

Post-Divorce Copyright Legal Status: An Indonesian Legal Perspective

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Abstract

Decision Number 1622/PDT.G/2023/PA.JB is a new precedent for the world of Indonesian law in the future, especially regarding copyright in the context of divorce because it raises problems related to the distribution of economic rights after divorce that arise over copyrighted works. This research aims to determine the position of work objects created during marriage and the status of economic rights to work objects after divorce. The research method used in this research is normative juridical with a statutory and regulatory approach. Primary and secondary legal materials are obtained through literature studies and explained using grammatical and extensive legal interpretation. The research results show that the position of created objects owned during marriage can be considered joint property, with the emphasis on the principle of togetherness in the marital relationship. Referring to Article 37 of Law no. 1 of 1974 and Article 97 of the Compilation of Islamic Law, the economic rights status of post-divorce copyrights which become joint property can be transferred, either in whole or in part for certain reasons. Therefore, the division of copyright after divorce needs to consider the contribution of each party in creating the work as well as the economic value of the copyrighted work itself. This research provides an important contribution in understanding the position of creative works as intangible assets in marriage and their impact on the division of joint assets after divorce.

Keywords: Economic Rights, Joint Property, Marriage, Works Object.



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INTRODUCTION

Case Decision Number 1622/PDT.G/2023/PA.JB in the divorce case of Virgoun Teguh Putra and Ina Idola Rusli is a new precedent for the world of Indonesian law in the future. One of the interesting decisions was the granting of royalties as joint assets by the West Jakarta PA (Hosen, Wahab, and Arianto 2024). In this conclusion, it was stated that Inara as his wife was entitled to 50 percent of the net royalties from three songs written by Virgoun, namely Surat Cinta Untuk Starla, Evidence, and Selamat. Regarding this decision, it gave rise to a conflict in the legal world because property, including intellectual property, copyright is a works that are *sui generis* as regulated in Law Number 28 of 2014 concerning Copyright (Munadiah 2021). According to the Oxford Dictionary, "*sui generis is different from all other people or things, something that is different from the general public or is unique or can be said to have its own classification.*" Because of this unique nature, it creates problems related to the position of created objects created during marriage and the economic rights status of the created works after divorce (Speriusi-Vlad 2009).

Ari Juliano Gema, who is an intellectual property law practitioner, gives the opinion that if the object of the property is royalties, then it cannot be separated from copyright ownership (Rahman et al. 2024). Royalties are economic rights that can be enjoyed by the creator, this copyright can be transferred to another party by the creator, while moral rights remain with the creator for life (Yanto, Chen, and Sari 2022). Therefore, Ari believes that copyright cannot automatically become joint property, even though the songs were created within the framework of marriage. If it turns out that ownership of copyright is still in dispute, the West Jakarta PA should not have the authority to decide on claims for royalties as part of the property (Hosen, Wahab, and Arianto 2024). Moreover, in this context, Virgoun objected to the distribution of royalties and has filed an appeal. He said that copyright cannot automatically become joint property. The position of ownership needs to be decided first by the Commercial Court as regulated in article 95 of the Copyright Law. The Commercial Court's decision can later be brought to the West Jakarta PA to be determined as joint property. The status will be different if the creator admits that the song is a collective right, so that it can be directly determined by the PA without a Commercial Court decision (Hasyim and Aprita 2024).

Copyright may be transferred or transferred, in whole or in part, for: inheritance; grant; worship; will; written agreement; or for any other reason permitted by the provisions of the law. What is meant by "*can be transferred or transferred*" is only economic rights, while moral rights remain inherent in the Creator himself (Lita 2020). In the case of divorce, each party, either husband or wife, is entitled to the sharing of common property as set forth in the Islamic Compilation of Laws. Exception for IPR as a common property object. Each party is entitled to the economic right of the use of such IPR both during the marriage and after the divorce until the period of such protection expires (Mahdianur etc, 2024). Royalties on Intellectual Property Rights acquired during the marriage, then the income related to the IPR is joint property. Royalty becomes a joint property (gono-gini) in marriage when the royalties have become an income earned by both husbands and wives and have become a matter in the daily needs. If there is a dispute between the spouses, then the model of settlement is based on the provisions of Article 37 of the Act No. 16 of 2019 on Amendment of the Law No. 1 of 1974 on Marriage which states, that when the marriage is broken up due to divorce, the joint property is regulated according to their respective laws (Yusuf, Dungga, and Elfikri 2024). Intellectual Property Rights are objects of common property in marriage as long as the object of the common property has clearly existed from its material or concrete object, is not abstract (not realized), has had economic value such as the work of the composer of the song, and the writings that already possessed the royalty he realized during the marriage. As for the mechanism of division, it is through a lawsuit in a religious court, either a cumulative lawsuit with a divorce case or a joint property claim with a stand-alone status. The transfer of IPR is limited to economic rights and does not affect the moral rights of the owner of the Intellectual Property Rights. The division still refers to the provisions of Article 97 of the Compilation of Islamic Law, where in principle the share of each spouse is 1/2 part. Connecting objects that are divided into movable objects which are non-real, then what is divided is royalty only (Chotchat 2023). Commercial secrets are intellectual property of high value and must be protected, then secrets can be said to be joint property when registered at the time of marriage, but if registered before the marriage period is said to be the personal inheritance of each other. But if the economic value of royalties on the

trade secrets is received or acquired after the marriage, then it is household wealth that becomes joint property. Then when a divorce occurs, it becomes a gono-gini treasure to be divided (Mashdurohatun 2020).

Basically, this research differs from previous research because of some aspects. One of the main differences is the focus of research. This research focuses on the analysis of the location of works objects during marriage and the status of post-divorce economic rights in the perspective of Indonesian law, while previous research may have a broader focus, such as analysis of marriage law, the rights of spouses in marriage, or the sharing of common property. Nevertheless, previous research has been supporting data in this research.

Journal by Susilo & Kian (2024), with the title "Kepemilikan Hak Kekayaan Intelektual Merek Sebagai Harta Bersama dalam Kasus Perceraian," states that in the event of a divorce, each party, both husband and wife, has the right to the distribution of joint property as regulated in the Compilation Islamic law. Exceptions to intellectual property rights as objects of joint ownership. Each party has the right to economic rights starting from the use of intellectual property rights, both during marriage and after divorce, until the end of the intellectual property rights protection period. The difference between this research and the author's research lies in the intellectual property objects discussed. This research discusses brands as joint property, while the author's research examines work objects as joint property after divorce. Thesis by Saputra (2022), titled "Royalti Hak Cipta sebagai Harta Bersama dalam Perkawinan," states that royalties become joint property (gono-gini) in marriage when the royalties have become an income earned by both the husband and wife and have also become a means to meet daily needs. In the event of a dispute between husband and wife, the resolution model is based on the provisions of Article 37 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage. The results of the research have not fully answered the formulated problem statement. Therefore, the research conducted by the author will complement previous studies. The author will further analyze the position of works objects that are considered joint property after the divorce ruling. Journal by Bakar et al., (2021), titled "Analisis Royalti Lagu Sebagai Harta Gono Gini dalam Perkawinan Menurut Perspektif Hukum Islam (Studi Putusan Nomor 1622/PDT.G/2023/PA.JB)," shows that under Islamic law, royalties earned during the marriage can be considered joint property as they reflect a collective contribution within the household. The judge's ruling to divide 50% of the net royalty income as joint property reflects the principles of justice and equality in the distribution of assets, as well as the adaptation of Islamic law to modern dynamics. This research focuses on the research of Islamic law, while the author's research focuses on the research of positive law in Indonesia. In addition, the research only discusses the recognition of song royalties as joint property. Meanwhile, the author's research addresses the position of the object and its status before and after the divorce ruling. Journal by Hasyim & Aprita (2024), titled "Tinjauan Yuridis Mengenai Hak Royalti yang Menjadi Harta Bersama Inara Rusli dan Virgoun," shows that the divorce case of Inara Rusli and Virgoun provides insights into the implications of the concept of joint property in the division of shared assets and financial rights. Well-thought-out financial planning and adequate legal protection are important factors in facing divorce situations. Both parties must consider the implications and consequences that may arise if a divorce occurs, as well as ensure that the interests of the child are also safeguarded. The implications of this case can serve as a lesson

for society about the importance of understanding and preparation before entering marriage, as well as the necessity of wisdom in managing family finances. The research only discusses the implications of the raised case but does not address the position or status of the object in question. Thus, the research is different from the research that the author will examine.

From these problems, questions arise related to what the status of work objects is carried out during marriage and what is the status of economic rights to work objects after a divorce decision. The research aims to examine the gaps between the positioning of objects of works made during marriage and to find out the status of economic rights of works post-divorce judgment in case 1622/PDT.G/2023/PA.JB. By conducting a comprehensive analysis of policies and regulations, the research seeks to provide insight to guide the development of a robust legal framework that conforms to the provisions of shared property in divorce cases. This article makes a significant contribution to a comprehensive understanding of the legal landscape and provides recommendations on legal solutions that partners can make to avoid conflicts related to intellectual property rights in the future.

RESEARCH METHODS

The type of research used in this research is normative research (Zainuddin and Karina 2023). Normative research is also known as doctrinal research, namely research on law that is conceptualized and developed because of the doctrine that is adhered to and developed. In this research, the author wants to examine the position of created objects created during marriage and the economic status of the works after the divorce settlement. Based on the research object, the approaches used in this research are the statute approach, focusing on the analysis of written laws and the conceptual approach to explain the relationship between copyright, marriage, and asset division post-divorce. Types and sources of legal materials in normative research include primary legal materials consisting of legislation such as Law Number 2018 concerning Copyrights, Article 37 of Law Number 1 of 1974, and Article 97 of the Compilation of Islamic Law; and secondary legal materials consisting of books, scholarly works, both national and international journals related to the research theme. The legal materials used in this research are collected through library research. To solve the research problem, researchers used legal interpretation. Interpreting legal rules is an attempt to find the meaning of those legal rules, meaning distilling or pulling them out and displaying them on the surface of legal rules or legal meaning. This research focuses on grammatical and extensive legal interpretation. Grammatical interpretation is used to translate the meaning of created objects and associate them with joint property in marriage. Meanwhile, extensive interpretation serves to expand the meaning of joint property, which has also evolved into intangible assets created during marriage.

RESULTS AND DISCUSSION

Copyright is Based on Indonesian Positive Law

Copyright is born and arises from the results of human thought in the fields of science, art, and literature (Izyumenko 2024). Copyright arises automatically as soon as a creation is born. Copyright is a civil right that is inherent in the creator (Saxena and Pal 2022). Copyright is private right. The justification is because a creation is born from the creator's creation. Creations that arise from the thoughts and creativity of the creator. A copyright must be born from human creativity, not from something that already exists outside of human activity or

outside of the results of human creativity. Copyright is regulated in Law Number 28 of 2014. Based on the provisions of Article 1 paragraph (1) of Law Number 28 of 2014: *“Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is manifested in a real form without reducing restrictions in accordance with the provisions of laws and regulations.”* Copyright is one of the part of intellectual property that has the broadest scope of protected objects, because it covers science, art and literature which also includes computer programs (Tambunan, Panjaitan, and Siahaan 2023). The development of the creative economy which is one of the mainstays of Indonesia and various countries and the rapid development of information and communication technology requires an update to the Copyright Law, considering that Copyright is the most important basis of the national creative economy. With the Copyright Law that fulfills the elements of protection and development of the creative economy, it is hoped that the contribution of the Copyright and Related Rights sector to the country's economy can be more optimal. Copyright is a natural right, is absolute and is protected if the creator lives and several years after the creator dies, in the Copyright Law the protection period after the creator dies is 70 years. As an absolute right, this right can basically be defended against anyone, those who have the right can sue for any violation committed by anyone (Ma'ruf 2023). A creation must prioritize originality and be real/tangible so that a creation in the fields of art, literature, and science can have full copyright. The originality criteria are intended for copyright ownership or claims to the results of a creation/work. Showing that a creation/work is truly made and comes from the creator. Originality does not require novelty in a creation, but requires that a creation/work is truly the result of the creator's thoughts/creations (Debora, Siallagan, and Nainggolan 2024). Does not create copyright for a creation/work that imitates the creation/work of others or public domain works. Based on UUHC Number 28 of 2014 Article 4, it states that copyright is an exclusive right consisting of moral rights and economic rights. Copyright is only intended for the creator, so it prohibits/ restricts unrelated parties from using the work without permission from the copyright owner. In Article 8 of UUHC Number 28 of 2014, economic rights are the exclusive rights of the Creator or Copyright Holder to obtain economic benefits from the Creation (Mashdurohatun 2020)

Position of Works Object Made during Marriage

Marriage is a contract that provides the benefit of being able to establish a family relationship (husband and wife) between a man and a woman and to provide mutual assistance as well as to limit the rights of the owners and provide for the fulfillment of their respective obligations. If marriage is understood only as a civil bond or contract, will be able to eliminate the sanctity of marriage as a form and instrument of social worship to Allah SWT (Asman 2019). Marriage in the context of Indonesian law is a complex social institution and full of rules that regulate various aspects, including the rights and obligations of married couples (Fauzi 2024). Thus, the discussion of the position of the object of works made during marriage becomes relevant and important to understand its legal implications in the context of marriage.

In the context of modern marriage, the regulation and protection of intellectual property rights is a very important issue (Ayu Palar, Rafianti, and Muchtar 2023). Intellectual property rights like copyright are an integral part of the economic life of a married couple. Of course, in this case, it is necessary to consider the aspects of economic justice and property separation

when a divorce occurs. Some questions about how intellectual assets should be managed, shared, or protected can have a significant impact on the economic well-being of couples when a divorce occurs (Arso 2017). Thus, the author tries to dig deeper into the rules governing the positioning of objects of works made during marriage and how such rules can affect economic justice between divorced couples. The rules and protection of intellectual property rights in the context of the object of works made in marriage can have a significant impact on economic justice and the separation of property during divorce. Intellectual property rights refer to the legal rights granted to the creators, inventors, or owners of intellectual properties on their works or intellectually created works (Azoro 2023).

In Case No. 1622/PDT.G/2023/PA.JB on the divorce case of Virgoun Teguh Putra and Ina Idola Rusli, which became a question is the status of economic rights of the post-divorce decision works. Of those people, the related rule is Act No. 28 of 2014 on Copyright. In some cases of divorce, copyright and trademark rights are joint property to be shared. For example, in case No. 584/Pdt.G/2022/PA.Srg, the plaintiff filed a lawsuit against joint copyright property to the Attack Religious Court. The object in dispute is still a result of divorce and needs to be resolved through legal process. The common treasure in the context of this discourse has the meaning of works (Milton 1820). Then, when the process of work is done, then the work becomes a common treasure. In accordance with article 8 UUHC that “*Economic rights are the exclusive right of the Creator or copyright holder to obtain the economic benefit of the works.*” A copyright acquires exclusive rights automatically at the time of publication. Another question arises as to whether the royalty earned after the marriage ends is part of the joint property (Itkin 2022). In fact, it depends on when a work was created. In article 35, paragraph (1) of Act No. 1 of 1974 on Marriage, it is stated that “*the property of things acquired during marriage becomes joint property.*” The birth of a work gives rise to the right to work. If a copyright is acquired at the time of the marriage, all the benefits and benefits of the copyright shall be joint, unless otherwise promised in the form of the Matrimonial Agreement (Mashdurohatun 2020).

Intellectual property rules in marriage can affect the separation of property because intellectual ownership in this research is copyright is an asset that has economic value (Mashdurohatun 2020). During the marriage period, their property is often regarded as shared property which will then be shared fairly upon divorce. However, the protection of objects of works made as joint property may affect the enforcement of assets during marriage and the process of separation of property. For example, if one of the spouses is a songwriter who holds the copyright of his work, then the royalty value received from the sale or use of the work can be considered as part of the marriage asset to be considered in the process of the division of property at the time of the divorce. Of course this can be a source of complexity and controversy especially when the economic value of the object of the works is very high or when there are special provisions in the marriage agreement that regulate the separation of assets (Mahdi 2024). Therefore, in marriages where intellectual property is an important factor, there is a need for a clear understanding of the rules and rights associated with intellectual property rights so that the status of economic rights of post-divorce works is clear and the process of separation of property can be conducted fairly in accordance with applicable law (Haq and Akbarizan 2023).

Furthermore, intellectual property is usually regarded as an individual asset rather than a joint asset in marriage, unless a pre-marital agreement states otherwise (Ida 2022). This means that intellectual property claims made or owned by one of the parties before the marriage tend to remain the property of the individual without involving the partner. However, it should be understood that when a couple jointly creates or owns a work in the case of this research is a song that is later referred to as intellectual property rights during the marriage period, there is a possibility of an obligation to divide royalty when the divorce occurs (Ruslan 2024). In fact, this is often a complex issue because it determines each partner's contribution to the works of intellectual property.

Intellectual property regulations, copyrights during marriage, can affect economic justice (Febrianty, Ishwara, and Angraeni 2024). How can it be, when couples have shared intellectual property, the distribution of rights to intellectual property, especially royalties during divorce, can be a significant source of conflict between couples. Therefore, it is important to have clear and fair rules in dealing with this. In the case of divorce, the rules should ensure that the rights of each spouse are properly considered. It involves an objective assessment of each spouse's contribution to the works and management of intellectual property during the marriage (Febrianty, Ishwara, and Angraeni 2024). A fair separation of wealth must be the primary goal, so that no spouse is unfairly harmed. Thus, proper regulation can help avoid prolonged conflict and ensure that the distribution of intellectual property is done fairly (Hasanah, Utari, and Desvianti 2024).

In order for intellectual property rights in this research to be objects of works to be clearly regulated, the couple can consider making a pre-marriage agreement (Chen 2023). In a pre-marriage agreement, the spouses can regulate some important aspects relating to their intellectual property rights. First, they can determine how the income from intellectual property rights will be distributed during the marriage (Malkin 2022). This includes the extent to which the right to such income will be held jointly or separately, as well as the percentage that each couple will receive. This sharing of revenue can help prevent future disputes and ensure that both sides feel fair. Second, a marriage agreement can discuss how assets derived from intellectual property rights will be treated in the event of a divorce (Köbis et al., 2021). This could include the sharing of property, intellectual property rights, or royalties on such intellectual property rights. By arranging this in the first place, the couple can avoid a larger conflict in the divorce process by clarifying the status of economic rights of the post-divorce works. Finally, a marriage agreement can also be used to protect the right of the original owner to such intellectual property rights during marriage and divorce (Dadaboeva 2022). This may include provisions that guarantee that such intellectual property rights remain the exclusive right of the original owner, as well as the measures to be taken in the event of infringement or abuse of such rights by one of the partners. By planning maturedly through pre-marriage agreements, couples can create a framework that is fair and clearly related to their intellectual property rights, preserving the harmony of marriages, and reducing potential future conflicts. It's a wise step to address the complex issues related to intellectual property rights in marriage relationships (Singer et al. 2021).

If intellectual property in the form of copyright is acquired during the marriage, then such property shall be regarded as shared property to be equitably distributed (Mashdurohatun 2020).

A marriage agreement is a tool that can be used by a couple to regulate the distribution of property, including copyright, in marriage and divorce. In a marital agreement, the couple can clearly determine how the copyrights owned by each party will be treated during the marriage or separation. This agreement may cover the sharing of royalties, copyright ownership, or other intellectual property rights (Inshakova, Deryugina, and Malikov 2020).

The Act No. 28 of 2014 on Copyright in Indonesia regulates rights and obligations in the context of copyright. UUHC grants copyright owners exclusive rights to control the use, reproduction, and distribution of their copyrighted work (Tambunan, Panjaitan, and Siahaan 2023). In the context of marriage, if one of the spouses is the copyright owner of the work, UUHC will play an important role in protecting such rights. UUHC also grants the right to obtain royalties or other payments for the use of the copyrighted works. If the couple agrees to use or commercialize the copyright owned by one of them, a contract of engagement or other written agreement may be used to regulate the distribution of royalties or revenue from the copyright. In Islamic law, works created during marriage are usually considered joint property (*misyar*) or the property of the husband (*mulk*). However, this can vary depending on the agreement that the husband and wife have agreed to (Hasballah 2020).

Objects of works in the context of intellectual property rights have significant economic value in modern society. In the context of marriage, if a man possesses intellectual property rights, in particular copyrights acquired before the wedding, then the copyright will be considered part of the joint property in the marriage (Hosen et al., 2024). This means that the right to copyrights will be jointly owned by the husband and wife after marriage occurs. Thus, if a husband has a right to work before marriage, then the property is a right with the husband and wife in their marriage. This emphasizes the principle that the property in marriage is often regarded as a joint property shared between the couple in order to preserve the bonds and bonds of the marital relationship (Hidayah 2024). Therefore, an in-depth understanding of the legal aspects of intellectual property rights in the context of marriage is essential to prevent potential conflicts within the household and to ensure that individual rights in marital relations remain guaranteed.

From the above consideration it can be concluded that intellectual property rights, such as copyright, play an important role in the context of marriage in Indonesia (Tabroni, Ahyani, and Permana 2021). Copyright can be an asset owned by one of the spouses in a marriage. That all means, in marriage, when the copyright possessed before or during marriage can be regarded as joint property, underlining the principle of equality in the marriage relationship. If there is a copyright dispute during the marriage, then the court must play an important role in assessing the evidence and agreement that exists in order to reach a fair decision (Samuelson 2021).

The Economic Rights Status of After Works the Divorce Verdict

The status of economic rights after divorce is an important issue because it relates to the protection of rights for both parties. In many cases, domestic conflicts are often triggered by financial problems (Fikri & Bunyamin, 2024). One aspect that often triggers conflicts is the division of economic rights, including rights to intellectual property such as copyright. This division often leads to disputes, especially if the work was produced during the marriage.

In divorce, the protection of intellectual property rights is important. In article 35 of Act No. 1 of 1974 on Marriage, the Act no. 16 of 2019 on Amendment of the Law No. 1, of 1974

states that the joint property acquired during marriage must be equitably divided in divorce. However, the property which was the private property of each couple prior to marriage remains their private property (Engels and Untermann 2021).

In article 91 of the Compilation of Islamic Law it is stated that one of the forms of a thing that becomes a common property is an intangible moving thing. However, what is problematic is when the provisions of the transfer of intellectual property rights and the status of economic rights of post-divorce works can be comprehensively understood (Yiğit and Kurnaz 2024). Regarding the reasons intellectual property rights may be transferred or transferred among:

Table 1. Reasons for Transfer of Intellectual Property Rights

No.	Cause of Diversion		
	Copyright	Patent	Brand rights
1	Inheritance	Inheritance	Inheritance
2	Grant	Grant	Testament
3	Waqf	Testament	Waqf
4	Testament	Waqf	Grant
5	Written agreement	Written agreement	Written agreement
6	Other reasons that are justified in accordance with PUU provisions	Other reasons that are justified under the PUU	Other reasons that are justified under the PUU

Sources: Article 91 of the 1991 Compilation of Islamic Law

Table 2. Authentic Interpretation of Reason Point Number 6

Authentic Interpretation of Reason Point Number 6		
Copyright	Patent	Brand rights
Caused by a court decision that has obtained permanent legal force, a merger, acquisition or dissolution of a company or legal entity where there is a merger or separation of company assets.	Dissolution of the legal entity that was originally the patent holder.	Changes in brand ownership due to dissolution of a legal entity, restructuring, merger or acquisition.

Sources: Article 91 of The Compilation of Islamic Law

Based on the above-mentioned intellectual property transfer mechanism, along with its authentic interpretation, the limitative and limited reasons for any transfer of rights have been established, except in the case of the transfer of copyright, which gives room for the transfer by a court ruling which has a fixed legal force. The court ruling could be extended by withdrawing one of the lawsuits in the Religious Court in Indonesia, namely joint property claims and judgments issued by religious courts, but different situations are found in the patent and trademark rights arrangements that do not seem to give such a space. Having regard to the above provisions of the law, it is possible to draw some important points in the solution of the problem, namely the need to harmonize the material of the cargo between one regulation of the legislation with the other regulation (Watanuki 2015). In the context of this research, of course, Act No. 1 of 1974 with various laws governing intellectual property rights (patents, works, trademarks, industrial designs, trade secrets, protection of plant varieties, and design of integrated circuitry). From this perspective, any form of legislative regulation regulating intellectual property rights

cannot be applied based on *lex specialis derogat legi generalis*. In article 35 of the Act No. 1 of 1974 on Marriage, the Act no. 16 of 2019 on the Amendment of the Law No. 1, of 1974 has stated that joint property is property acquired during the marriage, of course, including intellectual property rights, only, in the laws governing the right of intellectual property concerning the transfer of such rights does not explicitly enumerate the transfer due to a judgment of a court of fixed law. So, it creates a disharmony of the law. However, in the scope of implementation, for the sake of law, such as the purpose of harmonizing the material of regulations, there are often revisions of the law to conform to other regulations (Reichman and Dreyfuss 2007). Harmonization solely maintains the continuity of the concept of constitutionalism in the intersection of national and national life. The characteristics of a system are purposes, boundaries, open, composed of subsystems, interconnected and interdependent, an integrity, transformative activities, control mechanisms and the ability to regulate and adapt (Khodair 2024).

In relation to the economic rights status of works after a divorce decision, basically the amount of each husband and wife's share of joint assets in the event of a divorce is $\frac{1}{2}$ (Weitzman 1980). Article 97 of the Compilation of Islamic Law states: *"Divorced widows or widowers each have the right to half of the joint assets as long as it is not specified otherwise in the marriage agreement."* Meanwhile, Article 37 of Law no. 1 of 1974 concerning Marriage in conjunction with Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 provides relaxation in the mechanism for dividing joint assets depending on the form of the object that is the object, with the following provisions: *"If a marriage breaks up due to divorce, property is regulated according to respective laws."*

At the level of application, the provision that each husband and wife receive $\frac{1}{2}$ of the joint assets is not legally implemented, but other factors must still be taken into account that can influence it (Pelu and Dakhoir 2021). For example, during the marriage one of the parties is negligent and unwilling and reluctant to fulfill his obligations, whether he is husband or wife, then the court can consider disproportionate distribution. The division of joint assets in the form of tangible objects, both movable and immovable, is relatively easier to divide (Couclelis 2020). The distribution can be done by physically handing over the object or calculating it into money and then dividing it. Meanwhile, for joint assets in the form of intellectual property rights, where the object is intangible movable property and is said to be an immaterial object, the division is more difficult. So, careful and deeper digging is needed so that the objects of joint property can truly be divided according to their respective parts. Issues related to the distribution of joint assets will be a little easier to implement by the Religious Court if the economic rights of the Intellectual Property Rights already exist or have emerged, meaning that it is obligatory: 1) The object of the Joint Property has a clear material or concrete form, not abstract (not yet realized), for example, a song works has been recorded, produced and sold, a written work has been published and sold, a trademark has been used and so on, is not a works that have not been realized in a real (concrete) form. And 2) The object of Intellectual Property Rights has economic value, for example written works of songs and written works that already have royalties (Abbott et al. 2024).

If an intellectual property idea has been realized in real form during the marriage so that it becomes intellectual property, then referring to Article 35 paragraph (1) of the Marriage Law,

the intellectual property becomes joint property of both husband and wife. In a divorce, there are many questions that must be answered if a spouse owns intellectual property rights (Waldman 2024).

In general, owners of intellectual property rights have several choices that can be made in the event of a divorce. Indeed, dividing intellectual property rights during a divorce is not as simple and easy as when people divide wealth in the form of tangible objects such as houses, cars, and so on (Mashdurohatun 2020). For example, this option is to calculate the economic value of intellectual property rights generated during the marriage period or another option is to negotiate the division of income or royalties from intellectual property obtained after the divorce occurs. These two options are not something that is very easy to implement and certainly require a very serious process regarding the proportions of each. Couples who are divorcing and have intellectual property rights during their marriage must know what intellectual property rights they have. The assessment of the calculation of the economic value of an intellectual property right must be explained clearly so that the status of the economic rights of the works after the divorce verdict is also known (Mera et al. 2024).

Furthermore, a Settlement of the Division of Copyright as Joint Property in Divorce is required (Itkin 2022). Formulation of the Discussion Results of Commission II in the Field of Environmental Affairs, Religious Justice, National Working Meeting of the Supreme Court of the Republic of Indonesia in 2007 in Makassar, in the seventh point, states that royalties from the proceeds of a person's wealth are his or her right based on intellectual property rights (HAKI). In the event that the right is obtained during an ongoing marriage, the right to royalties becomes income obtained during the marriage and therefore becomes joint property (Asmuni, Yusdani, and Arfaizar 2023). However, there is no further explanation regarding the definition of royalty. According to *Black's Law Dictionary*, royalties are: "A payment reserved by the grantor of a patent, lease of a mine, or similar right, and payable proportionately to the use made of the right by the grantee".

According to the Legal Dictionary "Royalty is a percentage of gross or net profit or a fixed amount per sale to which the creator of a work is entitled which is determined by contract between the creator and the manufacturer, publisher, agent and/or distributor." Copyright Law "Royalties are compensation for the use of the economic rights of a work or related rights products received by the creator or owner of related rights." So it can be concluded that royalties are a certain value paid to the owner of intellectual property rights for the economic enjoyment of an intellectual property right, the amount of which is agreed upon by the parties, for a certain period of time (Irianto and Wardani 2023).

The financial profits or royalties that are the object of sharing joint assets are determined based on when the copyright was born as follows: 1) If the copyright and brand rights arise during the marriage so that the financial profits and royalties generated during the marriage become the object of joint property division; and 2) If copyright and brand rights arise during marriage and financial profits or royalties exist after divorce, then these financial profits or royalties can be claimed as an object for dividing joint assets (Hosen et al., 2024).

If the copyright is registered in the name of husband and wife, each person remains entitled to the copyright and brand rights as well as financial profits and royalties without having to divide these rights as an object of sharing joint assets (Strong 2014). After a divorce,

it is very possible that royalties from the copyright will exist if the economic rights are still in use, as the validity period of the creator's economic rights depends on the work regulated in Articles 58-63 of the Copyright Law, namely starting from 25 years, 50 years and 70 years. Then the validity period of rights to a registered mark as regulated in Article 35 is 10 years which can be extended again for the same period (Altay 2019). If royalties from copyright as joint assets still exist after divorce, then these royalties can be submitted for distribution (Hasan and Pradikta 2024). Provisions regarding the distribution and size of the portion of each husband and wife's income from joint assets in the event of a divorce, whether divorce or death or the husband or wife is lost, we find in the provisions of Article 96 and Article 97 of the Compilation of Islamic Law (KHI) (Mashdurohatun 2020). Article 96 KHI reads as follows: 1) In the event of a divorce, half of the joint assets become the rights of the spouse who survives longer; and 2) The distribution of joint assets for a husband or wife whose wife or husband has disappeared must be postponed until there is certainty of his true or legal death based on the decision of the Religious Court. Article 97 reads: "*Widows or divorcees each have the right to half of the joint assets as long as it is not specified otherwise in the marriage agreement.*" (Alamsyah 2024)

The articles above emphasize that the distribution of joint assets between husband and wife who are divorced or who are divorced after death, or because one of them is lost, each of them gets half/ half of the joint assets (Kulzer 1975). It does not consider who works, and, in whose name, the joint assets are registered. If the property was acquired during the marriage period in accordance with Articles 35 and 36 of the Marriage Law, then the property obtained is joint property and is divided between the husband and wife (Nawawi 2022).

So, the ownership status of works created during marriage in Indonesia heavily depends on the agreements made by the husband and wife (Asnawi 2022). If there is no specific agreement, the ownership rights to those works can vary based on the religious laws followed by the couple and the applicable marriage laws. Therefore, it is important for couples to establish clear and specific agreements to regulate the economic rights arising from intellectual works during the marriage (Hafen 1983).

CONCLUSION

Intellectual property rights in the form of copyright have an important role in the context of marriage as valuable assets for couples. Within the framework of marriage, works owned before or during marriage can be considered joint property, emphasizing the principle of togetherness in marital relationships. In cases of copyright disputes during marriage, the judiciary evaluate evidence and agreements to reach a fair decision. Furthermore, provisions for the division of joint assets during divorce, as stipulated Article 97 of the Compilation of Islamic Law and Article 37 of Law No.1 of 1974, allow flexibility asset division depending on the nature of the object considered as assets. In practice, asset division may not always follow an equal split but considers various influencing factors. Consequently, specific legal rulings, such as Case Decision Number 1622/Pdt.G/2023/PA.JB, permit the transfer of the economic rights status of jointly owned works post-divorce, either wholly or partially, for specific reasons allowed by law.

This research can be further development, focusing on case research on perceptions in handling copy rights disputes in the context of marriage. This research will provide an in-depth understanding of how the judiciary handles copyright disputes arising during marriage and their implications for asset division post-divorce. By selecting an in-dept case research approach, this research can delve into specific case details to examine how court decisions are made, factors considered, and how they influence legal practices.

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