needs to be carried out with the aim of anticipating the phenomenon of plagiarism and to help increase public understanding of the meaning and function of copyright as well as to protect the rights of creators.² Copyright is a branch of intellectual property law whose existence provides economic benefits in the form of royalties when used or commercialized by other parties.³ All forms of utilization and commercialization of copyright in Indonesia are carried out with the consent of the creator of the work and the party who wishes to utilize the copyright. Further regulations regarding economic rights to copyright are stipulated in Government Regulation No. 56 of 2021 concerning the Management of Royalties for Song and/or Music Copyright.

A marriage that begins and is based on mutual love and affection between husband and wife is always expected to run well, be eternal, and be based on the One Almighty God. This is in accordance with the purpose of marriage itself based on Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), which states that: marriage is a spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God.⁴ In this case, the definition of marriage according to Article 26 of the Civil Code (Burgerlijk Wetboek) is that a marriage as defined in the above article only considers civil relations, namely a legal relationship between a man and a woman for a long period of time.⁵

Every husband and wife desires to create a harmonious and happy household. Husbands and wives must be faithful to each other, love and support each other, live together, provide for each other, and raise their children

together. However, if the household is no longer harmonious, there is a possibility of significant disputes and arguments arising. Often, these disputes cannot be resolved or are out of control, and the chances of the household reaching a peak of conflict that leads to a broken marriage become increasingly greater. When experiencing divorce, married couples usually dispute joint property or shared property due to a divorce decree from the court. In fact, in every court process, there are often disputes about the division of joint property or shared property, which complicates the divorce between them because each claims that "this and that" is their share or right.

Based on positive law applicable in Indonesia, joint property is regulated in the Marriage Law, the Civil Code (KUHPer), and the Compilation of Islamic Law (KHI). The regulation of joint property is recognized by law, including in terms of its management, use, and distribution.⁶ Referring to Article 35 paragraph (1) of the Marriage Law, it is stipulated that joint property is property acquired during marriage. In fact, the Compilation of Islamic Law provides a more detailed definition. Article 1 letter f of the Compilation of Islamic Law states: Marital property or syirkah is property acquired either individually or jointly by husband and wife during the marriage and is hereinafter referred to as marital property, regardless of whose name it is registered under. However, the Law does not specify what items fall under the category of joint property. Provisions regarding the classification of joint property are found in Article 91 paragraphs (1) to (4) of the Compilation of Islamic Law, which states that joint property includes tangible objects such as movable property, immovable property, and securities, as well as intangible objects such as rights and obligations.

This thesis stems from the divorce case of an Indonesian celebrity couple, Virgoun and Inara. The divorce case between Virgoun and Inara presents an interesting and novel context in Indonesian law. Inara filed her lawsuit with the West Jakarta Religious Court under case number 1622/Pdt.G/2003/PA.JB. In addition to explaining the custody rights of the children, which became a point of debate in the trial between Inara as the plaintiff and Virgoun as the defendant, the petition also stated that Inara was demanding several assets, namely a plot of land with a permanent building (house) with an area of 90 m² located at , a motor vehicle in the form of a car, a plot of land in Purwakarta, and 50% (fifty percent) of the net income from royalties earned by Virgoun as the creator of the songs Surat Cinta Untuk Starla, Bukti, and Selamat from PT XXX as the publisher.

In Decision Number: 1622/Pdt.G/2003/PA.JB issued by the West Jakarta Religious Court, the court essentially granted part of the plaintiff's claim, namely inara, regarding the demand for iddah and mut'ah alimony, custody rights, and the division of joint property. One of the judge's decisions regarding the division of joint property caught the author's attention for further review, namely the division of the defendant's or Virgoun's copyright royalties. In relation to the court's decision, the judge divided 50% (fifty percent) of the copyright royalties for three songs owned by Virgoun to Inara for the songs Surat Cinta Untuk Starla, Bukti, and Selamat from PT XXX as the publisher. In various current laws and regulations, there is no clear mechanism and implementation of the division of copyright royalties in marital property.

From an intellectual property rights perspective, royalties are the exclusive rights of the creator, in this case Virgoun, regardless of whether the work was inspired by something or someone else. From the perspective of the Marriage Law and the Islamic Family Law, it is generally understood that all assets acquired during marriage, whether movable or immovable, are joint property that can be used as joint property in the event of divorce. It can be seen that there is a lack of harmony and inconsistency in the regulations, which creates legal uncertainty. In principle, legislation or the law itself should clarify ambiguities to achieve legal certainty and justice in society.

In addition to examining and analyzing issues related to copyright and joint property, this thesis will also examine the role of notaries in dealing with these issues. A notary is a public official authorized to draw up authentic deeds concerning all acts, agreements, and stipulations required by a general regulation or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date, storing the deed, and providing copies and excerpts thereof. all of which, to date, has not been assigned or exempted to other public officials.⁷

This thesis focuses on three issues that will form the core of the problems to be examined. First, it concerns the regulation of copyright as joint property in laws and regulations related to copyright and marriage. Second, it concerns the legal certainty of copyright as an object of joint property. Third, it concerns the role of notaries in

realizing the legal certainty of copyright as joint property. Theoretically, the main focus of this thesis is related to the theory of legal certainty. The dispute between Virgoun and Inara has highlighted the need for a comprehensive study of the position of copyright, which is the exclusive right of a creator under the Copyright Law, in relation to joint property under the Marriage Law and the Compilation of Islamic Law. Legal certainty regarding copyright as an object of joint property is important. This must be realized through legislative instruments and the role of other institutions or officials such as notaries.

Regulation of Copyright as Marital Property in Law Number 28 of 2014 concerning Copyright and Law Number 1 of 1974 concerning Marriage

Intellectual property rights are property rights, rights to something that comes from the work of the brain, the work of reason. The result of human reasoning, which is intangible or immaterial, is formulated as intellectuality. People who optimally utilize their brainpower are those who are considered capable of using reason, capable of thinking rationally using logic (a method of thinking, a branch of philosophy), and therefore their thoughts are called rational or logical.⁸ In Anglo-Saxon legal literature, there is a term known as *Intellectual Property Rights*. This term was then translated into Indonesian as "Hak Milik Intelektual" (Intellectual Property Rights), which is actually more accurately translated as Hak atas Kekayaan Intelektual (Rights to Intellectual Property). The reason is that the term "hak milik" (property rights) is actually a standard term in legal literature.⁹

The United Nations Conference on Trade and Development (UNCTAD) – International Centre for Trade and Sustainable Development (ICTSD) states that IPR is "the results of human creative endeavors that are protected by law."¹⁰ The Directorate General of Intellectual Property Rights, in its IPR guidebook, explains that Intellectual Property Rights, abbreviated as "HKI" or "HaKI," is a term commonly used for *Intellectual Property Rights* (IPR), which are rights that arise from the work of the mind that produces a product or process that is useful to humans. In essence, IPR is the right to enjoy the economic benefits of intellectual creativity. The objects regulated under IPR are works that arise or are created due to human intellectual ability.¹¹

The issue of song copyright royalties as shared property first arose and occurred in a case involving the division of joint property in the divorce of a married couple, Virgoun and Inara Rasri. Inara Rasri sued Virgoun for divorce and in her lawsuit, Inara Rasri argued that she had been the inspiration for three songs created by Virgoun, therefore she felt she was entitled to request copyright royalties for the three songs in whose creation she had played a role as the inspiration. Inara Rasri's petition requested that, based on the arguments regarding copyright, the copyright royalties for the three works by Virgoun that were claimed to be inspired by Inara Rasri be designated as joint property and divided 50/50.

In fact, copyright, which is part of intellectual property rights, is essentially a right with special and unique characteristics, because it is granted by the state. Based on the provisions of the law, the state grants this special right to those who are entitled to it, in accordance with the procedures and requirements that must be met.¹² There is a discrepancy between exclusive copyright and the principle of joint property in marriage. There is a fundamental conflict between private copyright and the concept of communal joint property, which is not fully regulated in Indonesian marriage law.

In addition, there is legal uncertainty about the period and amount of royalties included in joint property. The absence of specific rules on the distribution of royalties during divorce creates room for interpretation that can lead to injustice and makes it difficult to assess the economic value of song copyrights.

In terms of position, the categorization of copyright as an object is regulated in positive norms. Article 16 paragraph (1) of the Copyright Law states that "...copyright is an intangible movable object." Based on these legal consequences, copyright fulfills the classification of property according to civil law as an intangible movable object, the ownership of which can certainly be transferred. This transfer is carried out through the transfer of two rights arising from a copyright, namely moral rights and economic rights. Article 5 paragraph (2) of the Copyright Law states that moral rights can be transferred by will after the creator's death. Meanwhile, in the transfer of economic rights, copyright can be transferred on the basis of inheritance, grants, waqf, written agreements, or other causes permitted by law (Article 16 paragraph (2) of the Copyright Law). Regarding the transfer of economic rights, Article 17 paragraph (1) of the Copyright Law further explains

that "...the economic rights to a Creation remain in the hands of the Creator or Copyright Holder as long as the Creator or Copyright Holder does not transfer all economic rights from the Creator or Copyright Holder to the recipient of the transfer of rights to the Creation."

Joint property is property acquired during marriage outside of inheritance or gifts, meaning property acquired through their joint or individual efforts during the period of marriage, which will have consequences for the status of property, both fixed and movable, acquired during the marriage, which becomes the joint property of the husband and wife without distinguishing or questioning who worked, who obtained the money used to purchase the property, and also without disputing whether the property is registered in the name of the husband or wife.¹³ Law No. 1 of 1974 concerning Marriage, Article 37, states, "If the marriage is terminated due to divorce, joint property shall be regulated according to their respective laws." What is meant by their respective laws is clarified in the explanation of Article 37, namely religious law, customary law, and other laws.

The provisions stipulated in the Marriage Law clearly state that joint property acquired during marriage is joint property or community property in the event of divorce between husband and wife. In relation to the explicit regulation of copyright and/or copyright royalties as joint property, there is no clear and explicit regulation yet. The existence of copyright, which is an exclusive right accompanied by moral rights and economic rights, is considered by some to be part of property according to the Civil Code. It can be clearly seen that there is a provision stating that copyright is classified as an intangible movable object, so some views associate it with the context of property law, which also correlates with the concept of property in personal and family law. However, without realizing it, this has led to a conflict between the nature of the laws governing copyright, which is personal and exclusive, and the laws governing communal property, which is communal in nature.

The provision used as the basis for copyright royalties being part of the division of joint property is a provision contained in several interrelated laws, so that some people believe that copyright royalties are property. so that if they are acquired during the marriage, they are valid as part of the joint property that must be divided between the divorced husband and wife.

The Marriage Law also does not clearly state that royalties can be considered joint marital property. Based on Article 35 of the Marriage Law, all property acquired during marriage is considered joint marital property for both parties. From the provisions of *the a quo*, royalties can actually be considered joint marital property as long as they are acquired during the marriage and are not excluded by the parties through a marriage agreement.¹⁴ However, according to the views of several experts, royalties are analogous to income earned by the Creator and are therefore recognized as joint marital property as long as they are acquired during the marriage.¹⁵ This is also confirmed by the Indonesian Recording Association, which states that royalties are fees given to artists (creators). Because they take the form of fees, they clearly increase the wealth of a person (the creator).¹⁶

There is no explicit regulation regarding the status and position of copyright as joint property. Even though Article 16 paragraphs (1) and (2) explain that copyright is an intangible movable object that can be transferred in part or in whole. Currently, the strengthening of the position of copyright as joint property is only a matter of interpretation based on a series of provisions in laws and regulations, including the Copyright Law, the Civil Code, the Islamic Family Law, and the Marriage Law, which certainly still provoke debate. This certainly has causes that result in legal uncertainty for copyright owners or holders. These issues include the period of time for the distribution of royalties to be divided as joint property, the amount to be divided in joint property, and the legal certainty itself regarding the interpretation that copyright is an exclusive right of the creator.

Legal Certainty of Copyright as an Object of Joint Property

Copyright is regulated in Law Number

28 of 2014 concerning Copyright, which aims to provide clear rules regarding creative activities in Indonesia. Article 1 paragraph 1 states that copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in tangible form without reducing the

restrictions in accordance with the provisions of laws and regulations. Legal regulations regarding song copyright in the context of joint property are also influenced by differences in copyright and marriage laws in each country. Applicable copyright laws may determine the rights and obligations related to copyright over works of art, including songs, produced during marriage. On the other hand, marriage laws may specifically regulate the ownership and division of joint property between husband and wife, including how song copyrights are considered in that context.

Copyright royalties are regulated in Article 9 of the Copyright Law, which explains that copyright has economic rights so that the owner of the copyright to a song or music can enjoy the economic benefits of their work. The economic rights of copyright are royalties obtained by the creator from users who use their work for commercial purposes.¹⁷ Royalties are payments given to individuals or legal entities as compensation for the continuous use of an asset they own, whether tangible or intangible. According to Article 1 paragraph 21 of the Copyright Law, royalties are compensation for the utilization of the economic rights of a creation or related product received by the creator or owner of the related rights. This process occurs when a song created by someone is used in various contexts such as radio broadcasts, record sales, or *digital platform* screenings. As the creator of a song, a person has copyright over their work, which gives them the exclusive right to control the use of the song and receive royalties as a form of appreciation for their work. Song royalties are an important source of income for songwriters and are a form of appreciation for their creativity and talent.¹⁸

The concept of joint property in the Civil Code is regulated in Chapter VI of Book I, based on Article 119, which states that once a marriage is solemnized, the husband and wife's property becomes jointly owned, unless there is a marriage agreement that stipulates otherwise. This means that all property acquired before and during the marriage becomes jointly owned, and there is no separation of property unless agreed upon in advance.¹⁹ The legal consequence of this joint ownership of property is that the husband and wife's property is combined into a single entity, whereby the husband has full authority over the management, sale, or transfer of property without the wife's consent, thereby limiting the wife's rights over the joint property.

However, since the enactment of the Marriage Law, the concept of joint property in the Civil Code is no longer valid and has been replaced by specific provisions in the Marriage Law. The Marriage Law only contains three provisions regarding joint property. First, in Article 35, marital property is divided into two types, namely joint property acquired during marriage and personal property in the form of dowry, gifts, or inheritance of each party. Second, in Article 36, joint property is managed jointly with the consent of both parties. Third, Article 37 states that the mechanism for the division of joint property after divorce is left to the religious law of each party, one of which is that if the husband and wife are Muslim, they will be subject to the KHI.

According to the KHI, marital property is all property acquired by the husband and/or wife during the marriage, regardless of whose name the property is registered under. Based on Articles 85-97 of the KHI, property is divided into property brought by the husband or wife before marriage, personal property obtained through gifts, inheritance, donations, or charity, and joint property acquired during the marriage. The KHI does not give special privileges regarding property ownership to either party, but emphasizes that property acquired during the marriage is jointly owned. The division of joint property is carried out after divorce based on the principle that each party is entitled to half, unless otherwise specified in a marriage agreement based on Articles 96 and 97 of the KHI.

Based on the above explanation of the concept of joint property in marriage, we will now review the determination and distribution of royalties as joint property. As a *droit de suite* right, the right to royalties will always be attached to and follow the owner of the property. At a minimum, there are two main elements of *droit de suite* rights to royalties, namely that these rights are not lost or extinguished when they are transferred to a third party and that there is a continuous personal and personal connection between the creator and their work.²⁰ Rights to royalties can be transferred through legal transfer, namely through inheritance, gift, or statutory provisions. Although royalties can be transferred to a third party, the transfer of royalty rights is limited to a period of 25 years. After this period ends, the royalty rights revert to the creator in full in accordance with Article 18 of the Copyright Law. Clearly, the royalty rights attached to the creator as an individual cannot be revoked or transferred without the creator's consent, unless otherwise specified in legislation.²¹

Furthermore, based on Article 91 paragraph (3) of the KHI, compensation for the creator's royalties obtained during the marriage is recognized as joint marital property. Royalties are designated as the personal property of one of the parties if they meet the following criteria:²²

1. the royalties were generated before the marriage took place;
2. there is no contribution from the husband or wife to the creation of the musical work/song;
3. the royalties were created personally by the creator as an individual through the realization of their ideas/creativity, not as a joint family/group project.

Meanwhile, royalties as joint marital property only need to meet two elements, namely:²³

1. obtained during the marriage; and
2. there is no agreement stipulating that royalties obtained during the marriage are the personal property of one party.

Furthermore, regarding the division of rights to royalties as joint property after the termination of the marriage, the principle is that the division of joint property, including royalties, is carried out proportionally without regard to the contribution of each party, both according to national law and Islamic law.²⁴

Copyright is categorized as movable property or intangible property according to the Civil Code in the provisions of Article 499 of the Civil Code (KUHPdata), which defines property (*zaak*) as any item and any right that can be controlled by ownership rights. This definition covers two types, namely tangible goods (*goed*), such as land and houses, and intangible rights (*recht*), such as copyright or claim rights (*receivables*). However, in this case, copyright is a *sui generis* right, which means "of its own kind" and "unique." Copyright has its own characteristics that differ from other types of intellectual property rights. One of these characteristics is that copyright protection is naturally granted to creators for the originality of their works. For this reason, legal regulations and protection, including any legal actions related to copyright, are subject to special provisions as stipulated in the Copyright Law.²⁵

Referring to Article 16 paragraph (1) of the Copyright Law, copyright is classified as an intangible movable object. *The intangible nature* is expressed in the form of rights, namely moral rights and economic rights attached to the creator as a single entity whose ownership cannot be separated in accordance with Article 4 of the Copyright Law. Article 8 of the Copyright Law states that the economic rights of the creator are the exclusive rights to obtain economic benefits from their creations. Referring to Article 499 of the Civil Code, in essence, goods are divided into two types, namely objects or rights that can be attached to property rights. Subekti distinguishes objects into three types;²⁶

1. in the narrow sense as tangible or physical objects,
2. as a person's wealth in the form of rights and income, and
3. as legal objects that coexist with legal subjects.

Subekti also classifies movable property based on its nature (whether it can move on its own or be moved) or as determined by law.²⁷ Based on Article 511 of the Civil Code, movable property as determined by law includes, among others:²⁸

1. rights to use the proceeds and rights to use movable property;
2. rights to interest;
3. obligations and claims regarding amounts of money that can be collected;
4. share certificates, shares in government debt;

5. serial numbers or bond coupons.

From these legal provisions, royalties are not explicitly mentioned as movable property attached to property rights, either because of their nature or because of the provisions of the Civil Code.

Royalties are not actually property rights in the concept of the Civil Code. In this case, royalties are *sui generis* derivative rights arising from copyright, so that special provisions in the Copyright Law apply. However, royalties in a broad sense can be classified as rights attached to property rights in accordance with Article 409 of the Civil Code, so that the principles of civil law also apply to royalties. Therefore, one of the applicable property principles is that royalties can be transferred as long as it is done by a person who has the right to perform such legal actions.²⁹ At based on this, the position of copyright royalties in joint property is as an object. The existence of the position of copyright royalties as an object of joint property cannot stand solely on the basis of the combination of laws and regulations. There are complex and diverse legal consequences of recognizing copyright royalties as joint property. When it is decided that it is divisible property in the division of joint property, it immediately seems to contradict the meaning of copyright, including the benefits in the form of economic rights and moral rights that are exclusive to the creator or copyright holder.

The issue of recognizing royalties as part of joint property has become a significant concern in the dynamics of family and economic law in Indonesia. In the context of national law, royalties are ongoing income derived from the use of creative works such as songs, books, or films by third parties, as regulated in Law Number 28 of 2014 concerning Copyright. The recognition of royalties as joint property is complex due to their intangible nature and continuous flow during the term of the copyright, even possibly after a divorce occurs. On the other hand, Law Number 1 of 1974 concerning Marriage defines joint property as everything acquired during marriage, including income in the form of salaries, investment returns, and other assets, unless otherwise stated in a prenuptial agreement. In many divorce cases, disputes over royalties arise due to differences in opinion about when the royalties were generated—before, during, or after the marriage. Therefore, the recognition of royalties in the context of joint property requires a comprehensive legal approach to provide justice for both parties. In addition, the importance of clear regulations regarding royalties is also closely related to the protection of the creative industry in Indonesia, given that royalties are one of the main sources of income in the creative economy.³⁰

Royalty rights are exclusive rights attached to creators or holders of intellectual property rights to receive financial compensation from the use of their work. In Article 8 of Law Number 28 of 2014 concerning Intellectual Property Rights, royalties are included in economic rights that provide material benefits to creators based on license agreements or contracts with users of the work. The main characteristic of royalties that distinguishes them from other assets is their sustainable nature and dependence on the level of use of the work by other parties. For example, a musician whose songs continue to be played on music streaming platforms will receive royalties as long as the songs are used commercially. In the context of joint property, the challenge that arises is determining whether royalties received after divorce can still be considered the result of hard work during the marriage or as income that is completely independent of the marital relationship. This uncertainty is often the main cause of conflict in divorce disputes. In addition, royalties as intangible assets require fair measurement and distribution mechanisms to ensure justice for the spouses involved in divorce cases.³¹

As a comparison, there are similar issues in the United States. In general, in the United States copyright is regulated by the Copyright Act of 1976, which grants creators the exclusive right to use and control their creative works for a certain period, which usually lasts for the creator's lifetime plus 70 years after their death. Patents are regulated by the United States Patent and Trademark Office (USPTO) under the Patent Act, granting inventors exclusive rights to exploit their inventions for 20 years from the date of patent application.³²

In the context of marriage and joint property, policies regarding royalties can vary depending on state law. The United States recognizes two main systems for regulating joint property: "*community property*" and "*equitable distribution*." In states that adhere to the *community property* system, such as California and Texas, royalties earned during marriage are considered joint property and must be divided equally between both parties in the Muhammad Nurhadi, Copyright and Indonesian Civil Law, Yogyakarta: Deepublish, 2020, p. 33 event of a divorce.³³ This means that any royalty income earned from copyrights, patents, or natural resources during the

marriage will be considered the joint property of the husband and wife, regardless of who actually created or acquired the rights. This arrangement reflects the view that the contributions of both parties to the marriage, whether financial or non-financial, are equally important.

Conversely, in states with an *equitable distribution* system such as New York, the court will determine the division of property based on the principle of fairness, which may not always mean an equal division but rather a division that is considered fair based on each party's contribution during the marriage. In this system, the court considers various factors such as the duration of the marriage, the income and future earning potential of each party, contributions to the acquisition of assets, child care needs, and the health and age of the couple. Royalties earned during the marriage will be evaluated as part of the total assets, and the distribution will be adjusted to reflect the unique contributions and needs of each spouse.³⁴

In the context of joint property, royalties fall under the category of intangible assets, which are different in nature from physical assets such as property or vehicles. This intangible nature often poses an obstacle in the process of dividing joint property because it requires a different evaluation mechanism. According to the Copyright Law, royalties depend on the use of copyrighted works by third parties, so their value tends to fluctuate. This uncertainty in value makes royalties difficult to estimate as part of joint property in divorce proceedings. In addition, not all royalties are recorded or reported in detail, which can lead to uncertainty in the calculation of joint property. The recognition of royalties as joint property requires a more adaptive legal approach, such as financial audit mechanisms and licensing contracts to ensure fair distribution. In practice, several court cases have demonstrated the importance of transparency in royalty management to prevent post-divorce conflicts.³⁵

The recognition of royalties as joint property not only affects individuals but also has broader implications for the creative economy industry in Indonesia. In recent years, the creative economy sector has become one of the main pillars of national economic growth, with significant contributions from royalties from music, film, and literature. If royalties are not recognized as part of joint property, this could reduce the motivation for spouses to support their partner's creativity due to the lack of clear financial incentives. Conversely, recognizing royalties as joint property could encourage more couples to work together in developing creative works, which could ultimately increase the productivity of the creative industry.

Clear regulations are still needed to protect the rights of creators while ensuring fairness for spouses in the distribution of royalties. Thus, this issue is not only a family law matter but is also closely related to the national strategy to promote the creative economy as a sustainable resource. The government needs to develop more detailed technical guidelines on the mechanism for distributing royalties in the context of joint property, including in the event of divorce. In deciding copyright cases as part of divisible property in joint property, the court needs to strengthen its capacity in to handle cases involving royalties by referring to the practices of countries that have legal principles similar to those of Indonesia.

The Role and Function of Notaries in Realizing Legal Certainty of Copyright as Marital Property

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning the Position of Notary in Article 1 point 1 provides the following definition of Notary: "Notary is a Public Official who has the authority to make authentic deeds and other authorities as referred to in this Law". The term "Public Official" itself is a translation of *openbare ambtenaren* found in Article 1 of the Notary Position Regulations and Article 1868 of the *Burgerlijk Wetboek*. According to the legal dictionary, one of the meanings of *ambtenaren* is "official." Thus, *openbare ambtenaren* are officials who have duties related to the interests of the community. *Openbare ambtenaren* are defined as officials who are entrusted with the task of drawing up authentic deeds that serve the public interest and such qualifications are given to notaries.³⁶

Thus, *Openbare Ambtenaren* are officials whose duties are related to the public interest, so it is appropriate to define *Openbare Ambtenaren* as public officials. Specifically, *Openbare Ambtenaren* are translated as Public Officials, which are defined as officials entrusted with the task of creating authentic deeds that serve the public interest, and such qualifications are given to Notaries.³⁷ Notaries are the only public officials who have the right to draw up authentic deeds as a means of perfect proof. Notaries are an extension of the State, performing some of the State's duties in the field of civil law. The State, in order to provide legal

protection in the field of private law to citizens, has delegated some of its authority to Notaries to draw up authentic deeds. Therefore, when carrying out their duties, notaries must be positioned as public officials who carry out tasks.³⁸ Notaries as public officials,³⁹ are the translation of the term *Openbare Ambtenare* found in Article 1 of the Notary Position Regulations (PJN), 3 and Article 1868 of the Civil Code (KUHPerdata).

The duty of a notary is to confirm the legal relationship between the parties in awritten form and specific format, thereby creating an authentic deed. A notary is a powerful document creator in a legal process.⁴⁰ The provisions of Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary state that Notaries have the authority to create authentic deeds concerning all acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of the deed's creation, storing the deed, providing gross copies, copies, and excerpts of the deed, all of which are as long as the creation of the deed is not also assigned or exempted to other officials or persons designated by law.

In addition to the aforementioned authority, paragraph (2) further states that in addition to the authority referred to in paragraph (1), a Notary is also authorized to:

- a. to authenticate signatures and establish the certainty of the date of a private document by registering it in a special book;
- b. to record private documents by registering them in a special book;
- c. to make copies of original private documents in the form of copies containing the descriptions as written and depicted in the relevant documents;
- d. certifying the conformity of photocopies with the original documents;
- e. providing legal advice in connection with the preparation of deeds;
- f. drawing up deeds relating to land; or
- g. drawing up auction deeds.

Furthermore, paragraph (3) states that in addition to the authority referred to in paragraphs (1) and (2), Notaries have other authorities as regulated in laws and regulations.

Notaries are required by law to assist and serve the public who need authentic written evidence regarding circumstances, events, or legal actions that the parties wish to be recorded in the form of an authentic deed to be used as evidence based on laws and regulations stipulating that certain legal actions must be made in the form of an authentic deed.⁴¹ In the context of private legal relations, notaries enjoy exclusive authority to draw up authentic deeds. These authentic deeds are given strong evidentiary weight in civil cases, so that notaries who are authorized to draw up authentic deeds occupy a very important position in legal life. In many ways, Notaries serve as trusted advisors to people who need legal assistance, and for clients, they can act as guides.⁴²

When a divorce occurs, issues regarding joint property often arise between the former husband and wife, and disputes over joint property often involve the families of both parties. Article 126 of the Civil Code explains that joint property is dissolved by law due to death, marriage with the permission of a judge after the husband or wife is no longer alive, divorce, separation of bed and board, or separation of property.⁴³ The explanation of Article 126 of the Civil Code states that divorce results in the dissolution of joint property, so that the joint property must be divided between the husband and wife. The legal consequences of divorce on joint property are regulated in Article 37 of the Marriage Law, which states that if a marriage is terminated due to divorce, joint property shall be regulated according to their respective laws. The explanation of Article 37 of the Marriage Law states that "What is meant by their respective laws are religious laws, customary laws, and other laws.

Article 15 paragraph (1) of the UUJN concerning authentic deeds mentions the role of notaries in relation to the division of joint property, namely deeds of agreement and division of joint property. in this case, the notary

must ensure that the status of the joint property that will be the object of the deed of the parties is clear in order to create legal certainty and protection for the parties, because the notary, as a public official, has the authority to make authentic deeds, as long as the making of authentic deeds is not reserved for other public officials. Legal certainty and protection are evident through the authentic deeds he makes as perfect evidence in court. It is perfect evidence because authentic deeds have three powers of evidence, namely extrinsic evidentiary power (*uitwendige bewijskracht*), formal evidentiary power (*formele bewijskracht*), and material evidentiary power (*materiele bewijskracht*).⁴⁴

The creation of deeds of agreement and division of joint property is a form of deed made before (*ten oVERStaan*) a notary or called a "party deed" (*partij akten*). In this party deed, the statements of the persons acting as parties to the deed are authentically recorded. The deed of agreement and division of joint property must be based on the authenticity of a deed, which must meet the requirements stipulated in the law regarding the validity and completeness of the creation of an authentic deed. Authenticity of a deed.⁴⁵ The role of a notary in drawing up a deed of joint property distribution is as a public official who draws up a deed based on the wishes of both parties in accordance with applicable laws. Notaries act as authentic deed makers in relation to joint property distribution and as creators of written evidence in relation to the deeds they draw up in accordance with the wishes of both parties based on applicable laws. In addition, notaries can also provide guidance on the contents of the agreement and division of joint property, ensuring that it does not violate applicable laws and regulations, and then confirming with the parties that the property to be divided is joint property and does not include personal property, such as gifts, presents, and inheritance.

The role and function of a notary in the division of joint property or marital property is divided into two functions and roles. First, the function and role carried out before the divorce with is to draw up a marriage agreement between the husband and wife. The marriage agreement can be made before or during the marriage. Theoretically, marriage agreements can be made in various forms, ranging from the rules listed in the Civil Code to the Marriage Law No. 1 of 1974. If a person makes a promise and another person agrees to that promise and also makes a promise related to the first promise, then a bond of two promises is formed between two people who have a relationship with each other.⁴⁶

Indonesian positive law governing marriage agreements is regulated in the Civil Code, Law No. 1 of 1974 in conjunction with Government Regulation No. 9 of 1975 concerning the Implementation of Law No.

1 of 1974 concerning Marriage. The provisions of marriage agreements according to the Civil Code and Law No. 1 of 1974 contain differences and are based on the legal principle of *lex specialis derogate legi generalis*, which is a principle of legal interpretation that special laws override general laws. Therefore, the provisions contained in Law No. 1 of 1974 on Marriage and its implementing regulations are more effectively implemented while still complying with the provisions of the marriage agreement contained in the Civil Code.

Law Number 1 of 1974 concerning Marriage came into effect on October 1, 1975. Since the enactment of Law Number 1 of 1974 concerning Marriage, there has been unification in the field of Marriage Law in Indonesia, except insofar as it has not been regulated in the law, in which case the old regulations may be used.⁴⁷ After the enactment of this law, regulations concerning marriage in Indonesia, particularly in this discussion regarding marriage agreements, began to be governed by the Marriage Law. The increasingly complex issues surrounding marriage have led to amendments to Law No. 1 of 1974 on Marriage through Law No. 16 of 2019. According to Article 139 of the Civil Code, this marriage agreement can be used by prospective spouses to regulate the separation of property between the prospective husband and wife when they enter into marriage. This marriage agreement has the capacity to regulate not only financial or property matters, but also other issues as long as they are agreed upon and included in the marriage agreement itself.⁴⁸ In other words, a marriage agreement is a property separation agreement, so the husband and wife can agree on which assets are the husband's or wife's personal property and which assets are the joint property of the husband and wife during the marriage.

In addition to performing functions and roles in the preparation of marriage agreements or separation of property agreements before or during the agreement, notaries can also play a role and function after a court decision regarding the division of joint property for to clarify the judge's decision by notarizing the joint

property or joint assets that have been divided by the court and assisting in the transfer of rights in accordance with the Court Decision on the division of joint property after divorce. The role and function of notaries after a court decision is more to provide additional legal certainty by notarizing the division of property by the court decision, and no less important in the process of division, notaries also have an important role in assisting the process of transferring rights to the shared property that has been divided. of course, the role of the notary in this case is in the context of drawing up a deed for the implementation of the division of marital property.

Marriage agreements are drawn up in notarial deeds because authentic deeds are required to provide certainty of proof of the agreement. An authentic deed is a deed that must be drawn up in the form specified by law, drawn up in the presence of an authorized official, and must be drawn up in the place where the official has authority.⁴⁹ As stated in Article 15 of Law Number 30 of 2004 concerning the Notary Position *in conjunction with* Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states that Notaries in carrying out their duties are authorized to draw up authentic deeds for the parties concerned, whether they are marriage agreements or other authentic deeds.

In addition to drawing up marriage agreements, the role and function of notaries is to bind parties in a deed regarding the implementation of a court decision on the division of joint property, which includes joint property in the form of copyright royalties. It is very important to authenticate decisions regarding the division of joint property, which also includes joint property in the form of copyright royalties. One of the main reasons for the need for a notary is the question of how royalties are divided, especially the proportion and mechanism after divorce. Economic factors are a major consideration because of the long-term income potential of royalties. Creative works have significant and sustainable economic value, especially through royalties received periodically. The difficulty in this assessment is caused by the intangible nature of copyright and the fluctuations in the income generated, such as royalties.⁵⁰

The division of joint property is basically carried out after a final and binding decision or agreement between the two parties has been reached. The property that must be divided is property acquired until the marriage is declared terminated by the court. Royalties themselves have characteristics that continue to be attached to the copyright holder. Of course, there must be a clear limitation that the copyright royalties to be divided in the joint property are those obtained from the beginning of the marriage until the marriage is declared terminated due to divorce by a court decision. This is where the notary plays a role in clarifying this based on the agreement of the parties, namely the husband and wife, as stated in a notarial deed. In addition to the period during which joint property in the form of copyright royalties is acquired, there is also a loophole in the form of the nominal amount obtained from copyright royalties acquired during the marriage. Copyright royalties have a fructuous character at any given time and are not always constant and static in terms of their acquisition.

II. CONCLUSION

The regulation of copyright as joint property under Law No. 28 of 2014 on Copyright is not explicitly stipulated, but the provisions of Article 16 of the Copyright Law seem to leave room for interpretation that copyright in this case, in the form of economic rights acquired during the marriage, is movable property that is also part of the joint property that must be divided upon the termination of the marriage due to divorce. Law No. 1 of 1974 concerning marriage also does not clearly regulate the position of copyright as part of joint property, but it is clearly stated in the Marriage Law that property acquired during marriage is joint property, which must be divided between husband and wife when the marriage ends due to divorce. Legal certainty regarding copyright as part of joint property already exists, but it is still considered insufficiently concrete. There are no clear and concrete regulations regarding the mechanism for dividing copyright as joint property. The absence of clear regulations has resulted in legal uncertainty regarding the timing of the division of economic rights to copyright as joint property, even though it has been decided by the court. The role and function of notaries in realizing legal certainty of copyright as joint property is by carrying out the duties and functions of notaries as public officials authorized to draw up notarial deeds, which can be done at the beginning before or during the marriage by drawing up a property separation agreement between husband and wife, or drawing up a notarial deed after a court decision on the distribution of joint property-gini provides additional legal certainty by notarizing the division of property by court decision, and no less important in the

process of division, notaries also have an important role in assisting the transfer of rights to the objects of joint property that have been divided.

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