Protection of Performers' Rights under Indonesian Copyright Law and International Conventions

Muhammad Hawin*

* Professor of Law, Faculty of Law, Universitas Gadjah Mada (UGM), Yogyakarta, Indonesia. He obtained a law degree (S.H.) from UGM in 1989, Master of Laws (LL.M.) from American University in 1996, and Doctor of Philosophy (Ph.D.) from the University of Queensland, Australia in 2004. Special thanks to colleague Irna Nurhayati, S.H., LL.M., Ph.D. for her important feedbacks to this article.E-mail:winha62@gmail.com

Abstract

This paper aims to analyze performers' rights in Indonesian Copyright Law compared to some international conventions, namely the Rome Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), the WIPO Performances and Phonograms Treaty (the WPPT), and the Beijing Treaty on Audiovisual Performances (the BTAP). It also aims to find out whether or not Indonesian Copyright Law is in line with the BTAP and to recommend what the country should do when ratifying the BTAP.

The research uses a normative approach, by way of analyzing certain provisions in Indonesian Copyright Laws and international conventions and incorporating materials or information from books, journals and Internet sources as supporting arguments. The method of analysis is a comparative one. The paper finds that Indonesia's Copyright Act of 2002 provided only minimal rights to performers and was not in line with the TRIPS Agreement because, unlike the Agreement, the Act did not grant performers protection of unfixed performance. In relation to performers' rights, Indonesia's Copyright Act of 2014 is better than the Rome Convention because, unlike the Convention, the Act confers moral rights. Performers' rights under the Copyright Act of 2014 are very similar to those in the WPPT. Nevertheless, in respect of the right of integrity, the Act gives better protection than the WPPT. The moral rights and economic rights of performers in the Copyright Act of 2014 are quite similar to those in the BTAP. However, as long as the definition of "fixation" in the Act is not extended to audiovisual fixation, the Act cannot be understood to grant moral rights and economic rights to audiovisual performers. Therefore, as the stance of the Copyright Act of 2014 is not yet in line with the BTAP and the current situation in Indonesia is not ready to protect audiovisual performers, the paper recommends that, when ratifying the BTAP, the country avail itself of the leniency found in the BTAP and amend the Copyright Act of 2014 to be in line with the Treaty.

Key Words: copyright, performer, right, moral, integrity, fixation, audiovisual, protection

Manuscript received: Mar.1, 2018; review completed: Apr. 2, 2018; accepted: May 16, 2018.

I. Background

A work cannot be enjoyed by the public and will not get famous if it is not performed by a performer. The song "Twist and Shout"[1] written by Phil Medley and Bert Berns would not be famous until now were it not sung by the Beatles or other performers. The melody "Morning Has Broken,"[2] the lyric of which was written by Eleanor Farjeon, would not have become number one on the U.S. Easy Listening Chart in 1972[3] were it not performed by Cat Stevens and accompanied by the pianist Rick Wakeman. The eighth spy film of James Bond "Live and Let Die"[4] probably did not become special and legendary were it not performed by the talented Roger Moore and with the song sung by the brilliant Paul McCartney.

It is therefore precise to state that performance of a work can add great value to the work. In relation to a song, for example, a talented performer can bring new life to a musical work by adding unique elements that appeal to listeners.[5] The position of a performer is essential since not every songwriter can perform his or her work. The performer then connects the work with the audience. Therefore, the performer reasonably deserves recognition and protection for his or her performance.

The international society, led by the World Intellectual Property Organization (WIPO), has increasingly demanded the recognition and protection for the important role played by performers. From the making of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) in 1961[6] to the Beijing Treaty on Audiovisual Performances (BTAP) in 2012,[7] the world witnessed that the international society had never halted to struggle for the sake of performers' rights despite their facing difficulties.

The Rome Convention agreed on October 26, 1961 is the first convention that governs *neighboring rights* or related rights in the field of copyright, one of which is right of performers. The Convention gives performers economic rights. However, it lacks in terms of several things, such as being silent on the

---

1) THE BEATLES, *Twist and Shout*, *on* PLEASE PLEASE ME (Parlophone 1963).
2) CAT STEVENS, *Morning Has Broken*, *on* TEASER AND THE FIRECAT (Island 1972).
3) *Top 100 Songs of 1972 - Billboard Year End Charts*, BOBBORST.COM, http://www.bobborst.com/popculture/top-100-songs-of-the-year/?year=1972 (last visited Apr. 25, 2018).
4) LIVE AND LET DIE (Eon Productions 1973).
5) Eric Blouw, *Just Asking for a Little "Respect": Radio, Webcasting & the Sound Recording Performance Right*, 5 CYBARIS 353, 426 (2014).
6) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Oct. 26, 1961, 496 U.N.T.S. 43 [hereinafter Rome Convention].
7) Beijing Treaty on Audiovisual Performances, June 24, 2012, WIPO Lex No. TRT/BEIJING/001 [hereinafter BTAP].

issue of moral rights and giving only limited rights to performers in audiovisual works. Then, WIPO tried to *rectify* the weakness of the Rome Convention by adopting the WIPO Performances and Phonograms Treaty (WPPT)[8] on December 20, 1996. The WPPT has rectified the drawbacks of the Rome Convention by providing performers not only with economic rights but also moral rights. However, as the name of the Convention indicates, it has nothing to do with the protection of performers in audiovisual works, such as films, videos, and television dramas. Thus, although the adoption of the WPPT is without question a great achievement, the destiny of performers in audiovisual works has not been paid adequate attention. Several attempts by the WIPO members to make a treaty to update the protection of performers in audiovisual works were unsuccessful,[9] but fortunately, on June 24 of 2012 in Beijing, the WIPO successfully adopted the BTAP.[10] The new treaty extends performers' rights against unauthorized use of their audiovisual performances.

In 1994, Indonesia ratified the Agreement Establishing the World Trade Organization.[11] Thus, although the country has not ratified the Rome Convention, the country has to comply with the provision on the protection of performers in the World Trade Organization (WTO) Agreement on Trade-Related Aspect of Intellectual Property Rights (the TRIPS Agreement).[12] Therefore, in 1997, Indonesia amended its first Copyright Act 1982[13] by Act Number 12 of 1997,[14] which then recognized the rights of performers.

8) WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 36 I.L.M. 76 [hereinafter WPPT].

9) *Performers' Rights - Background Brief*, WIPO, http://www.wipo.int/pressroom/en/briefs/performers.html (last visited Apr. 25, 2018).

10) *Summary of the Beijing Treaty on Audiovisual Performances (2012)*, WIPO, http://www.wipo.int/treaties/en/ip/beijing/summary_beijing.html (last visited Apr. 25, 2018) (the BTAP was adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing on June 24, 2012).

11) Indonesia ratified the Agreement Establishing the World Trade Organization by Undang-Undang Republik Indonesia Nomor 7 Tahun 1994 tentang Pengesahan Persetujuan Pembentukan Organisasi Perdagangan dunia [Law of the Republic of Indonesia Number 7 of 1994 Regarding the Ratification of the Agreement Establishing the World Trade Organization] [hereinafter WTO Ratification].

12) Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

13) Undang-Undang Republik Indonesia Nomor 6 Tahun 1982 tentang Hak Cipta [Law of the Republic of Indonesia Number 6 of 1982 on Copyright].

14) Undang-Undang Republik Indonesia Nomor 12 Tahun 1997 tentang Perubahan Atas Undang-Undang Nomor 6 Tahun 1982 tentang Hak Cipta Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 7 Tahun 1987 [Law of the Republic of Indonesia Number 12 of 1997 Regarding the Amendment of the Law Number 6 of 1982 on Copyright as Already Amended by Law Number 7 of 1987].

However, it only provided performers with limited rights[15] and without moral rights. Historically, rights of performers such as neighboring rights were an unknown concept in Indonesia until the promulgation of Act Number 12 of 1997.[16] Even after the promulgation, there was no discussion on efforts to improve the rights of performers. Instead, attention was given more to the rights of authors. This was demonstrated by the establishment of the first collecting management organization, *Yayasan Karya Cipta Indonesia* (KCI), in 1990, which collected royalties from users only for the sake of authors,[17] while there was no collecting management organization founded on behalf of performers. Therefore, it is reasonable to conclude that the country's second Copyright Act promulgated in 2002 (hereinafter Copyright Act 2002)[18] also gave performers only limited economic rights and no moral rights. In other words, the previous Copyright Act 2002 did not improve the rights of performers. The reluctance of the government of Indonesia to recognize the necessity that rights owners deserve compensation has been stated as the leading cause for this result.[19]

Beginning in 2014, Indonesia promulgated several new acts on intellectual property,[20] one of which was the Copyright Act (hereinafter Copyright Act 2014).[21] The Copyright Act 2014 contains provisions on the protection of performers which are better than those in the country's previous Copyright Act 2002.[22] The improvement of protection of performers was triggered by

15) *Id.* art. 43C ("Performer has a special right to permit or prohibit other persons, who without his or her consent, from making, reproducing, and broadcasting sound recordings and images of his or her performance.").

16) CHRISTOPH ANTONS, INTELLECTUAL PROPERTY LAW IN INDONESIA 65 (2000).

17) *Id*.

18) Undang-Undang Republik Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta [Law of the Republic of Indonesia Number 19 of 2002 on Copyright] [hereinafter Copyright Act 2002].

19) ARVIE JOHAN, ANALISIS HUKUM PERSAINGAN TERHADAP PRAKTIK KEGIATAN LEMBAGA MANAJEMEN KOLEKTIF DI INDONESIA [A COMPETITION LAW ANALYSIS OF COLLECTIVE MANAGEMENT ORGANIZATION IN INDONESIA] 18 (2016) (citing OTTO HASIBUAN, HAK CIPTA DI INDONESIA: TINJAUAN KHUSUS HAK CIPTA LAGU, NEIGHBOURING RIGHTS, DAN COLLECTING SOCIETY [COPYRIGHT IN INDONESIA: SPECIAL REVIEW OF COPYRIGHT, NEIGHBORING RIGHTS, AND COLLECTING SOCIETY] (2008)).

20) Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta [Law of the Republic of Indonesia Number 28 of 2014 on Copyright] [hereinafter Copyright Act 2014]; Undang-Undang Republik Indonesia Nomor 13 Tahun 2016 tentang Paten [Law of the Republic of Indonesia Number 13 of 2016 on Patents]; Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis [Law of the Republic of Indonesia Number 20 of 2016 on Mark and Geographical Indication].

21) Copyright Act 2014.

22) Copyright Act 2014 art. 21 gives moral rights to performers whereas the Copyright Act 2002 is silent on the issue. Copyright Act 2014 art. 23(2) contains broader economic rights for performers than Copyright Act 2002 art. 49(1).

the country's more active role in the international forum especially after the ratification of the WPPT,[23] which protects rights of performers a lot better than the TRIPS Agreement and the Rome Convention.

This paper analyzes the provisions on the protection of performers in the Copyright Act 2014 and compares them with the provisions in some relevant international conventions. This paper begins with a brief discussion on the protection of performers under the international conventions, namely, the Rome Convention, the TRIPS Agreement, the WPPT and the BTAP. Then, it continues with the provisions under Indonesia's previous Copyright Act 2002 and Copyright Act 2014, and then compares them with the provisions in the international conventions. This paper argues that the protection of rights of performers in the new Indonesian Copyright Act 2014 is in line the WPPT but not yet in line with the BTAP. This paper finally recommends what the country should do when ratifying the BTAP.

II. Protection of Performers Under International Conventions

A. Protection of Performers Under the Rome Convention

The Rome Convention agreed on October 26, 1961 is the first convention that governs *neighboring rights* or related rights in the field of copyright, one of which is rights of performers. Article 3(a) of the Convention provides that "performers mean actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works."[24] This definition is broad because, first, the meaning of "performers," apart from those who make a performance (*act, sing, deliver, declaim, play, etc.*) in front of audiences (live performance), includes those who make a performance to fix a work; it also includes those whose performance is involved by means of technical editing, and mixing of individual performances made at different times and places by different performers.[25]

---

23) Indonesia ratified the WPPT by Keputusan Presiden Republik Indonesia Nomor 74 Tahun 2004 tentang Pengesahan Traktat WIPO Mengenai Pertunjukan dan Rekaman Suara, 1996 [Presidential Decree of the Republic of Indonesia Number 74 of 2004 Regarding the Ratification of WIPO Performances and Phonograms Treaty, 1996] [hereinafter WPPT Ratification].

24) *Id.* art. 3(a).

25) WIPO, GUIDE TO THE COPYRIGHT AND RELATED RIGHTS TREATIES ADMINISTERED BY WIPO AND GLOSSARY OF COPYRIGHT AND RELATED TERMS 139 (2004) [hereinafter WIPO GUIDE TO COPYRIGHT], http://www.wipo.int/edocs/pubdocs/en/copyright/891/wipo_pub_891.pdf.

Thus, singers, piano players, guitar players, and other players involved at the time the music was recorded are also considered as performers. Additionally, singers and music players that later join in the process of editing and mixing are considered as performers too.

Secondly, the meaning of "literary" or "artistic" works in the Article is broad covering music, drama, and drama-musical works, etc.[26] Besides, the meaning is broad because it covers acts of the performance of works already in the public domain, although it does not include the performance of traditional and cultural expressions (*folklore*)[27] and the performance of a creation not constituting a work such as a circus game. However, these *drawbacks* in Article 3(a) of the Rome Convention has been *mended* by Article 9 of the Convention, which provides: "Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention to artists who do not perform literary or artistic works."[28] The title of Article 9 of the Convention is "Variety and Circus Artists."[29] However, it is not certain from the provision whether it includes traditional and cultural expressions (*folklore*). In other words, the Convention confers on its contracting states' discretion to protect a performer who performs a creation other than a work, such as a circus game, but it is not certain with respect to folklore. The drawback of Article 3(a) and the uncertainty of Article 9 of the Rome Convention have been finally *repaired* by Article 2(a) of the WPPT[30] and Article 2(a) of the BTAP[31] which define "performers" to include those who play traditional and cultural expressions (*folklore*).

According to the 1961 Rome Diplomatic Conference, the meaning of performers in Article 3(a) of the Rome Convention includes a conductor of music and a conductor of singers.[32] The WIPO states that this constitutes an extension of interpretation of Article 3(a), taking into account that there is no clear basis for the interpretation in the text of Article 3(a) itself.[33] A conductor

---

26) Yong Wan, *Legal Protection of Performers' Rights in the Chinese Copyright Law*, 56 J. COPYRIGHT SOC'Y U.S. 669, 671 (2009) (*Rome Diplomatic Conference* in 1961 agreed that the term 'literary and artistic works,' used in Rome Convention, *supra* note 6, art. 3 had the same meaning as in the Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971, 331 U.N.T.S. 217 [hereinafter Berne Convention], especially covering musical works, dramas, and musical dramas.).

27) WIPO GUIDE TO COPYRIGHT, *supra* note 25.

28) Rome Convention, *supra* note 6, art. 9.

29) *Id.*

30) WPPT, *supra* note 8, art. 2(a) ("'performers' are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore.").

31) BTAP, *supra* note 7, art. 2(a).

32) Yong Wan, *supra* note 26.

33) WIPO GUIDE TO COPYRIGHT, *supra* note 25.

itself does not do any of the actions mentioned in the article, which are *act*, *sing*, *deliver*, *declaim* or *play* "literary" and "artistic" works, although the term "or otherwise perform" is mentioned in the provision.[34] However, again, the weakness of Article 3(a) of the Rome Convention has been mended by Article 2(a) of the WPPT which includes the term "to interpret" as one of the actions of performers;[35] and the action of a conductor can be regarded as an act of interpreting music.[36]

Although Article 3(a) the Rome Convention states "other persons who act . . . play,"[37] the WIPO states it does not include *contributors*, such as a group of people, soldiers or army, in an audiovisual work as performers.[38] Until now, there has been no international agreement which recognizes the rights of contributors.

Protection of performers is mentioned in Article 7 of the Rome Convention.[39] Based on the article, the protection includes rights to prevent (or the possibility of preventing):

> (a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;
> (b) the fixation, without their consent, of their unfixed performance;
> (c) the reproduction, without their consent, of a fixation of their performance:
> (i) if the original fixation itself was made without their consent;
> (ii) if the reproduction is made for purposes different from those for which the performers gave their consent;
> (iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.[40]

Article 7(1) uses the term "the possibility of preventing."[41] This means that its contracting states are not obliged to give protection provided in the article. This provision seems not to be firm but rather merely constitutes an option.

---

34) *Id.*
35) WPPT, *supra* note 8, art. 2(a).
36) WIPO GUIDE TO COPYRIGHT, *supra* note 25.
37) Rome Convention, *supra* note 6, art. 3(a).
38) *Id.* at 140.
39) Rome Convention, *supra* note 6, art. 7(1).
40) *Id.*
41) *Id.*

This is to enable contracting states to provide protection in a different way. For example, the United Kingdom had given protection to performers by using criminal law before it issued the Copyright, Designs and Patents Act 1988.[42]

The Rome Convention is silent on the issue of moral rights. Although it has been understood that performers are in dire need of such a right, particularly to claim to be identified by their names with their performances, and that these performances should not be modified and/or mutilated in ways likely to spoil them,[43] the Rome Convention does not touch the issue. The reason behind the position of the Convention is not clear. However, it is worth noting that the Rome Convention has been designed to provide a minimum standard of protection. It is asserted in Article 21 which, in the relevant part, provides: "The protection provided for in this Convention shall not prejudice any protection otherwise secured to performers."[44] Although based on Article 21 any contracting state of the Convention can confer moral rights on performers, it can be stated that the Convention's silence on the issue of moral rights is a drawback and only after about thirty-five years later the drawback of the Rome Convention was *rectified* by the WPPT which confers moral rights on performers.

The Rome Convention's provision on the minimal twenty years of protection,[45] which is shorter than the minimal duration of protection of authors in the Berne Convention which is during the life of authors and fifty years after their death,[46] seems not to be enough to convey that the neighboring rights including the performer's right in the Rome Convention and the authors' rights in the Berne Convention are different. There has been some dispute over whether the neighboring rights scheme of the Rome Convention affords the same protection as would be afforded under a pure copyright scheme.[47] This is reasonable since the consensus and practical application of the neighboring rights regime of the Rome Convention has been that the performance rights guaranteed in the Rome Convention protect

42) Copyright, Designs and Patents Act 1988, c. 48 (Eng.); *see* LIONEL BENTLY & BRAD SHERMAN, INTELLECTUAL PROPERTY LAW 341 (2014) (now, the Copyright, Designs and Patents Act 1988 has been amended to grant performers moral rights and economic rights in line the WPPT).

43) WIPO, GUIDE TO THE ROME CONVENTION AND TO THE PHONOGRAM CONVENTION 40 (1999) [hereinafter WIPO GUIDE TO ROME CONVENTION], http://www.wipo.int/edocs/pubdocs/en/copyright/617/wipo_pub_617.pdf.

44) Rome Convention, *supra* note 6, art. 21.

45) *Id.* art. 14(b).

46) Berne Convention, *supra* note 26, art. 7(1).

47) Jennifer Leigh Pridgeon, *The Performance Rights Act and American Participation in International Copyright Protection*, 17 J. INTELL. PROP. L. 417, 432-33 (2010).

artists in the same way they would be protected under a system based on authors' rights.[48]

Under the Rome Convention, performers in audiovisual works, such as feature films, videos and television dramas, have limited rights. Based on Article 19 of the Convention, although the performers have rights against unauthorized broadcasts or recordings of their performances, once the performers in audiovisual works have consented to the initial recording of their performance they are given no rights mentioned in the above-mentioned Article 7.[49] Thus, the Rome Convention has discriminated between the protection of performances in audio recordings and that in audiovisual recordings. In this digital era, when copying and digital manipulation of performances have vastly increased, performers in audiovisual works cannot receive any payment when they have given consent to the initial recording of their performance. For example, an actor in a film or TV series sold abroad has no legal right to any payment for foreign broadcasts or DVD sales. Additionally, they cannot control over how their performance is used nor assert moral rights that ensure attribution and respect for the integrity of their performance. In this digital age, it is easy to manipulate video images that may harm an actor's reputation. On the other hand, performers like musicians who record a sound-only CD may be paid whenever that CD is sold or broadcasted in a country that is a party to the WPPT, which protects performers in phonograms. An attempt by WIPO members to make a treaty to update the protection of performers in audiovisual works in this Internet era had been made but they initially failed to agree, and a second attempt to do so in 2000 was also unsuccessful.[50] Fortunately, on June 24 of 2012 in Beijing, the WIPO Diplomatic Conference finally adopted the BTAP. The new treaty extends performers' rights against unauthorized use of audiovisual performances to films and videos available on the Internet.[51] It raises the minimum term of protection to fifty years from the Rome Convention's twenty years.[52] The new treaty also provides that when a DVD is reproduced, sold, rented or broadcasted in a different country, the royalty shall go to the country of origin, which can then be shared with the performers.[53] It also grants performers moral rights to prevent lack of attribution or distortion of

48) *Id.*

49) Rome Convention, *supra* note 6, art. 19 ("Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio–visual fixation, Article 7 shall have no further application.").

50) *Performers' Rights - Background Brief*, *supra* note 9.

51) BTAP, *supra* note 7, art. 10.

52) *Id.* art. 14.

53) *Id.* arts. 7-9, 11.

their performance.[54] However, until this writing, the treaty has not yet come into force, waiting for ratification or accession from at least thirty countries.[55]

B. Protection of Performers Under the TRIPS Agreement

Article 14(1) of the TRIPS Agreement provides:

> In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.[56]

The TRIPS Agreement does not define the meaning of performers. Instead, it governs the rights of performers. However, it should be understood that because of the reference of Article 2(2) of the TRIPS Agreement to the Rome Convention, the TRIPS Agreement upholds the definition of performers in Article 3(a) of the Rome Convention.[57] The Agreement has increased the duration of performers' right to at least fifty years.[58]

Based on the above-mentioned Article of the TRIPS Agreement, the rights of a performer include the rights to live (unfixed) performance and non-live (fixed) performance. The Article explicitly protects only the fixation of a phonogram. It does not cover an audiovisual fixation.

Regarding unfixed performance, under the TRIPS Agreement, performers can prevent the fixation of their unfixed performance. This resembles the Rome Convention with one notable exception: the TRIPS Agreement does not protect visual and audiovisual fixations, but only protects fixations of a phonogram. Thus, the TRIPS Agreement only protects musical performances. Furthermore, performers are protected against unauthorized wireless broadcasting and communication to the public of their live performance. The duration of protection is fifty years, calculated from the end of the calendar year in which the performance took place.[59]

---

54) *Id.* art. 5.
55) *Id.* art. 26 ("This Treaty shall enter into force three months after 30 eligible parties referred to in Article 23 have deposited their instruments of ratification or accession.").
56) TRIPS Agreement, *supra* note 12, art. 14(1).
57) *Id.* art. 2(2).
58) *Id.* art. 12.
59) *Id.* art. 14(5).

In terms of fixed performance, under the TRIPS Agreement, a performer can prevent the reproduction of a fixation of his or her performance of a phonogram. However, the text of Article 14(1) regarding fixed performance has been considered as not very clear, and, therefore, it is disputed whether this right exists when the initial fixation was made with the performer's consent. One has argued that even if the initial fixation was made with the performer's consent the performer has the right to prevent reproduction,[60] but another scholar argued that the performer does not have the right.[61] The latter opinion is more convincing because it is doubtful that the drafters of TRIPS Agreement had intended to go further than the provision of Article 7(1)(c) of the Rome Convention.[62]

C. Protection of Performers Under the WPPT

The WPPT was concluded in 1996 and entered into force in 2002. The WPPT governs the rights of two related rights owners, namely: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that do the fixation of sounds). These rights are addressed in the same treaty because most of the rights granted by the WPPT to performers are rights related to their fixed, purely aural performances (which are the subject matter of phonograms).

Article 2(a) of the WPPT defines performers as "actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore."[63] As mentioned above, by this definition, the WPPT has mended the drawback of the definition of performers in the Rome Convention.

Article 5(1) of the WPPT grants moral rights to performers. The Article provides:

> Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where

60) Michael Gruenberger, *A Duty to Protect the Rights of Performers? Constitutional Foundations of an Intellectual Property Right*, 24 CARDOZO ARTS & ENT. L.J. 617, 644 (2006) (citing J.A.L. STERLING, WORLD COPYRIGHT LAW, at 22.09 (2003).

61) OWEN MORGAN, INTERNATIONAL PROTECTION OF PERFORMERS' RIGHTS 167 (2002).

62) Rome Convention, *supra* note 6, art. 7(1)(c) ("The protection provided for performers by this Convention shall include the possibility of preventing: (c) the reproduction, without their consent, of a fixation of their performance: (i) *if the original fixation itself was made without their consent*.") (emphasis added).

63) WPPT, *supra* note 8, art. 2(a).

> omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.[64]

The rights mentioned in Article 5(1) above include the *rights of attribution*, which is the "right to claim to be identified as the performer" and the *rights of integrity*, which is the "right to object to any distortion, mutilation or other modification of his performances."[65] These two rights are independent of the economic rights of performers and still belong to the performers even after the transfer of their economic rights to other persons. However, probably, the words "that would be prejudicial to his reputation,"[66] mentioned in the last sentence may weaken the stance of the WPPT in protecting the integrity rights. It can be interpreted that the performers can prohibit any distortion, mutilation or other modification of his performances only if the acts damage their reputation.

Article 5(1) of the WPPT is very similar to Article 6*bis*(1) of the Berne Convention which protects moral rights of authors.[67] However, Article 5(1) of the WPPT provides narrow protection of the integrity rights because it does not protect performers from "derogatory action" to their performances.

Like Article 6*bis*(2) of the Berne Convention,[68] Article 5(2) of the WPPT states that the duration of the moral rights is "at least until the expiry of the economic rights."[69] This means that the duration of moral rights of performers is the same as that of authors.

The WPPT grants performers economic rights in their performances fixed in phonograms (not in audiovisual fixations as governed by the BTAP, such as motion pictures): (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available.[70] The right of reproduction is the right to authorize direct or indirect reproduction of their performances fixed in the phonogram in any manner or form.[71] The right of distribution is the right to authorize the making available to the public of the

---

64) *Id.* art. 5(1).
65) *Id.*
66) *Id.*
67) Berne Convention, *supra* note 26, art. 6*bis*(1) ("Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.").
68) *Id.* art. 6*bis*(2).
69) WPPT, *supra* note 8, art. 5(2).
70) *Id.* arts. 7-10.
71) *Id.* art. 7.

original and copies of their performances fixed in the phonogram through sale or other transfer of ownership.[72] The right of rental is the right to authorize the commercial rental to the public of the original and copies of their performances fixed in the phonogram as determined in the national law of the contracting parties (except for countries that, since April 15, 1994, have had a system in force for equitable remuneration of such rental).[73] The right of making available is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them.[74]

In relation to unfixed (live) performances, Article 6 of the WPPT gives performers: (i) the right of broadcasting (except in the case of rebroadcasting); (ii) the right of communication to the public (except where the performance is a broadcast performance); and (iii) the right of fixation.[75]

Article 15(1) of the WPPT provides that performers, together with producers of phonograms, have the right to a single equitable remuneration for the direct or indirect use of phonograms, published for commercial purposes, broadcasting or communication to the public.[76] However, based on Article 15(3) of the WPPT, any contracting state, by a reservation to the WPPT, may restrict or deny this right.[77] In this case, the other contracting states are permitted to deny the application of the National Treatment principle to the reserving contracting state.[78]

The WPPT contains limitations and exceptions. Article 16 of the WPPT incorporates the so-called "three-step" test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention.[79] The accompanying Agreed Statement provides that such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment.[80] Contracting states may devise new exceptions and limitations appropriate to the digital environment as long as they satisfy the conditions of the "three-step" test.[81]

---

72) *Id.* art. 8.
73) *Id.* art. 9.
74) *Id.* art. 10.
75) *Id.* art. 7.
76) *Id.* art. 15(1).
77) *Id.* art. 15(3).
78) *Id.* art. 4(2).
79) *Id.* art. 16; Berne Convention, *supra* note 26, art. 9(2).
80) WPPT, *supra* note 8, n.15.
81) WIPO GUIDE TO COPYRIGHT, *supra* note 25, at 254.

According to Article 17(1) of the WPPT, the term of protection must be at least fifty years.[82] This is an extension of the term provided for in Article 14 of the Rome Convention which is only twenty years. This is commensurate with the position of the BTAP.[83]

The WPPT in Article 18 obliges contracting states to provide for adequate legal protection against the circumvention of technological measures (e.g., encryption) used by performers in relation to the exercise of their rights.[84] In addition, based on Article 19 of the WPPT, contracting states shall provide for adequate legal protection against the removal or altering of information – such as the indication of certain data that identify the performer, performance, and the phonogram – necessary for the management (e.g., licensing, collection and distribution of royalties) of the said rights ("rights management information").[85]

D. Protection of Performers Under the BTAP

On June 26, 2012 in Beijing, the WIPO Diplomatic Conference on the Protection of Audiovisual Performances adopted the BTAP. The BTAP modernizes and updates the protection for singers, musicians, dancers and actors in audiovisual performances contained in the Rome Convention. The BTAP complements the provisions in the WPPT and updates protections for performers and producers of phonograms. The BTAP is a treaty acknowledging for the first time the rights of performers with regard to their audiovisual performances.[86] Different from the WPPT, which focuses on audio recordings, the BTAP focuses on audiovisual ones. Thus, by the virtue of BTAP, now all performances deserve protection, regardless of how they are delivered to the audience and the nature (audio or audiovisual) of their fixation.

The BTAP is the outcome of a protracted process, encompassing two previously missed opportunities.[87] The first international treaty to protect the rights of all performances was the Rome Convention in 1961. However, it provides limited protection to performers and does not grant them moral rights. Additionally, one of its provisions, which is Article 19, as mentioned

82) WPPT, *supra* note 8, art. 17(1).
83) BTAP, *supra* note 7, art. 14.
84) WPPT, *supra* note 8, art. 18.
85) *See id.* art. 19(2) (for the definition of "rights management information").
86) Int'l Fed'n of Actors, *What is the Beijing Treaty?*, BEIJING TREATY WIPO, http://beijingtreaty.com/about/what-is-the-beijing-treaty (last visited Apr. 10, 2018).
87) *Id.*

above, expressly denies any economic right to audiovisual fixations.[88] Thus, the Rome Convention has discriminated between the protection of audio recordings and that of audiovisual ones.[89] A WIPO Diplomatic Conference in 1996, by way of the WPPT, finally updated the protection in the Rome Convention and upgraded the IP rights of audio performers only.[90] Another Diplomatic Conference in 2000 specifically dealing with audiovisual performances failed to deliver a treaty, as diverging opinions on the sensitive issue of the transfer of performers' rights to producers could not be reconciled.[91] Indeed, finding an acceptable compromise on this matter was the main reason it took so long to finalize an audiovisual performances treaty.[92] Producers' lobby insisted on a mandatory presumption of the transfer rule, but the majority of countries resisted the idea.[93] Fortunately, although after waiting for twelve years, producers finally accepted a provision that acknowledges the presumption of transfer provisions in national laws, but only as long as there is no contract between performers and producers which mentions otherwise.[94]

Article 2(a) of the BTAP defines performers as "actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore."[95] The definition is an exact copy of the definition of performers in the WPPT. As mentioned above, this kind of definition has mended the drawback of the Rome Convention's definition of performers which is not certain to include folklore.

The BTAP covers the performances of actors in media such as film and television, and also musicians when their performances are recorded on a DVD or any other audiovisual means. The Treaty confers on performers economic rights in fixed and unfixed performances, and certain moral rights.

---

88) Rome Convention, *supra* note 6, art. 19 ("Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio–visual fixation, Article 7 shall have no further application.").
89) *What is the Beijing Treaty?*, *supra* note 86.
90) *Id.*
91) *Id.*
92) *Id.*
93) *Id.*
94) *See* BTAP, *supra* note 7, art. 12(1) ("A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.").
95) BTAP, *supra* note 7, art. 2(a).

Based on Article 10 of the BTAP, for their performances fixed in audiovisual fixations, performers have four kinds of economic rights: (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available.[96] The right of reproduction is the right to authorize direct or indirect reproduction of the performance fixed in an audiovisual fixation in any manner or form.[97] The right of distribution is the right to authorize the making available to the public of the original and copies of the performance fixed in an audiovisual fixation through sale or other transfer of ownership.[98] The right of rental is the right to authorize the commercial rental to the public of the original and copies of the performance fixed in an audiovisual fixation.[99] The right of making available is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in an audiovisual fixation, in such a way that members of the public may have access to the fixed performance from a place and at a time individually chosen by them.[100] This right covers, in particular, on demand, interactive making available through the Internet.

Based on Article 6 of the BTAP, as to unfixed (live) performances, performers have three kinds of economic rights: (i) the right of broadcasting (except in the case of rebroadcasting); (ii) the right of communication to the public (except where the performance is a broadcast performance); and (iii) the right of fixation.[101]

Article 5(1) of the BTAP grants performers moral rights, that is, the right to claim to be identified as the performer (except where such an omission would be dictated by the manner of the use of the performance); and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation, taking into account the nature of the audiovisual fixations.[102]

Article 11(1) of the BTAP provides that performers shall enjoy the right to authorize the broadcasting and communication to the public of their performances fixed in audiovisual fixations.[103] However, based on Article 11(2), contracting states may notify that, instead of the right of authorization, they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or

96) *Id.* arts. 7-10.
97) I*d.* art. 7.
98) *Id.* art. 8.
99) *Id.* art. 9.
100) *Id.* art. 10.
101) *Id.* art. 6.
102) *Id.* art. 5(1).
103) *Id.* art. 11(1).

communication to the public.[104] Based on Article 11(3), by making a reservation to the treaty, any contracting state may restrict or deny this right.[105] In that case, based on Article 4(4), the other contracting states are permitted to deny the application of the National Treatment principle to the reserving contracting state.[106]

Article 12 of the BTAP governs the transfer of rights. The article provides that contracting states may stipulate in their national laws that once a performer has consented to the audiovisual fixation of a performance, the exclusive rights mentioned above are transferred to the producer of the audiovisual fixation unless a contract between the performer and the producer states otherwise.[107] Independent of such a transfer of rights, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under the BTAP.

With respect to limitations and exceptions, like the WPPT, Article 13 of the BTAP incorporates the so-called "three-step" test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application to all rights.[108] Article 9(2) of the Berne Convention provides: "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."[109] Therefore, contracting states may provide limitations and exceptions to the exclusive rights of performers as long as they comply with the three-step test, namely: the limitations and exceptions are only in certain special case, they do not contradict with a normal exploitation of the work of performance, and they do not unreasonably prejudice the legitimate interests of the performers.

Article 14 of the BTAP extends the term of protection to performers governed in the Rome Convention,[110] which is twenty years, to at least fifty years from the end of the year in which the performance was fixed.[111] This extension follows Article 17 of the WPPT.

The main difference between the BTAP and the Rome Convention is that, while the latter only grants performers the right to oppose certain uses of their

104) *Id.* art. 11(2).
105) *Id.* art. 11(3).
106) *Id.* art. 4(4).
107) *Id.* art. 12.
108) *Id.* art. 13. *See* WPPT, *supra* note 8, art. 16; Berne Convention, *supra* note 26, art. 9(2).
109) Berne Convention, *supra* note 26, art. 9(2).
110) Rome Convention, *supra* note 6, art. 14.
111) BTAP, *supra* note 7, art. 14.

performances, the former grants them a comprehensive list of exclusive rights, including the right of making available on demand, which has become crucial in light of the latest technological developments and the digital distribution of creative works. The Rome Convention does not recognize moral rights but the BTAP does. The most prominent difference between them is that, while the BTAP specifically protects audiovisual fixations, the Rome Convention does not.

The WPPT, approved in 1996 and entered into force in 2002, is more closely related to the BTAP. However, the WPPT only grants rights to audio recordings. The list of economic and moral rights is quite similar in the two treaties, although some differences exist as to the extent of the protection granted by those provisions and the options that countries may take as they ratify and implement the treaty. The most prominent difference between the two treaties is that, while the BTAP includes a specific provision recognizing the legality of mechanisms at the national level regarding the transfer of the exclusive economic rights to the producer, the WPPT does not.

It has been stated that many have argued that the BTAP is overprotective of performers and would eliminate the distinction between related rights and copyright, compelling its contracting states to essentially provide full copyright protection to performers.[112] This is debatable since, as mentioned above, the rights of performers in the BTAP are almost identical with those in the WPPT and the WIPO has stated that the level of moral rights of performers in the WPPT has been intentionally made below that of authors provided in Article 6*bis* of the Berne Convention.[113]

The BTAP will enter into force three months after thirty eligible parties have deposited their instruments of ratification or accession. Until this writing, it has not.

---

112) Jacob M. Victor, Garcia v. Google *and a "Related Rights" Alternative to Copyright in Acting Performances*, 124 YALE L.J.F. 80, 87 (2014) (citing Steven Seidenberg, *"Innocence of Muslims" Creates Copyright Controversy in US*, INTELL. PROP. WATCH (Mar. 31, 2014), http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1685&context=historical; Carolina Rossini et al., *Beijing Treaty on Audiovisual Performances: We Need to Read the Fine Print*, ELECTRONIC FRONTIER FOUND. (July 24, 2012), https://www.eff.org/deeplinks/2012/07/beijing-treaty-audiovisual-performances).

113) *See* WIPO GUIDE TO COPYRIGHT, *supra* note 25, at 243.

III. Protection of Performers Under Indonesian Copyright Laws

A. Protection of Performers Under the Previous Copyright Act of 2002

In order to comprehend the extent to which the previous Indonesian Copyright Act 2002[114] protected the rights of performers, it is important to understand the meaning of the term "performer" under the Act. Article 1 number 10 of Indonesia's previous Copyright Act 2002 defined performer as: "actor/actress, singer, musician, dancer or a person who performs, acts, shows, sings, communicates, recites, or plays a music composition, drama, dance, literary work, folklore or other kinds of artistic works."[115]

It is clear from the definition that the Copyright Act 2002 defined the meaning of performer broadly. In order to be a performer, one was not necessary to do activities towards works that were still protected under the copyright law. For example, one who sang an old song the copyright of which had been expired could still be considered as a performer and his or her rights were protected. Furthermore, Article 1 number 10 of the Copyright Act 2002 explicitly mentioned that one who performed a "folklore" (*folklor*) was a performer.[116] However, based on the provision, a music conductor was not considered as a performer; there was no clue to that in the provision.

To be considered as a performer, one had to do activities towards a work (*karya cipta*), namely, a literary work or an artistic work. Thus, a circus player might not be considered as a performer if he or she did not play a literary work or an artistic work. This is because the Copyright Act 2002 did not avail itself of Article 9 of the Rome Convention mentioned above.

The provision of the Copyright Act 2002 is similar to the provision of Article 3(a) of the Rome Convention which provides: "'performers' mean actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works."[117] However, the provision in the Copyright Act 2002 is better than the provision in the Rome Convention, since the provision in the Act mentioned "folklore"

114) Copyright Act 2002.

115) Copyright Act 2002 art. 1(10). (The original Indonesian version of Article 1 number 10 of the Copyright Act 2002 provided: "aktor, penyanyi, pemusik, penari, atau mereka yang menampilkan, memperagakan, mempertunjukkan, menyanyikan, menyampaikan, mendeklamasikan, atau memainkan suatu karya musik, drama, tari, sastra, folklor, atau karya seni lainnya.").

116) *Id.*

117) Rome Convention, *supra* note 6, art. 3(a).

whereas Article 3(a) of the Convention does not. As mentioned above, the drawback of the Rome Convention has been mended by the WPPT and the BTAP which include folklore. Article 2(a) of the WPPT, as Article 2(a) of the BTAP, provides: "'performers' are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore."[118] It is clear that the provision of the Copyright Act 2002, thus, closely resembles the provisions of the WPPT and the BTAP.

However, unlike the WPPT and the BTAP, the Copyright Act 2002 did not recognize the rights of a music conductor. As mentioned above, the WPPT and the BTAP recognize the rights of a conductor by mentioning the term "to interpret" in the definition of performer.[119] The significance of a music conductor cannot be neglected since he or she plays an important role in the success of a musical orchestra performance; and, today, everyone can witness a musical orchestra broadcasted in the media such as televisions, radio stations or the Internet. Therefore, the absence of the conductor's rights in the Copyright Act 2002 constitutes an oversight. However, it seems not to be an important issue in Indonesia since Indonesia's ratification of the WPPT in 2004[120] has not sparked even one discussion on the protection of performers' rights. People's attention has been discriminating the protection of authors' and sound recording companies' rights against that of performers' rights.[121] Performers other than a music conductor, such as singers and music players appearing every minute in the media, have been neglected their rights, let alone a music conductor who appears to people much more rarely.

---

118) WPPT, *supra* note 8, art. 2(a); BTAP, *supra* note 7, art. 2(a).

119) WPPT, *supra* note 8, art. 2(a); BTAP, *supra* note 7, art. 2(a).

120) In 2004, Indonesia ratified the WPPT by Presidential Decree Number 74 of 2004.

121) Before the promulgation of the Copyright Act 2014, there were collecting management organizations (CMO) but only for the sake of authors and sound recording companies. *Yayasan Karya Cipta Indonesia* (KCI) was the CMO for authors, and *PT AS Industri Rekeman Suara Indonesia* (ASIRINDO) for sound recording companies. *Sejarah Yayasan Karya Cipta Indonesia* [*History of Yayasan Karya Cipta Indonesia*], KCI http://kci-lmk.or.id/sejarah-kci (last visited Apr. 25, 2018); *PT ASIRINDO Pelajari Pengalaman Lembaga Manajemen Kolektif* [*PT ASIRINDO Learns the Experience of Collective Management Organizations*], PIKIRAN RAKYAT (Dec. 15, 2011), http://www.pikiran-rakyat.com/ekonomi/2011/12/15/169434/pt-asirindo-pelajari-pengalaman-lembaga-manajemen-kolektif. Then, the Copyright Act 2014 was promulgated, where it contains Article 87(1) which enables the establishment of CMO for the owners of neighboring rights including performers. Copyright Act 2014 art. 87(1).

Article 1 number 9 of the Copyright Act 2002 defined the meaning of *Related Rights* which consisted of the exclusive right of a performer to reproduce or to broadcast his or her performances.[122] This article did not explain whether the performance was a live performance (unfixed performance) or a non-live performance (fixed performance). Based on this Article alone, it seems that the rights of a performer might include the rights to both live performance and non-live performance. However, if Article 49(1) of the Act is referred to, which stated: "A Performer shall have the exclusive right to give consent to or prevent another person who without his consent makes, reproduces or broadcasts *a phonogram and/or a picture of his performance*,"[123] the right of performers only covered non-live (fixed) performance. Article 49(1) did not give a performer the exclusive rights to his or her live (unfixed) performance. It could be seen as the definition of a performer's right in Article number 9 was explained and limited by Article 49(1). Thus, the Copyright Act 2002 conferred on a performer only the exclusive rights to his or her non-live (fixed) performance. The Elucidation to Article 49(1) defining that the meaning "broadcast" (*menyiarkan*) to include "to communicate live performance" (*mengkomunikasikan pertunjukan langsung*)[124] did not make sense since the term "to broadcast" in the Article (*menyiarkan*) was qualified (related with) by the term "a phonogram and/or a visual picture of his performance." In other words, the term "to broadcast" cannot be interpreted independently from the term "a phonogram and/or a visual picture of his performance." Thus, the Elucidation was incorrect. This seems to be an inaccuracy or an error made by the drafter of the Act. Although Indonesia had not ratified the Rome Convention, because the country had ratified the Agreement Establishing the World Trade Organization in 1994,[125] the Copyright Act 2002 should have complied with Article 14(1) of the TRIPS

122) Copyright Act 2002 art. 1(9) ("Related Rights shall mean the rights which are related to Copyright, that is, the exclusive right for a Performer to reproduce or to broadcast his/her performances . . . .").

123) Copyright Act 2002 art. 49(1) (emphasis added).

124) Penjelasan atas Undang-Undang Republic Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta [Elucidation of the Copyright Act 2002] art. 49(1) [hereinafter Copyright Act 2002 Elucidation] ("Yang dimaksud dengan menyiarkan termasuk menyewakan, melakukan pertunjukan umum [public performance], mengomunikasikan pertunjukan langsung [live performance] . . . ." [the meaning to broadcast includes to rent out, to make public performance, to communicate live performance.]).

125) WTO Ratification, *supra* note 11.

Agreement in respect of the protection of performers' rights which included the protection of live (unfixed) performance.[126]

There was uncertainty on whether the Copyright Act 2002 protected performers in audiovisuals. There are clues showing that it did not. Article 50(1) of the Act provided: "The term of protection for a Performer shall be valid for 50 (fifty) years after the work is performed or fixed in audio or *audiovisual media*."[127] However, there was no explicit provision in the Act that a performer had exclusive rights to his or her audiovisual fixation. As mentioned above, Article 49(1) provided that a performer had exclusive rights only to the fixation on a phonogram and/or a picture of his or her performance. Likewise, Article 49(1) prevailed over Article 50(1). Thus, although Article 50(1) mentioned the term "audiovisual," it was not necessary and not wise to interpret that the Act protected the performance in audiovisual media.

It was also uncertain whether the Copyright Act 2002 conferred moral rights on performers. This is different with the WPPT and the BTAP which provide moral rights to performers. Like the issue of audiovisual performance mentioned above, there was no provision in the Copyright Act 2002 which explicitly gave moral rights to performers. Article 24 of the Copyright Act 2002 provided moral rights only to authors.[128] However, in the General Elucidation to the Act, was there a sentence stating that "Moral Rights are rights attached to the author and performer that cannot be omitted or erased on any reason, although the Copyright or the Related Rights has or have been transferred."[129] This opposing statement in the Elucidation cannot be construed to

126) TRIPS Agreement, *supra* note 12, art. 14(1) ("In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.").

127) Copyright Act 2002 art. 50(1) (emphasis added).

128) Copyright Act 2002 art. 24 ("(1) An *Author* or his heir shall be entitled to require the Copyright Holder to attach the name of the *Author* on his work; (2) It is forbidden to make changes to a Work although the Copyright has been transferred to another party, except with the consent of the *Author* or his heir if the *Author* has been deceased; (3) The provisions referred to in paragraph (2) shall also be applicable to changes in the title and subtitle of a work, inclusion and changes in the name or pseudonym of the *Author*; (4) The *Author* shall remain entitled to make changes to his Work in accordance with social propriety.") (emphasis added).

129) Copyright Act 2002 Elucidation, *supra* note 124, art. 24 (In the original Indonesian version it states "Hak moral adalah hak yang melekat pada diri Pencipta atau Pelaku yang tidak dapat dihilangkan atau dihapus tanpa alasan apa pun, walaupun Hak Cipta atau Hak Terkait telah dialihkan.").

extend the coverage of Article 24; thus, the Copyright Act 2002 did not confer moral rights on performers.

B. Protection of Performers Under the Copyright Act of 2014 Compared to the Previous Copyright Act of 2002

Starting with the definition of the term "performer" mentioned in the Copyright Act 2014,[130] the rationale behind its narrow definition is questionable. Article 1 number 6 of the Copyright Act 2014 provides: "Performers are one or several persons who individually or together to *show* and to *demonstrate* a Work."[131] There are only two activities, which are *to show* and *to demonstrate*, covered by the article.

Meanwhile, according to the Copyright Act 2002, "'Performer' (*Pelaku*) means an actor/actress, singer, musician, dancer or a person who performs, acts, shows, sings, communicates, recites, or plays a music composition, drama, dance, literary work, folklore or other kinds of artistic works."[132] Therefore, in this case, the position of the Copyright Act 2002 is better. This is because the previous Act mentioned the broader scope of activities to be considered acts of performers, namely: to perform, to act, to show, to sing, to communicate, to recite, and to play. The term "to show" and "to demonstrate" mentioned in the Copyright Act 2014 cannot replace the meaning of all activities mentioned in the previous Act.

However, in terms of moral rights, the Copyright Act 2014 is better. The Copyright Act 2002 was silent on whether or not performers had moral rights. Article 24 of the previous Act conferred moral rights only on authors.[133] Whereas, Article 21 of the Copyright Act 2014 states that performers have moral rights.[134] Based on this article, the moral rights of performers cannot be voided and cannot be erased for any reason even though the neighboring rights have been transferred to any other person. According to Article 22 of the Copyright Act 2014, moral rights of performers consist of rights of attribution and rights of integrity.[135]

---

130) Copyright Act 2014.

131) *Id.* art. 1(6) (The original Indonesian version provides: "Pelaku Pertunjukan adalah seorang atau beberapa orang yang secara sendiri -sendiri atau bersama sama menampilkan dan mempertunjukkan suatu Ciptaan." An unofficial translation is available at http://www.indolaw.org.).

132) Copyright Act 2002 art. 1(10).

133) *Id.* art. 24.

134) Copyright Act 2014 art. 21.

135) *Id.* art. 22 ("Performers moral rights referred to in Article 21 include the rights: a. to be named as Performers, unless agreed otherwise; and b. that there is no distortion of their

In terms of economic rights of performers, the Copyright Act 2014 is broader than the previous one. Article 49(1) of the previous Copyright Act 2002 provided only limited economic rights, stating that exclusive right of performers was to give license to another person to reproduce and/or broadcast the (sound or image) recording of their performance and to prohibit another person from reproducing and/or broadcasting the (sound or image) recording of their performance.[136] Broader economic rights of performers are given by the Copyright Act 2014. Based on Article 23(2) of the Copyright Act 2014, these rights include: rights to conduct themselves the broadcasting or the communication of their unfixed performance, the fixation of their unfixed performance, the reproduction of a fixation of their performance by any means or forms, the distribution of their performance fixation or its copies, the rental of their performance fixation or its copies to the public, the making available to the public of their performance fixation; rights to authorize others to do those activities and rights to prevent others from doing those activities.[137]

Another aspect of which the Copyright Act 2014 is better than the previous one is regarding the rights of performers when a recording of their performance is commercialized or reproduced. Article 27(2) of the Copyright Act 2014 provides that performers shall be paid a reasonable remuneration if a phonogram embodying their performance has been published commercially or reproduced directly for broadcasting and/or communication purposes.[138] This is a very important new provision. The previous Act was silent on this issue and, therefore, the rights of performers like singers and all musical instrument players had been neglected. For example, when a CD containing songs is played in a karaoke, the royalties were paid only to the author or the writer of the songs, and never paid to all of these performers. The new provision of the Copyright Act 2014 is supported by another provision in the Act making possible the establishment of Collecting Management Organizations (CMOs) for the sake of protection of rights of performers.[139] Also, it is asserted in Article 87(2) of the Copyright Act 2014 that users of neighboring rights, who use the rights commercially, shall pay royalties to the neighboring rights

---

Creation, mutilation of their Creation, modification of their Creation, or the things that are detrimental to their honor or reputation unless approved otherwise.").

136) Copyright Act 2002 art. 49(1).

137) Copyright Act 2014 art. 23(2).

138) *Id.* art. 27(2).

139) *Id.* art. 87(1) ("In order to secure economic rights, every Author, Copyright Holder, Related Rights owner shall become a member of a Collective Management Organization in order to be able to draw reasonable remuneration from users who use the Copyright and Related Rights in the form of a public service of commercial nature.").

owners, including performers, through the CMO.[140] However, until now, the implementation of these provisions remains unclear.

It is important to note that there is a difference between the economic rights of performers and those of authors. authors get better rights, since they have the exclusive right of publication, whereas performers do not;[141] authors have exclusive rights of broadcasting and communication after their works have been fixed, whereas performers do not have these rights after the fixation of their performance if the fixation has been permitted by the performers.[142] Therefore, in the case of commercial use in a karaoke, for example, authors can prohibit the use of their works in the karaoke, whereas performers cannot, although, as mentioned above, performers have the right to get remuneration from the karaoke. However, if the use in the karaoke is considered as a rental, besides performers being able to claim royalties, they can also prohibit the use of the CD in the karaoke, because they have the exclusive of right of the rental of their performance fixation.[143] This may impede the rights of authors and recording companies.

There is another new provision regarding the right of performers of royalties in the Copyright Act 2014. Article 28 of the Act states that, unless otherwise agreed, phonogram producers must pay performers one-half of his or her income.[144] However, this provision is weak in terms of the protection of economic rights of performers, since it enables phonogram producers to avoid that amount by making a special agreement with the performers. Apparently, it has been customary in Indonesia that phonogram producers tend to pay a flat fee in front of songwriters and performers instead of paying percentages of their income from their products sold in the market. That is why there have been some well-known and legendary Indonesian musicians and artists whose songs are still very famous and sung everywhere today in the country, but they remain poor.[145] Fortunately, the government seems to be wise enough to resolve the problem by incorporating a new provision in the Act stating that any agreement of transfer of copyright must only last not more than twenty-

140) *Id.*
141) *Id.* art. 9(1); *c.f. id.* art. 23(2), (3).
142) *Id.* art. 23(3).
143) *Id.* art. 23(2)(e).
144) *Id.* art. 28.
145) Say, *Tak Melulu Bahagia, Ini 5 Fakta Getirnya Kehidupan Yon Koeswoyo* [*Not Just Happy, These 5 Facts of Unhappy Life of Yon Koeswoyo*], TRIBUNJOGJA.COM (Jan. 5, 2018, 11:25 AM), http://jogja.tribunnews.com/2018/01/05/tak-melulu-bahagia-ini-5-fakta-getirnya-kehidupan-yon-koeswoyo?page=all (Indon.).

five years; after twenty-five years elapses, the copyright will automatically retransfer to the author.[146] However, it is uncertain whether this provision will apply retroactively, and there has been no sign of attention to this new provision which may be used to resolve the problem.

IV. Protection of Performers Under Indonesia's Copyright Act of 2014 Compared to International Conventions

As mentioned above, for certain aspects, the Copyright Act 2014 has given better protection than the Copyright Act 2002. Below is the comparison between the position of the Copyright Act 2014 and that of some relevant international conventions mentioned above.

In terms of the definition of "performers," the definition in the Rome Convention is better than the Copyright Act 2014. Article 3(b) of the Rome Convention provides: "'performers' mean actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works."[147] This definition is broader than that in Article 1(6) of the Copyright Act 2014 stating that a performer means "a person or several persons who individually or together displays (*menampilkan*) and show (*mempertunjukkan*) a work."[148] The reason of the narrow scope of the definition in the Copyright Act 2014 is questionable. There is no explanation of the definition in the Act and the reference used is not clear. In fact, as mentioned above, although it is broad enough, the definition in the Rome Convention has a drawback since it does not include those who play traditional and cultural expressions (*folklore*), which has been repaired by Article 2(a) of the WPPT and Article 2(a) of the BTAP that define "performers" to include those who play *folklore*.[149] Therefore, it is reasonable to state that the narrow definition in the Copyright Act 2014 is questionable and that the lawmakers of the Copyright Act 2014 should not have made that narrow definition and instead should have referred to Article 2(a) of the WPPT, which has been ratified by Indonesia. Or, the lawmakers should have

146) Copyright Act 2014 art. 18 ("The Copyright for Creations in the form of books, and/or all other written works, songs and/or music with or without text that are transferred in a true sale agreement and/or unlimited time transfer, shall return to the Author after the agreement reaches the period of 25 (twenty five) years.").

147) Rome Convention, *supra* note 6, art. 3(b).

148) Copyright Act 2014 art. 1(6).

149) WPPT, *supra* note 8, art. 2(a); BTAP, *supra* note 7, art. 2(a).

maintained the definition of performers in the Copyright Act 2002 because, as mentioned above, it is better, since it is broader than that in the Copyright Act 2014.

Indonesia's Copyright Act 2014 is better than the Rome Convention in terms of rights given to performers. As mentioned above, the Copyright Act 2014 confers moral rights on performers. On the other hand, the Convention is silent on the question of moral rights. Although performers are in dire need of being identified by name with their performances, and their performances should not be modified and/or mutilated in ways which may damage their reputation, unfortunately, the Rome Convention does not deal with the issue. The reason behind the position of the Convention is not clear.[150] However, the Rome Convention has been made to provide a minimum standard of protection and, as mentioned above, based on Article 21, any contracting state of the Convention can go further and confer moral rights on performers.[151] The shortcoming of the Rome Convention was then rectified by the WPPT that confers moral rights on performers. The stance of the Copyright Act 2014 which provides moral rights to performers is therefore reasonable since Indonesia has ratified the WPPT.[152]

As stated above, in terms of economic rights, Article 23(2) of the Copyright Act 2014 gives performers the exclusive rights to conduct themselves, to authorize others to conduct, or to prohibit others from doing certain acts, namely: the broadcasting or the communication of their unfixed performance, the fixation of their unfixed performance, the reproduction of a fixation of their performance by any means or form, the distribution of their performance fixation or its copies, the rental of their performance fixation or its copies to the public, and the making available to the public of their performance fixation.[153] In this case, compared to the Rome Convention, the position of the Copyright Act 2014 is better. Those broad exclusive rights, which are to *conduct themselves*, to *authorize others* to conduct, or to *prohibit others*,[154] cannot be found in the Rome Convention. As mentioned above, based on its Article 7(1), the Rome Convention only gives the right to *prevent* ("the possibility of preventing").[155] The Convention does not confer on performers the exclusive right to *conduct themselves* or to *authorize others* to conduct certain acts as mentioned in the Copyright Act 2014. This is different

150) *See* WIPO GUIDE TO ROME CONVENTION, *supra* note 43 (WIPO itself has no idea as it is not discussed herein).
151) Rome Convention, *supra* note 6, art. 21.
152) WPPT Ratification, *supra* note 23.
153) Copyright Act 2014 art. 23(2).
154) *Id.*
155) Rome Convention, *supra* note 6, art. 7(1).

with the rights given by the same Convention to producers of phonograms and broadcasting organization. Article 10 of the Convention provides that "[p]roducers of phonograms shall enjoy the right to *authorize* or *prohibit* the direct or indirect reproduction of their phonograms."[156] Article 13 of the Convention provides that "[b]roadcasting organizations shall enjoy the right to *authorize* or *prohibit*" certain acts.[157] Some probably think that the discrimination seems paradoxical, regrettable and unfair. However, the title of Article 7 of the Rome Convention is "Minimum Protection for Performers."[158] This means that national laws can go further.

It has been understood that the Rome Convention takes that position since the grant of an exclusive right to performers to exploit their performers may hinder or paralyze the exercise of the works of authors.[159] Performers may forbid the use of their performance in order to claim further remuneration to the detriment of the authors who have created the works performed by the performers. The exclusive right of performers may also frighten phonogram producers since the performers may refuse to record;[160] this is true especially if the performers are so famous or have a worldwide reputation that the phonogram producers are dependent on them.

Based on Article 23(2)(c) of the Copyright Act 2014, performers can prohibit the reproduction of a fixation of their performance by any means or form.[161] On the other hand, the Rome Convention enables performers to prevent the reproduction without the consent of their performance fixation only if certain conditions are satisfied. For example, the fixation has been made without their consent, if the reproduction is made for purposes different from those for which the performers gave their consent.[162]

The Copyright Act 2014 is also better than the Rome Convention in terms of the right of distribution and rental. Articles 23(2)(d) and (e) of the Act provide performers with the exclusive right of distribution and rental of a

156) *Id.*, art. 10.
157) *Id.*, art. 13.
158) *Id.*, art. 7.
159) WIPO GUIDE TO ROME CONVENTION, *supra* note 43, at 35.
160) *Id.*
161) Copyright Act 2014 art. 23(2)(c).
162) Rome Convention, *supra* note 6, art. 7(1)(c) ("The protection provided for performers by this Convention shall include the possibility of preventing: . . . (c) the reproduction, without their consent, of a fixation of their performance: (i) if the original fixation itself was made without their consent; (ii) if the reproduction is made for purposes different from those for which the performers gave their consent; (iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.").

fixation of their performance and its copies[163] whereas the Convention is silent on the issue.

Based on the above-mentioned discussion, the Copyright Act 2014 generally gives better protection to performers than the Rome Convention does. The only problem in the Copyright Act 2014 is the narrow definition of performers; others are better.

While it is better than the Rome Convention, the position of the Copyright Act 2014 needs to be compared to that of the WPPT and the BTAP, the newer international conventions which rectify the drawbacks of the Rome Convention. The performers' rights under the Copyright Act 2014 are in line with the WPPT.[164]

Starting with the moral rights, like the WPPT, as mentioned above, Articles 21 and 22 of the Copyright Act 2014 confer moral rights on performers. Article 21 of the Act provides: "Performers moral rights are the inherent rights of Performers that cannot be removed or cannot be erased for any reason even though the economic rights have been transferred."[165] This article asserts that moral rights of performers are independent of their economic rights. This is in line with the first words of Article 5(1) of the WPPT, mentioned below, stating "[i]ndependently of a performer's economic rights."[166]

Article 22 of the Copyright Act 2014 provides:

> Moral Rights of Performers shall include the right: a. that their name be mentioned as Performers, unless otherwise agreed; and b. to object to any distortion of their Creations, mutilation of their Creations, modification of their Creations, or other matters that are prejudicial to their personal honor or reputation unless otherwise agreed.[167]

The rights mentioned in Article 22 above include the right of attribution, which is the right "that their name be mentioned as Performers" and the right of integrity, which is the right "to object to any distortion of their Creations, mutilation of their Creations."[168] Compared to the provision of moral rights of performers in the WPPT, Article 22 of the Copyright Act 2014 is better. Article 5(1) of the WPPT provides:

---

163) Copyright Act 2014 arts. 23(2)(d), (e).
164) WPPT, *supra* note 8, arts. 5, 10.
165) *Id.* art. 21.
166) WPPT, *supra* note 8, art. 5(1).
167) Copyright Act 2014 art. 22.
168) *Id.*

> Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.[169]

Like Article 22 of the Copyright Act 2014, the rights mentioned in Article 5(1) of the WPPT above also include the right of attribution and the right of integrity. However, the provision of Article 22 of the Act is better than that of Article 5(1) of the WPPT. In respect of the right of integrity, Article 22 of the Copyright Act 2014 includes the words "other matters that are prejudicial to their personal honor or reputation,"[170] while Article 5(1) of the WPPT does not. This means that Article 22 of the Act gives better protection since the acts that may be considered to be against the right of integrity of performers in Article 22 of the Copyright Act 2014 are broader than those in Article 5(1) of the WPPT. Additionally, Article 22 includes not only "reputation" but also "honor," while Article 5(1) includes only "reputation."[171] Thus, unlike Article 22 of the Act, based on Article 5(1) of the WPPT, any act which is prejudicial only to the honor of a performer and not to his reputation is not against the performer's right of integrity. This demonstrates that the level of protection given by Article 5(1) of the WPPT is lower than that given by Article 22 of the Copyright Act 2014.

The content of Article 22 of the Copyright Act 2014 is very similar to Article 6*bis* of the Berne Convention which confers moral rights on authors, which provides:

> Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or *other derogatory action* in relation to, the said work, which would be prejudicial to his *honor or reputation*.[172]

The words "other matters that are prejudicial" in Article 22 of the Act[173] are similar to the words "other derogatory action" mentioned in Article 6*bis* of

169) WPPT, *supra* note 8, art. 5(1).
170) Copyright Act 2014 art. 22.
171) *Id.*; WPPT, *supra* note 8, art. 5(1).
172) Berne Convention, *supra* note 26, art. 6*bis* (emphasis added).
173) Copyright Act 2014 art. 22.

the Berne Convention.[174] Both Article 22 of the Act and Article 6*bis* of the Berne Convention include the words "honor" or "reputation."[175] Thus, the position of the Copyright Act 2014 apparently equalizes the level of protection of moral rights of performers with that of authors. However, arguably, the Copyright Act 2014 has given moral rights to authors below that in the Berne Convention. Article 5(1)(a) of the Copyright Act 2014 provides that moral rights are rights that are inherent to the author "to identify or not to identify his/her name" on the copy of his or her creation in relation to its public use.[176] The words "to identify or not to identify his/her name" mentioned in the article probably does not indicate that the article gives authors the right to claim authorship of their work. The article only gives authors the right to put their name or not to put their name in their works and cannot oblige other persons who use the authors' works to mention the names of the authors in the works. Whether the level of moral rights of authors is below that of performers in the Copyright Act 2014 is questionable and unreasonable, and it might be a typo made by the lawmakers of the Act. If this stance has been written intentionally, then it indicates that the lawmakers do not understand the issue of moral rights. The level of protection of moral rights of performers should not have exceeded that of authors and it is acceptable that the level of protection of the former is below that of the latter.[177]

The Copyright Act 2014 and the WPPT are different in terms of the possibility not to mention the name of performers. Article 5(1) of the WPPT states the right "to claim to be identified as the performer, *except where omission is dictated by the manner of the use of the performance*."[178] For example, a broadcast of the performance of an orchestra where so many performers are involved that it is difficult to mention all their names.[179] Whereas, Article 22 of the Act mentions the right "that their name be mentioned as Performers, *unless otherwise agreed*."[180] The words "unless otherwise agreed" means that the name of a performer can be not mentioned

174) Berne Convention, *supra* note 26, Art. 6*bis*.
175) *Id.*; Copyright Act 2014 art. 22.
176) Copyright Act 2014 art. 5(1)(a) (in Indonesian provides: "Hak moral sebagaimana dimaksud dalam Pasal 4 merupakan hak yang melekat secara abadi pada diri Pencipta untuk: a. tetap mencantumkan atau tidak mencantumkan namanya pada salinan sehubungan dengan pemakaian Ciptaannya untuk umum . . . .").
177) WIPO GUIDE TO COPYRIGHT, *supra* note 26, at 243 (WIPO has explained that the level of moral rights of performers in Article 5(1) of the WPPT has been intentionally made below that of authors provided in Article 6*bis* of the Berne Convention).
178) WPPT, *supra* note 8, art. 5(1) (emphasis added).
179) WIPO GUIDE TO COPYRIGHT, *supra* note 26, at 242.
180) Copyright Act 2014 art. 22 (emphasis added).

as a performer if there is an agreement to that effect. This demonstrates that the stance of the Copyright Act 2014 is stricter than that of the WPPT, because to omit the name of performers, according to the Copyright Act 2014, there must be an agreement, while the WPPT does not require an agreement.

Regarding the issue of inalienability, in relation to the right of attribution, it is explicitly stated in Article 21 of the Copyright Act 2014 that moral right of performers "cannot be removed or cannot be erased for any reason."[181] Therefore, the words "unless otherwise agreed" mentioned in Article 22[182] explains the provision in Article 21 and means that, basically, the names of performers cannot be removed but they can be removed only if there is an agreement. Thus, the stance of the Copyright Act 2014 is that moral right of performers is inalienable. The WPPT is silent regarding the issue. However, WIPO has understood that a performer may exercise his or her moral rights, and he or she has the option not to exercise these rights; he or she may even waive them.[183] For example, a performer may, in a contract, agree to refrain indefinitely from identifying himself or herself as the performer of a particular performance.[184]

The BTAP takes the same stance as the WPPT. The provision of Article 5(1) of the BTAP, which governs the moral right of performers,[185] is almost identical with that of Article 5(1) of the WPPT. Article 5(1) of the BTAP adds only the words "taking due account of the nature of audiovisual fixations."[186] The meaning of this last clause has been explained in footnote 5 of the BTAP stating that:

> [C]onsidering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer,

181) *Id.* art. 21.
182) *Id.* art. 22.
183) WIPO GUIDE TO COPYRIGHT, *supra* note 26, at 242.
184) *Id.*
185) BTAP, *supra* note 7, art. 5(1) ("Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right: (i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and (ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.").
186) *Id.*

> would not in themselves amount to modifications within the meaning of Article 5(1)(ii).[187]

The Copyright Act 2014 and the WPPT do not contain such kind of clause. However, Article 22(1) of the Act contains the clause "modification of their Creations, or other matters *that are prejudicial to their personal honor or reputation*,"[188] and Article 5(1) the WPPT contains the clause "other modification of his performances *that would be prejudicial to his reputation*."[189] This means that modification *per se* has nothing to do with moral rights. In other words, performers cannot object to modification if it is not prejudicial to their honor or reputation. Therefore, any modification made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats (as mentioned in the BTAP)[190] cannot be objected to by performers as long as it is not harmful to their honor or reputation. Thus, the positions of the Copyright Act 2014 and the WPPT are actually not different from that of the BTAP.

Although modification *per se* is not against performers' right of integrity, the provision of the right of integrity in the BTAP has been stated as likely to threaten the freedom of speech that could lead to endless litigation concerning mashups.[191] This is understandable since there have been many litigations in the United States where right owners have attempted to restrict the fair use of books, news stories, songs, music videos, and video games.[192]

In terms of economic rights of performers, the Copyright Act 2014 is in line with the WPPT. As mentioned above, broad exclusive rights have been given to performers by the Copyright Act 2014. The exclusive rights include the right to *conduct themselves*, to *authorize others* to conduct, and to *prohibit others* from doing certain acts.[193] Based on Article 23(2) of the Act, in terms of unfixed (live) performance, these acts include the *broadcasting*, the *communication* and the *fixation*; and in terms of fixed performance, the acts include the *reproduction* by any means or form, the *distribution*, the *rental*, and the *making available* to the public.[194] The WPPT gives performers the

187) *See* EIFL, THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES: AN EIFL BRIEFING FOR LIBRARIES 5 (2013), http://www.eifl.net/system/files/ resources/201408/eifl-ip_the_beijing _treaty_on_audiovisual_performances_guide.pdf.

188) Copyright Act 2014 art. 22(1) (emphasis added).

189) WPPT, *supra* note 8, art. 5(1) (emphasis added).

190) BTAP, *supra* note 7, n.5 (regarding the agreed statement concerning Article 5).

191) Hannibal Travis, *WIPO and the American Constitution: Thoughts on a New Treaty Relating to Actors and Musicians*, 16 VAND. J. ENT. & TECH. L. 45, 61 (2013).

192) *Id.* at 64.

193) Copyright Act 2014 art. 23(2).

194) *Id.*

exclusive right of authorizing certain acts in relation to their unfixed performances and fixed performances.[195] The meaning of the *exclusive right of authorizing* may impliedly cover the rights *to conduct themselves*, *to authorize others* to conduct, and *to prohibit others*, as mentioned in the Copyright Act 2014.

In relation to unfixed (live) performances, Article 6 of the WPPT gives performers: the exclusive right of *broadcasting* (except in the case of rebroadcasting), the right of *communication* to the public (except where the performance is a broadcast performance), and the right of *fixation*. In terms of fixed performance in phonograms, the WPPT gives performers the right of *reproduction*, the right of *distribution*, the right of *rental*, the right of *making available.*[196]

Like the WPPT, based on its Article 23(3)(b), the Copyright Act 2014 also limits the right of broadcasting and the communication only to unfixed (live) performance not already broadcasted before.[197] In other words, performers cannot prohibit the rebroadcasting of their performance as long as its first broadcasting has been authorized before.

The provisions on performers' rights under the Copyright Act 2014 are not compatible with the BTAP because it is not certain whether or not the Act protects performances fixed in audiovisual forms. It likely does not. The comparison of the definition of fixation in Article 1 of the Copyright Act 2014 with the definition of audiovisual fixation in Article 2 of the BTAP demonstrates this.

Article 1 number 13 of the Copyright Act 2014 states: "Fixation is an audible sound recording, recording of images or both, which can be seen, heard, reproduced, or communicated through any device."[198] The fixation governed by the provision apparently does not include audiovisual fixation. While, according to Article 2(b) of the BTAP, audiovisual fixation means "the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device."[199] The definition of fixation in the Copyright Act 2014 includes the term "images" which does not cover moving images as is stipulated in Article 2(b) of the BTAP.[200]

---

195) WPPT, *supra* note 8, arts. 6-10.
196) *Id.* art. 6.
197) Copyright Act 2014 art. 23(3)(b) ("[T]he right of broadcasting and communication . . . does not apply to: (b) rebroadcasting or re-communication," which is authorized.).
198) Copyright Act 2014 art. 1(13).
199) BTAP, *supra* note 7, art. 2(b).
200) *Id.*

As mentioned above, the BTAP resembles the WPPT. The list of economic and moral rights is quite similar in the two treaties. Thus, if the rights of performers in the Copyright Act 2014 are compared to those in the BTAP, the result will be the same as that of the comparison between the rights of performers in the Copyright Act 2014 and that in the WPPT mentioned above. That is, the Copyright Act 2014 confers moral rights and economic rights on performers quite similar to the BTAP. However, as long as the definition of "fixation" in the Copyright Act 2014 is not extended to audiovisual fixation, the Copyright Act 2014 cannot be interpreted to confer moral rights and economic rights on performers in audiovisual performances.

V. What Indonesia Should Do When Ratifying the BTAP

Indonesia signed the BTAP on December 18, 2012, although, until this writing, it has not been ratified yet. The country has planned to ratify the BTAP. The Directorate General of Intellectual Property in Jakarta has drafted an Explanatory Document of the Ratification of the BTAP.[201]

In the Explanatory Document, it is stated that the Copyright Act 2014 has been made in line with the provisions of the BTAP.[202] As mentioned above, the Copyright Act 2014 confers moral rights and economic rights on performers in line with those in the BTAP. However, the problem is the limited definition of "fixation" in the Copyright Act 2014. This is not stated in the Explanatory Document. As discussed above, the definition of "fixation" governed by Article 1 number 13 of the Copyright Act 2014 is limited, not including audiovisual fixation.[203] It is uncertain whether the limited definition of "fixation" in the Copyright Act 2014 has been mistakenly written or deliberately written. One scholar argued that it was mistakenly written and suggested that the term be defined broadly.[204] It is an agreeable argument. However, the problematic definition can be seen as a blessing in disguise since Indonesia is actually not ready to protect performers in audiovisual

201) DIREKTORAT JENDERAL KEKAYAAN INTELEKTUAL, NASKAH PENJELASAN RATIFIKASI THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES PERJANJIAN BEIJING TENTANG PERTUNJUKAN AUDIOVISUAL [EXPLANATORY DOCUMENT OF THE RATIFICATION OF THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES] (2017) (on file with author) (Indon.).

202) *Id.*

203) Copyright Act 2014 art. 1(13).

204) *Menyoal Penyempitan Doktrin Fiksasi Dalam UU Hak Cipta Terbaru* [*Questioning the Narrowing of Fixation in the New Copyright Law*], HUKUM ONLINE (Oct. 10, 2014), http://www.hukumonline.com/berita/baca/lt5437a94407a6a/menyoal-penyempitan-doktrin-fiksasi-dalam-uu-hak-cipta-terbaru-broleh--risa-amrikasari--ss--mh (Indon.).

performance. Currently, as mentioned above, in practice in the country, performers have been paid inadequate attention as compared to authors. Although the Copyright Act 2014 enables the establishment of CMO for performers, there is only a limited number of CMOs representing performers founded and their focus is on the protection of singers in recordings rather than in audiovisual ones.[205] They are not yet concerned with the rights of artists in audiovisual performances like film actors and actresses. Currently, in practice, actors and actresses rely on their contract with the film producers.[206] The contract determines the rights they are entitled to. Normally, an actor or an actress receives only a flat fee up front but some famous actors and actresses are given a royalty in the form of a certain amount of money per movie ticket sold.[207] Therefore, with the current situation in the country and the current stance of the Copyright Act 2014 on performers in audiovisual performances, the country is actually not ready to ratify the BTAP.

Before ratifying the BTAP, Indonesia had better learn lessons from the position taken by the United States on the issue of whether an actress has the right to prevent the publication or communication of her performance in a movie. This issue was sparked by *Garcia v. Google, Inc*.[208] In *Garcia*, the court initially held that an actor, like Garcia, could claim a copyright interest for her individual performance in a film, so long as her performance met the threshold requirements of copyrightability under the US Copyright Act.[209] After a tumult from third-party content distributors, film industry players, and a variety of others, the court revisited the case. In an amended opinion, the court held that Ms. Garcia had no copyright claim in her performance.[210]

The *Garcia* case has ignited extensive debate regarding the possibility of granting exclusive rights in actors' or actresses' individual performances. Some commentators argue that recognizing such rights will lead to a problem

205) *E.g.*, ARVIE JOHAN, *supra* note 19, at 148 (*Persatuan Artis Penyanyi, Pencipta lagu dan Penata Musik Rekaman Indonesia* (PAPPRI) and *Persatuan Artis Musik Dangdut dan Melayu Indonesia* (PAMMI)).

206) *See* Ade Irwansyah, *Siapa aktor dengan penghasilan terbesar di Indonesia?* [*Who Are the Biggest Income Actors in Indonesia?*], LIPUTAN6 (June 4, 2014, 8:30 PM), http:// showbiz.liputan6.com/read/2058602/ satu-film-honor-reza-rahadian-rp-34-m-lebih-ini-hitungannya (Indon.).

207) *Id.*

208) Garcia v. Google, Inc., 766 F.3d 929 (9th Cir. 2014), *rev'd en banc*, 786 F.3d 733 (9th Cir. 2015).

209) *Id.*

210) Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015).

in the film industry, because anyone who contributes something minimally to a film could claim an interest, imposing practical burdens on producers of creative works.[211] In other words, giving the rights to a movie actor will hurdle the creativity in the film industry. While it is not to state that Indonesia should follow the United States' tradition not to protect moral rights of authors,[212] the wisdom of not granting exclusive rights to a movie actor can be taken as a lesson that it is not easy for Indonesia to give the rights to performers in audiovisual performances. If the country gives exclusive rights to performers in audiovisual performances, the famous Daniel Craig can claim royalty if his performance in the James Bond movie *Quantum of Solace*[213] is broadcasted in Indonesian televisions. The worse, Tobey Maguire can prohibit the broadcasting of *Spider-Man*[214] in Indonesia, and even, Indonesian actress Dian Sastrowardoyo may prevent the broadcasting and the communication of her *Ada Apa Dengan Cinta?*[215] in the country. Indonesia is not quite ready to allow these. The creativity in the film industry in Indonesia is still far behind that in other countries and it therefore still needs to be developed.[216] Granting exclusive rights to performers in audiovisual performances as stipulated in the BTAP will hamper the freedom of creativity and the development of Indonesia's film industry.

Therefore, when ratifying the BTAP, Indonesia should avail itself of the *leniency* found in certain articles of the BTAP. First, based on Article 19(1) of the BTAP, Indonesia shall accord the protection granted under the BTAP to

211) Chrissy Milanese, *Lights, Camera, Legal Action: Assessing the Question of Acting Performance Copyrights Through the Lens of Comparative Law*, 91 NOTRE DAME L. REV. 1641, 1642 (2016).

212) *See id.* at 1665 (stating commentators have suggested that the United States' aversion to moral rights came from a concern that adopting such provisions would negatively impact economic interests and cause a chilling effect on investment in creative works that would decrease investment in the arts and entertainment industries, leading to fewer creative works in the public forum).

213) QUANTUM OF SOLACE (Eon Productions 2008).

214) SPIDER-MAN (Marvel Enterprises & Laura Ziskin Productions 2002).

215) ADA APA DENGAN CINTA? [WHAT'S UP WITH LOVE?] (Miles Production 2002) (Indon.).

216) *See* Disfiyant Glienmourinsie, *Penyebab Industri Perfilman RI Belum Mampu Bersaing* [*Why Indonesia's Film Industry is Not Able to Compete*], SINDONEWS.COM (Oct. 31, 2016, 1:07 PM), https://ekbis.sindonews.com/read/1151496/34/penyebab-industri-perfilman-ri-belum-mampu-bersaing-1477891444 (Indon.). *See also* Yayu Agustini Rahayu, *30 Tahun Tertutup, Industri Film Terbuka Investasi Asing di Era Jokowi-JK* [*30 Years Closed, Film Industry Open to Foreign Investment in the Jokowi-JK Era*], MERDEKA.COM (Oct. 17, 2017, 2:10 PM), https://www.merdeka.com/uang/30-tahun-tertutup-industri-film-terbuka-investasi-asing-di-era-jokowi-jk.html (Indon.).

fixed performances existing at the time of the entry into force of the BTAP (existing fixed performances), and to all performances that occur after its entry into force for other contracting parties.[217] In relation to the existing fixed performances, Indonesia should avail itself of Article 19(1) which allows Indonesia not to protect them by way of declaring in a notification submitted to the Director General of WIPO that it will not apply the provisions of Articles 7 to 11 of the BTAP, or any one or more of those, to the existing fixed performances.[218] Currently, the Copyright Act 2014 contains provisions that are partly in line with this. Article 23(3) of the Act provides that performers do not have the right of broadcasting and communication to the public of their fixed performances if they have before consented to the fixation of the performances.[219] Article 23(4) of the Act provides that performers do not have the distribution right after their performances have been fixed, sold, or transferred.[220] Article 23(4) actually contains the exhaustion principle. This principle can be applied to the existing fixed audiovisual performances, which means that the performers' distribution rights in the audiovisual performances exhaust after their performances have been fixed, sold, or transferred. Thus, the Copyright Act 2014 still gives the right of reproduction (Article 7 of the BTAP), the right of rental (Article 9 of the BTAP) and the right of making available (Article 10 of the BTAP) to performers of the existing fixed performances.[221]

Second, based on Article 11(1) of the BTAP, performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.[222] In this case, based on Article 11(2) of the BTAP, Indonesia can notify the Director General of WIPO declaring that, instead of the right of authorization, Indonesia will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public.[223] Currently, Article 87(1) the Copyright Act 2014 enables the establishment of CMO for performers, by which people can make use of audiovisual performances for commercial purpose by way of paying a royalty to the CMO.[224] Furthermore, Article 87(4) of the Copyright Act 2014 provides that it is not considered as infringing the Copyright Act

217) BTAP, *supra* note 7, art. 19(1).
218) *Id.*
219) Copyright Act 2014 art. 23(3).
220) *Id.* art. 23(4).
221) BTAP, *supra* note 7, arts. 7, 9, 10.
222) *Id.* art. 11(1).
223) *Id.* art. 11(2).
224) Copyright Act 2014 art. 87(1).

any use of related rights, including performers' rights, for commercial purposes as long as the user satisfies the obligation agreed with the CMO.[225] There have been three CMOs for the sake of neighboring rights owners, including performers, namely: *Persatuan Artis, Penyanyi dan Pemusik Indonesia* (PAPPRI), *Sentra Lisensi Musik Indonesia* (SELMI), and *Anugrah Royalti Dangdut Indonesia* (ARDI). However, unfortunately, until this writing, in relation to performers, they deal only with the protection of singers and music players in recordings other than audiovisual ones.[226]

As mentioned above, Article 12 of the BTAP governs the transfer of rights.[227] The article provides that contracting parties may stipulate in their national laws that once a performer has consented to the audiovisual fixation of a performance, the exclusive rights of performers are transferred to the producer of the audiovisual fixation unless a contract between the performer and the producer states otherwise.[228] The Copyright Act 2014 does not contain any provision to anticipate Article 12 of the BTAP. Therefore, if Indonesia ratifies the BTAP, the country should amend the Copyright Act 2014 to accommodate the provision of Article 12 of the BTAP.

VI. Conclusion

In relation to the protection of performers, Indonesian Copyright Law has developed following the country's involvement in the international arena. The impetus from inside the country has been lacking if not missing. It did not provide any right to performers until the country's ratification of the Agreement Establishing the WTO containing the TRIPS Agreement. Its previous Copyright Act 2002 provided only minimal rights to performers and it was not in line with the TRIPS Agreement because, unlike the TRIPS Agreement, the Act did not grant performers the protection of their unfixed (live) performance. In addition, the Copyright Act 2002 did not grant moral rights to performers and did not protect performers in audiovisual works.

---

225) *Id.* art. 87(4).

226) FX Ismanto, *PAPPRI Tawarkan Solusi Perlindungan dan Pemberdayaan Musisi* [*PAPPRI Offers Solution of Protection and Empowerment to Musicians*], TRIBUNSELEB (Mar. 17, 2018, 2:48 PM), http://www.tribunnews.com/seleb/2018/03/17/pappri-tawarkan-solusi-perlindungan-dan-pemberdayaan-musisi (Indon.); *Hak Musisi juga Sudah Semakin Baik dengan Adanya LMK dan LMKN kata Bens Leo* [*The Rights of Musicians Are Also Getting Better with the Presence of LMK and LMKN, Says Bens Leo*], TRIBUNBISNIS (Mar. 22, 2017, 5L36 PM), http://www.tribunnews.com/bisnis/2017/03/22/hak-musisi-juga-sudah-semakin-baik-dengan-adanya-lmk-dan-lmkn-kata-bens-leo (Indon.).

227) BTAP, *supra* note 7, art. 12.

228) *Id.*

Although Indonesian Copyright Act 2014 has a problem with its narrow definition of the term "performer," it is generally better than the Copyright Act 2002. Unlike the previous Act, the Copyright Act 2014 grants performers moral rights, which are right of attribution and right of integrity, and broader economic rights in relation to their unfixed (live) performance and their fixed performance. However, like the previous Act, the Copyright Act 2014 does not protect performers in audiovisual performance.

Generally, in relation to performers' rights, Indonesia's Copyright Act 2014 is better than the Rome Convention. Unlike the Convention, the Act confers moral rights on performers. Under the Act, performers have broad exclusive rights, including *right to conduct themselves*, *right to authorize* others to conduct, and *right to prohibit* others from doing certain acts, whereas under the Rome Convention, they only have *right to prevent* certain acts. Furthermore, the Copyright Act 2014 grants performers exclusive right of distribution and rental of their fixed performance whereas the Rome Convention is silent on the issue.

Performers' rights under the Copyright Act 2014 are very similar to those in the WPPT. Both provide for the right of attribution and the right of integrity. Nevertheless, in respect of the right of integrity, the Copyright Act 2014 gives better protection than the WPPT, since the acts that may be considered to be against the right of integrity in the Copyright Act 2014 are broader than those in the WPPT. Additionally, because the Copyright Act 2014 imitates Article 6*bis* of the Berne Convention which confers moral rights on authors, the Act protects "reputation" and "honor," while the WPPT protects only "reputation" of performers.[229] In terms of economic rights of performers, the Copyright Act 2014 is in line with the WPPT. The Act grants performers *right to conduct themselves*, *right to authorize*, and *right to prohibit* certain acts in relation to their unfixed (live) performances and fixed performances, while the WPPT gives them the *exclusive right of authorizing* certain acts, which implies all rights mentioned in the Copyright Act 2014.

The BTAP resembles the WPPT. The moral rights and the economic rights of performers are quite similar in the two treaties. Thus, should the rights of performers in the Copyright Act 2014 be compared to those in the BTAP, the result will be the same as that of the comparison between the rights of performers in the Copyright Act 2014 and those in the WPPT, that is, the moral rights and economic rights of performers in the Copyright Act 2014 are quite similar to those in the BTAP. However, as long as the definition of "fixation" in the Copyright Act 2014 is not extended to audiovisual fixation, the Act cannot be understood to grant moral rights and economic rights to

229) Berne Convention, *supra* note 26, art. 6*bis*; WPPT, *supra* note 8, art. 5(1).

audiovisual performers. Nevertheless, the problematic definition can be deemed as a blessing in disguise since Indonesia is actually not prepared to protect audiovisual performers. Giving exclusive rights to audiovisual performers like in the BTAP will impede the freedom of creativity and development, especially in Indonesia's film industry. Therefore, when ratifying the BTAP, the country should avail itself of the leniency found in certain provisions in the BTAP and should amend the Copyright Act 2014 to be in line with the BTAP.

Bibliography

Legislature

Copyright, Designs and Patents Act 1988, c. 48 (Eng.).

Keputusan Presiden Republik Indonesia Nomor 74 Tahun 2004 tentang Pengesahan Traktat WIPO Mengenai Pertunjukan dan Rekaman Suara, 1996 [Presidential Decree of the Republic of Indonesia Number 74 of 2004 Regarding the Ratification of WIPO Performances and Phonograms Treaty, 1996].

Penjelasan atas Undang-Undang Republic Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta [Elucidation of Law of the Republic of Indonesia Number 19 of 2002 on Copyright].

Undang-Undang Republik Indonesia Nomor 6 Tahun 1982 tentang Hak Cipta [Law of the Republic of Indonesia Number 6 of 1982 on Copyright].

Undang-Undang Republik Indonesia Nomor 7 Tahun 1994 tentang Pengesahan Persetujuan Pembentukan Organisasi Perdagangan dunia [Law of the Republic of Indonesia Number 7 of 1994 Regarding the Ratification of the Agreement Establishing the World Trade Organization].

Undang-Undang Republik Indonesia Nomor 12 Tahun 1997 tentang Perubahan Atas Undang-Undang Nomor 6 Tahun 1982 tentang Hak Cipta Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 7 Tahun 1987 [Law of the Republic of Indonesia Number 12 of 1997 Regarding the Amendment of the Law Number 6 of 1982 on Copyright as Already Amended by Law Number 7 of 1987].

Undang-Undang Republik Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta [Law of the Republic of Indonesia Number 19 of 2002 on Copyright].

Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta [Law of the Republic of Indonesia Number 28 of 2014 on Copyright].

Undang-Undang Republik Indonesia Nomor 13 Tahun 2016 tentang Paten [Law of the Republic of Indonesia Number 13 of 2016 on Patents].

Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis [Law of the Republic of Indonesia Number 20 of 2016 on Mark and Geographical Indication].

International Treaties

Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299.

Beijing Treaty on Audiovisual Performances, June 24, 2012, WIPO Lex No. TRT/BEIJING/001.

Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971, 331 U.N.T.S. 217.
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Oct. 26, 1961, 496 U.N.T.S. 43.
WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 36 I.L.M. 76.

Cases

Garcia v. Google, Inc., 766 F.3d 929 (9th Cir. 2014).
Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015).

Books

CHRISTOPH ANTONS, INTELLECTUAL PROPERTY LAW IN INDONESIA (2000).
J.A.L. STERLING, WORLD COPYRIGHT LAW (2003).
LIONEL BENTLY & BRAD SHERMAN, INTELLECTUAL PROPERTY LAW (2014).
OTTO HASIBUAN, HAK CIPTA DI INDONESIA: TINJAUAN KHUSUS HAK CIPTA LAGU, NEIGHBOURING RIGHTS, DAN COLLECTING SOCIETY [COPYRIGHT IN INDONESIA: SPECIAL REVIEW OF COPYRIGHTS, NEIGHBORING RIGHTS, AND COLLECTING SOCIETY] (2008).
OWEN MORGAN, INTERNATIONAL PROTECTION OF PERFORMERS' RIGHTS (2002).

Journal Articles and Other Publications

ARVIE JOHAN, ANALISIS HUKUM PERSAINGAN TERHADAP PRAKTIK KEGIATAN LEMBAGA MANAJEMEN KOLEKTIF DI INDONESIA [A COMPETITION LAW ANALYSIS OF COLLECTIVE MANAGEMENT ORGANIZATION IN INDONESIA] (2016).
Chrissy Milanese, *Lights, Camera, Legal Action: Assessing the Question of Acting Performance Copyrights Through the Lens of Comparative Law*, 91 NOTRE DAME L. REV. 1641 (2016).
DIREKTORAT JENDERAL KEKAYAAN INTELEKTUAL, NASKAH PENJELASAN RATIFIKASI THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES PERJANJIAN BEIJING TENTANG PERTUNJUKAN AUDIOVISUAL [EXPLANATORY DOCUMENT OF THE RATIFICATION OF THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES] (2017) (Indon.).
EIFL, THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES: AN EIFL BRIEFING FOR LIBRARIES (2013), http://www.eifl.net/system/files/ resources/201408/eifl-ip_the_beijing_treaty_on_audiovisual_performances_guide.pdf.
Eric Blouw, *Just Asking for a Little "Respect": Radio, Webcasting & the Sound Recording Performance Right*, 5 CYBARIS 353 (2014).
Hannibal Travis, *WIPO and the American Constitution: Thoughts on a New Treaty Relating to Actors and Musicians*, 16 VAND. J. ENT. & TECH. L. 45 (2013).

Jacob M. Victor, Garcia v. Google *and a "Related Rights" Alternative to Copyright in Acting Performances*, 124 YALE L.J.F. 80 (2014).

Jennifer Leigh Pridgeon, *The Performance Rights Act and American Participation in International Copyright Protection*, 17 J. INTELL. PROP. L. 417 (2010).

Michael Gruenberger, *A Duty to Protect the Rights of Performers? Constitutional Foundations of an Intellectual Property Right*, 24 CARDOZO ARTS & ENT. L.J. 617 (2006).

WIPO, GUIDE TO THE COPYRIGHT AND RELATED RIGHTS TREATIES ADMINISTERED BY WIPO AND GLOSSARY OF COPYRIGHT AND RELATED TERMS 139 (2004), http://www.wipo.int/edocs/pubdocs/en/copyright/891/wipo_pub_891.pdf.

WIPO, GUIDE TO THE ROME CONVENTION AND TO THE PHONOGRAM CONVENTION 40 (1999), http://www.wipo.int/edocs/pubdocs/en/copyright/617/wipo_pub_617.pdf.

Yong Wan, *Legal Protection of Performers' Rights in the Chinese Copyright Law*, 56 J. COPYRIGHT SOC'Y U.S. 669 (2009).

Internet Sources

Carolina Rossini et al., *Beijing Treaty on Audiovisual Performances: We Need to Read the Fine Print*, ELECTRONIC FRONTIER FOUND., July 24, 2012, https://www.eff.org/deeplinks/2012/07/beijing-treaty-audiovisual-performances.

Disfiyant Glienmourinsie, *Penyebab Industri Perfilman RI Belum Mampu Bersaing* [*Why Indonesia's Film Industry is Not Able to Compete*], SINDONEWS.COM (Oct. 31, 2016, 1:07 PM), https://ekbis.sindonews.com/read/1151496/34/penyebab-industri-perfilman-ri-belum-mampu-bersaing-1477891444 (Indon.).

FX Ismanto, *PAPPRI Tawarkan Solusi Perlindungan dan Pemberdayaan Musisi* [*PAPPRI Offers Solution of Protection and Empowerment to Musicians*], TRI BUNSELEB (Mar. 17, 2018, 2:48 PM), http://www.tribunnews.com/seleb/2018/03/17/pappri-tawarkan-solusi-perlindungan-dan-pemberdayaan-musisi (Indon.).

Int'l Fed'n of Actors, *What is the Beijing Treaty?*, BEIJING TREATY WIPO, http://beijingtreaty.com/about/what-is-the-beijing-treaty.

Say, *Tak Melulu Bahagia, Ini 5 Fakta Getirnya Kehidupan Yon Koeswoyo* [*Not Just Happy, These 5 Facts of Unhappy Life of Yon Koeswoyo*], TRIBUNJOGJA.COM (Jan. 5, 2018, 11:25 AM), http://jogja.tribunnews.com/2018/01/05/tak-melulu-bahagia-ini-5-fakta-getirnya-kehidupan-yon-koeswoyo?page=all (Indon.).

Steven Seidenberg, *"Innocence of Muslims" Creates Copyright Controversy in US*, INTELL. PROP. WATCH, Mar. 31, 2014, http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1685&context=historical.

Yayu Agustini Rahayu, *30 Tahun Tertutup, Industri Film Terbuka Investasi Asing di Era Jokowi-JK* [*30 Years Closed, Film Industry Open to Foreign Investment in the Jokowi-JK Era*], MERDEKA.COM (Oct. 17, 2017, 2:10 PM),

https://www.merdeka.com/uang/30-tahun-tertutup-industri-film-terbuka-investasi-asing-di-era-jokowi-jk.html (Indon.).

Hak Musisi juga Sudah Semakin Baik dengan Adanya LMK dan LMKN kata Bens Leo [*The Rights of Musicians Are Also Getting Better with the Presence of LMK and LMKN, Says Bens Leo*], TRIBUNBISNIS (Mar. 22, 2017, 5L36 PM), http://www.tribunnews.com/bisnis/2017/03/22/hak-musisi-juga-sudah-semakin-baik-dengan-adanya-lmk-dan-lmkn-kata-bens-leo (Indon.).

Menyoal Penyempitan Doktrin Fiksasi Dalam UU Hak Cipta Terbaru [*Questioning the Narrowing of Fixation in the New Copyright Law*], HUKUM ONLINE (Oct. 10, 2014), http://www.hukumonline.com/berita/baca/lt5437a94407a6a/menyoal-penyempitan-doktrin-fiksasi-dalam-uu-hak-cipta-terbaru-broleh--risa-amrikasari--ss--mh (Indon.).

Performers' Rights - Background Brief, WIPO, http://www.wipo.int/pressroom/en/briefs/performers.html.

Sejarah Yayasan Karya Cipta Indonesia [*History of Yayasan Karya Cipta Indonesia*], KCI http://kci-lmk.or.id/sejarah-kci.

Ade Irwansyah, *Siapa aktor dengan penghasilan terbesar di Indonesia?* [*Who Are the Biggest Income Actors in Indonesia?*], LIPUTAN6 (June 4, 2014, 8:30 PM), http://showbiz.liputan6.com/read/2058602/ satu-film-honor-reza-rahadian-rp-34-m-lebih-ini-hitungannya (Indon.).

Summary of the Beijing Treaty on Audiovisual Performances (2012), WIPO, http://www.wipo.int/treaties/en/ip/beijing/summary_beijing.html.

PT ASIRINDO Pelajari Pengalaman Lembaga Manajemen Kolektif [*PT ASIRINDO Learns the Experience of Collective Management Organizations*], PIKIRAN RAKYAT, Dec. 15, 2011, http://www.pikiran-rakyat.com/ekonomi/ 2011/12/15/169434/pt-asirindo-pelajari-pengalaman-lembaga-manajemen-kolektif.

Top 100 Songs of 1972 - Billboard Year End Charts, BOBBORST.COM, http://www.bobborst.com/popculture/top-100-songs-of-the-year/?year=1972.

http://www.indolaw.org.

Audio Recordings and Films

ADA APA DENGAN CINTA? [WHAT'S UP WITH LOVE?] (Miles Production 2002) (Indon.).

CAT STEVENS, *Morning Has Broken*, *on* TEASER AND THE FIRECAT (Island 1972).

LIVE AND LET DIE (Eon Productions 1973).

SPIDER-MAN (Marvel Enterprises & Laura Ziskin Productions 2002).

THE BEATLES, *Twist and Shout*, *on* PLEASE PLEASE ME (Parlophone 1963).

QUANTUM OF SOLACE (Eon Productions 2008).