

Music Therapy and Copyright Issue: Comparative Study between Indonesia, the United States and Australia

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Abstract

Various factors may lead to the increase of physical and mental health problems within the society, especially among teenagers and adults. Music therapy has frequently been used to deal with such problems. Music therapy is generally conducted in private using various types of music, including musical works protected by copyright, therefore the use of music for therapeutic purpose may give rise to copyright issues. This article aims at exploring the legal frameworks on the practice of music therapy with regard to copyright issue in Indonesia and other jurisdictions. This normative juridical research employs both statutory and comparative approaches. Comparison is made with the United States and Australia. The results show that currently, there is no regulation governing music copyright used in private settings in Indonesia. Based on four factors test, the use of musical works protected by copyright in private music therapy sessions can be regarded as a fair use, provided that it is neither publicized nor distributed to the public. When music therapy sessions conducted publicly, such as performing public demonstrations with commercial purpose, therapists may use their own original songs, songs that are part of the Public Domain, musical works with a Creative Commons License, establishing an agreement with musicians, and making royalty payments to relevant institution (LMKN).

Keywords: Copyright, Mental Health, Music Therapy

1. Introduction

In this transitional era, there are various factors that can lead to the increase of physical and mental health problems within the society, especially among teenagers (15-18) and adults (18-40). These include stroke, vertigo and insomnia. As a matter of fact, people who suffer from stroke, vertigo, or insomnia later may suffer from mental health disorders, especially depression.

In many cases, stroke are stimulated by head injury due to accident.¹ According to the data from the Central Bureau of Statistics Indonesia (hereafter referred to as Statistics Indonesia), in 2022, the number of accidents reached 139.258 cases, including 13.364 involving severe injuries. This indicates that the occurrence of stroke tends to be high.

There are also lots of people suffering from vertigo. According to data from the World Health Organization (WHO) 2019, the number of people experiencing vertigo reached billions, and the number of people suffering from vertigo was estimated to continue increasing every year. Even in 2025, it is estimated that the number of people suffered from vertigo will also

¹ Alma Nazelia Syafni, 'Post Stroke Patient Medical Rehabilitation', *Jurnal Ilmiah Kesehatan Sandi Husada*, 9.2 (2020), 874 <<https://jurnalsandihusada.polsaka.ac.id/IKSH/article/view/428>>

reach billions.² Vertigo not only harms elderly, but also teenagers and adults within the age range of 18-50.³ Vertigo can disrupt daily activities as it can reduce motoric skills and cause stress. For instance, in young adults such as university students, vertigo can limit their social activities and may even lead to frequent absence from classes. This implies that vertigo not only negatively affects the person experiencing it, but also their family, professional life such as their studies, and their social life.⁴

Teenagers and adults, especially university students, can be affected not only by vertigo, but also sleep disturbances or insomnia. With the development of technology, one of the causes is the excessive use of smartphone or gadgets. According to Diagnostic and Statistical Manual of Mental Disorders (DSM) V, an individual can be diagnosed with insomnia if they experience one or more sleep disturbances, at least 3 nights per week for 3 months or longer. Based on survey on the use of information and communication technology (ICT) 2017, the highest percentage of smartphone or gadget users in Indonesia falls within the age ranges of 20-29 (75,95%) and 30-49 (68,34%), with 70,98% of them being university students.⁵ Based on the diagnostic criteria for insomnia disorder according to DSM V, 74% of them experience insomnia symptoms, while around 51,9% of university students meet the diagnostic criteria for insomnia disorder.⁶

There is a common trend of utilizing music therapy to deal with physical and mental health problems in Indonesia. Music therapy is a form of intervention using music to enhance the quality of human life in various aspect and needs, such as, social, emotional, cognitive, communicative, motoric, spiritual, and other needs.⁷ Based on research on the effectiveness of music as a therapeutic method, particularly for patients with stroke, vertigo, and insomnia, music therapy is one of the interventions that can help and accelerate their rehabilitation process.⁸ Music intervention significantly affects sleep quality, not only in adults, but in university students with insomnia, because music therapy is able to reduce stress levels,

² Nike Chusnul Dwi Indah Triyanti, et.al., 'The Effect of Physical Therapy Brandt Daroff on Vertigo at UGD RSUD Dr. R Soedarsono Pasuruan', *Jurnal Keperawatan Terapan*, 4.1 (2018), 3 <[https://doi.org/10.31290/jkt.v\(4\)i\(1\)y\(2018\).page:59-64](https://doi.org/10.31290/jkt.v(4)i(1)y(2018).page:59-64)>

³ Dr. Christianty Sugiarto, Sp.N, *Interviewed by Asahanna Metta Adhe Herlambang*, Immanuel Hospital Bandung.

⁴ Muhammad Anugerah Ramadhan Hasibuan, et.al., 'Hubungan Vertigo Dengan Insomnia Pada Mahasiswa Kedokteran Universitas Prima Indonesia 2019', *Prima Medical Journal (Prima): Artikel Penelitian*, 7.2 (2022), 50 <<https://doi.org/10.34012/pmj.v7i2.3147>>

⁵ Ministry of Communication and Information Technology of the Republic of Indonesia, 'Survey Penggunaan TIK 2017 Serta Implikasinya terhadap Aspek Sosial Budaya Masyarakat', *Pusat Penelitian dan Pengembangan Aplikasi Informatika dan Informasi dan Komunikasi Publik*, (2017), 19

⁶ Wihelma Naya Ditaelis, et.al., 'Hubungan Penggunaan Intensitas Gawai Dengan Kejadian Insomnia Pada Mahasiswa Fakultas Kedokteran Universitas Tanjungpura Pontianak', *Jurnal Kesehatan Republik Indonesia*, 1.4 (2024), 54 <<https://jurnal.intekom.id/index.php/jkri/article/view/348>>

⁷ Kezia Karnila Putri, S.Sn., MMT, MTA, MT-BC, *Interviewed by Asahanna Metta Adhe Herlambang*, Siloam Hospital Bandung.

⁸ MedRhythms, 'Neurological Music Therapy - Stroke Rehabilitation (MedRhythms)', *Youtube*, 5 October 2014 <<https://youtu.be/EK5qqYYxjn4?si=Ddxxr7vOoxKRFB1v>>; Dinda Ariyantika, et.al., 'The Effect of the Combination of Brandt Daroff Physical Therapy and Classical Music Therapy on Reducing the Level of Vertigo Symptoms in Puskesmas Sukowono, Kabupaten Jember', *Jurnal Keperawatan Terapan*, 9.1 (2023), 29 <<https://ojs.poltekkes-malang.ac.id/index.php/JKT/article/view/3964>>

improve mood, and even lower the level of blood pressure.⁹ Thus it is evident that music therapy is an essential field of healthcare in improving and enhancing an individual's quality of life.

In the United States, music therapists are recognized as healthcare professionals by the American Music Therapy Association (AMTA). This recognition began in the twentieth century, when it was required for music therapists to undergo training before being able to provide music therapy services. Music therapy is conducted in accordance with AMTA standards by a music therapist who meets the qualifications and have attained Music Therapist-board Certified Credential (MT-BC).¹⁰

Likewise, Australia also has similar association called Australian Music Therapist Association (AustMTA) which recognizes music therapist as a supportive healthcare professional. This practice is conducted in accordance with AusMTA's standards by officially registered music therapists (RMTs). Music therapists must have completed education from one or more higher education institutions in Australia accredited by AustMTA, or from higher institutions in other countries that meet the equivalent standards of AustMTA qualifications.¹¹

Such an association is also found in Indonesia under the name Indonesian Music Therapy Association (InaMTA). Unlike AMTA and AustMTA, unfortunately InaMTA has neither issued the standard of practice nor released certification for the practice of music therapy yet. The absence of these local standard and certification affect the practice of music therapy in Indonesia. Music therapists in Indonesia must hold an official certification from another country in order to practice it in Indonesia.¹² Although music therapist has also been considered as a healthcare professional, but it has not yet been officially recognized.

Currently, there is no regulation governing music therapy practice and music copyright used in private settings in Indonesia, particularly in regard to healthcare service. Considering the increasing need of music therapy for teenagers and adults who suffer from physical and mental health problems, it seems that regulation governing music therapy practice is urgent. In fact, as a new field in healthcare service, music therapy has gained attention from the public. Consequently, it is necessary to establish legal certainty for both music therapists and musicians whose songs are used in the music therapy practice. The authors identify several aspects that can be examined in this field and limit the discussion only to answer the question on copyright issue in regard to the practice of music therapy. In addition, relevant legal development the United States and Australia which apply the four factors test for the fair use of the music and the doctrine of private use will also be addressed.

So far, there is no article that discusses the same topic. Previous studies on the related issues came up with different focus and concern. An article entitled 'When Therapy Goes Public: Copyright Gatekeepers and Sharing Therapeutic Artifacts on Social Media' by Amanda Reid and Pablo Miño, discusses the usage of licensed music for music therapy in Australia, highlighting that the use of licensed music is only permitted for use in private one-on-one session and does not extend to sessions that are conducted through social media, as these fall

⁹ Dania Saleha, et.al., 'Pengaruh Terapi Musik Terhadap Tingkat Insomnia Pada Mahasiswa', *Jurnal of Psychology Today*, 1.1 (2023), 55
<<https://digamed.net/index.php/psychologytoday/article/view/167>>

¹⁰ American Music Therapy Association, 'FAQs', *American Music Therapy Association*, <<https://www.musictherapy.org/faq/#42>>

¹¹ Australian Music Therapy Association, *Australian Music Therapy Association*, <<https://www.austmta.org.au/>>

¹² Musictherapy.id, *Instagram* <<https://www.instagram.com/musictherapy.id/>>

within the public domain. Another article entitled 'Exploring Music Therapists' Experiences with and Perceptions about Copyrighted Music: A Thematic Analysis' by Amanda Reid and Sydney K. Nicolla, discusses the perspective and knowledge of several music therapists regarding music copyright for music therapy. With Alex Kresovich, Amanda Reid also wrote an article entitled 'Copyright as a Barrier to Music Therapy Telehealth Interventions: Qualitative Interview Study'. This article discusses the challenges of providing music interventions to patients through online sessions.

Different from the previous studies, this article makes a comparative review on legal aspect of using music for therapeutic purpose, hence, it is expected that this study will offer valuable academic contribution in the subject matter.

2. Method

This research was conducted using normative juridical method that examines legal sources relating to copyright issues in the form of legislation, books, articles and online sources. The authors have also looked at relevant legislation from different jurisdictions, especially the United States and Australia. In addition, this study also utilized primary data collected through interviews with relevant parties.

3. Discussion and Analysis

3.1. Legal Aspect in the Use of Music for Therapeutic Purpose

Health constitutes one of fundamental rights which is governed under the 1945 Indonesian Constitution and other legislation including Law Number 17 of 2023 on Health (hereinafter referred to as Health Law) and Law Number 18 of 2014 on Mental Health (hereinafter referred to as Mental Health Law). Health has been defined more comprehensively to cover not only physical aspect, but also mental aspect event social aspect. According to Section 1 point (1) of Health Law, health is a state of well-being of an individual, whether physically, psychologically, or socially, and is not merely the absence of diseases that enables him to have a productive life.

Various forms of healthcare service have been developed to improve the quality of individuals' health. Healthcare services refers to all forms of activities and/or a series of activities provided directly to individuals or communities to maintain and improve public health, in the forms of promotive, preventive, curative, rehabilitative, and/or palliative care [Section 1 point (3) of Health Law]. Music therapy is considered as a form of healthcare service as it can enhance the patient's health quality, both physical and mental health. Section 3 letter (a) of Mental Health Law states that mental health interventions aims to ensure that every person can achieve a good quality of life, enjoy healthy mental well-being, and be free from fear, pressure, and other disturbances that may affect mental health.

In line with the development of medical science and technology, several aspects within health sector have been associated with intellectual property right regulation. Law Number 13 of 2016 on Patent (hereinafter referred to as Patent Law) explicitly covers this sector. Based on Section 9 letter c of Patent Law, the invention related to method of examination, treatment, medication, and/or surgery applied to humans and/or animals cannot be patented. On the other side, Law Number 28 of 2014 on Copyright (hereinafter referred to as Copyright Law) does not regulate the health sector, particularly regarding the use of music for therapeutic purpose. The exceptions as outlined in Section 44 point (1) of Copyright Law, only covers other

areas within public domain. According to this Section, the use of creation for the purpose of education, research, scientific writing, the drafting of reports, writing critiques; security, government administration, legislation, and judiciary; lectures solely for educational and scientific purposes; and performances or stage shows, are not charged as far as they do not harm the legitimate interests of the creator. Another exception is found in Section 44 point (2) which provides that the use of creation for facilitating access to a work for persons with visual impairments, those with vision problems or reading limitations, and/or Braille users, audiobooks, or other means, is not considered as a copyright infringement as long as the source is fully acknowledged, unless it is for commercial purposes.

3.2. Copyright relating to the Use of Music for Therapeutic Purpose

In therapy involving music as an intervention, when music therapists employ the works created by other musicians, they are assumed as the user of those works. Consequently, several aspects need to be considered to ensure that such practices are in compliance with the existing laws and regulations.

1) The Use of Non-Registered Songs

According to Section 1 number 1 of Copyright Law, copyright refers to the exclusive rights of the creator that arise automatically based on the declarative principle once the creation is realized in a tangible form, without prejudice to the limitations in accordance with the provisions of the applicable laws and regulations. As stated in Section 4, the rights consist of moral and economic rights. As highlighted in Section 2, the copyright protection applies to all creations and related rights products, whether by Indonesian citizens, residents, and legal entities, or non-Indonesian citizens, non-residents, and non-legal entities, as long as the first publication occurs in Indonesia.

As explicitly stated in Section 40 point (1) letter d and Section 58 point (1) letter d of Copyright Law, music is included within the scope of works that are protected by copyright. Therefore, even if the musicians have not registered their works in the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (DGIP), the creator's exclusive rights will arise automatically as long as it has been publicly declared for the first time by themselves, for example, during a concert or musical performances. The creator's economic rights are protected during their lifetime and continues to be protected for 70 years after the creator's death, starting from January 1 of the following year. Meanwhile, as stated in Section 57 of Copyright Law, moral rights are valid indefinitely or for eternity.¹³ Consequently, when music therapists use the non-registered songs in carrying out the music therapy, they need to obtain the consent from the creators, unless those songs are of their own creation.

2) The Use of Registered Songs

a. The Use of Songs for Paid Music Therapy Sessions

Music therapists use music as an intervention to help enhance patients' quality of health. Like other healthcare professionals, music therapist deserve to earn money, calculated per session or based on the contract between music therapists and institutions, which indicates a commercial purpose, although it is not the primary objective.¹⁴ During music therapy sessions, music therapists can employ various types of music based on the patients' needs.

¹³ BESAR, 'Memahami Variasi Perlindungan Hak Cipta dalam UU No. 28 Tahun 2014', 29 February 2016 <<https://business-law.binus.ac.id/2016/02/29/memahami-variasi-perlindungan-hak-cipta-dalam-uu-no-28-tahun-2014/>>

¹⁴ Nathan Ng, *Interviewed by Asahanna Metta Adhe Herlambang*, Malaysia.

Music therapy can be conducted either in a face-to-face setting or virtually, and in practice, the songs needed by the patients may include registered songs that are protected by copyright. Registered songs refer to the songs that have or have not been registered for copyright by musicians to DGIP and are not part of the public domain as stated in Section 40 point (1) letter d and Section 58 of Copyright Law. Therefore, in accordance with Section 9 point (3) of Copyright Law regarding the commercial use of music, music therapists who wish to employ the songs must obtain the consent from musicians as long as they are still alive or as long as it is still within 70 years of copyright protection after the musicians' death as stated in Section 58 point (1) of Copyright Law. When the copyright of a song is held by two or more individuals, the length of the copyright protection follows the lifetime of the last surviving creator and continue for 70 years after their death, as stated in Section 58 point (2) of Copyright Law.

Article 44 point (1) of Copyright Law embodies the principle of fair use, wherein "the use, derivation, reproduction, and/or alteration of a work and/or related rights product, whether as a whole or in substantial part, shall not be deemed a copyright infringement, provided that the source is properly acknowledged and such use does not prejudice the legitimate interests of the creator or the copyright holders." However, considering that music therapists earn an income for their livelihood in the form of money from the use of songs whose economic rights of the musicians are still protected under copyright, the principle of fair use is not always applicable, as it involves a commercial purpose, although it is not the primary objective.

b. The Use of Songs for Non-Paid Music Therapy Sessions

Article 44 point (1) letter (a) of Copyright Law states that the use, derivation, reproduction, and/or alteration of a work and/or related rights product, whether in whole or in substantial part, shall not be deemed a copyright infringement, provided that the source is properly acknowledged for the purpose of education, research, scientific writing, report drafting, critique writing or review of an issue, which does not harm the legitimate interests of the creator or the copyright holders. The use of copyrighted and/or non-copyrighted songs in non-paid music therapy sessions conducted by hospitals or music therapists themselves, whether in private or public setting, can be considered as the fair use as embodied in above section, provided that it is conducted for non-commercial purposes or without any payment of fees.

3.3. Regulation on Copyright for Music Therapy in the United States and Australia

In international level, guidelines for music therapy practice are provided by an organization called the World Federation of Music Therapy (WFMT). WFMT has established the Code of Ethics for music therapists worldwide in World Federation Music Therapy Code of Ethics.¹⁵ Unfortunately, WFMT has not specifically regulated the copyright of music used in music therapy. Therefore, currently the regulations concerning the copyright of music used in music therapy are governed by the national legislations of each country. There are some countries that have established music therapy associations, including the United States of America and Australia.

1) The United States of America

The United States has a music therapy association called the American Music Therapy Association (AMTA). AMTA has issued several guidelines concerning music therapy

¹⁵ World Federation of Music Therapy, 'WFMT Documents', *World Federation of Music Therapy*, <<https://www.wfmt.info/wfmt-documents>>

practice, including the fundamental rules or internal regulations, a code of ethics for music therapists, standards of music therapy practice, and the scope of music therapy.¹⁶ However, AMTA has not specifically regulated the copyright of music used for therapeutic purposes, therefore, music therapists are subjected to the existing copy right law of the United States. In the United States, the fair use doctrine is adopted based on the four factors test as stated in Title 17 of Copyright Act of 1976 Section 107 on limitations on exclusive rights.

According to Donald R. Simon, a lawyer specializing in entertainment and intellectual property law, in general, music therapists are allowed to use copyrighted musical works with patients either individually or in small groups, in conditions and situations similar to “family gathering.” However, when it is conducted in large groups, the institutions providing music therapy where the music therapists practice must pay the licensing fees, either to Broadcast Music, Inc. (BMI) or The American Society of Composers, Authors, and Publishers (ASCAP), as BMI and ASCAP are authorized to collect these fees on behalf of music owners. Provided that the institutions facilitating music therapy hold a BMI or ASCAP license, music therapists are free to use the music without worrying about copyright issues.¹⁷

In 2020, AMTA issued a circular regarding the practice of music therapy through online sessions during the COVID-19 pandemic. This circular contains recommendations and suggestions for music therapists in conducting music therapy using copyrighted musical works in two situations, namely “Telehealth” and “Programming by music therapists online on public and semi-public platforms.”

a. Telehealth

The process of obtaining a license or permission in order to use a song and/or music is very complex and takes a considerable amount of time for therapists. Music therapy sessions that use copyrighted musical works and are conducted on private online platforms have a lower legal risk when conducted in accordance with the AMTA’s Standards of Clinical Practice, Scope of Practice, Code of Ethics, and Board Certification Domains. This can be considered similar to music therapy sessions conducted face-to-face or onsite, as long as the platforms are secure and the location is private or non-public. In the event that music therapists record audio and/or video that includes the copyrighted musical works used during the session as part of the interventions provided to patients, it remains legally acceptable as long as the recordings are not duplicated, shared, and distributed to the public. The recordings must be included as part of the patients’ progress documentation.

b. Programming by Music Therapists Online on Public and Semi-Public Platforms.

This circular recommends music therapists to use musical works provided in the public or semi-public domain, which can be freely accessed and used. When music therapists intend to employ musical works that are protected by copyright, they must obtain a license to use the musical works.¹⁸

2) Australia

Australia has also established a music therapy association called Australian Music Therapy Association (AustMTA). Similar to AMTA, AustMTA has also issued several

¹⁶ American Music Therapy Association, ‘AMTA Official Documents’, *American Music Therapy Association* <<https://www.musictherapy.org/members/officialdocs/>>

¹⁷ Kimberly, ‘3 Things Music Therapists Should Know About Copyright Law’, *Music Therapy Maven*, 27 April 2011 <<http://www.musictherapymaven.com/what-is-copyright-law/>>

¹⁸ American Music Therapy Association, ‘Advisory Copyright and licensing: Maintaining compliance in online/remote environments’, *American Music Therapy Association* <https://www.musictherapy.org/assets/1/7/Advisory_Copyright_from_the_AMTA_COVID19_Task_Force_06_20_20.pdf>

regulations that serve as guidelines for music therapists in Australia, such as code of ethics and the Rules of the Australian Music Therapy Association Incorporated. The rules include the preliminary, powers of association, memberships, disciplinary action, grievance procedure, general meetings of the association, board, financial matters, and general matters.¹⁹

AustMTA has not specifically regulated the use of music and/or songs which are protected by copyright for therapeutic purposes. Therefore, music therapists must adhere to the existing copyright law of Australia. In Australia, therapists who use copyrighted music for therapeutic purpose in a public setting must obtain a public performance license from OneMusic Australia. However, in some cases, music that is specifically composed for relaxation purposes does not require a public performances license. The Copyright Act 1968 of Australia applies the doctrine of private use and regulates the private use of musical works which are still protected by copyright, referring to “the use of works that are neither publicized nor distributed to the public.” Given that music therapy sessions are generally conducted privately and individually (one-on-one), music therapists may use licensed musical works without permission or a license from the musicians or copyright holders for one-on-one music therapy sessions purposes.²⁰ However, when using sound recordings protected by copyright, therapists must obtain a license through OneMusic Australia. When music therapists intend to use songs from the internet for therapeutic purposes, they should download the songs from official websites such as www.pro-music.org, as there is a general prohibition against duplicating and distributing musical works, including those downloaded from the internet, without any permission or a relevant license from the copyright holders. When music therapists have legally purchased music or songs from iTunes or other official distributors, music therapists must verify the terms and conditions of each platform to ensure that the license obtained can be used for music therapy purposes.²¹

3.4. Integrating Copyrighted Music to Music Therapy Practice

A music therapy association has also been established in Indonesia, called Indonesian Music Therapy Association (InaMTA). As relatively new organization, InaMTA has not yet issued regulations or guidelines regarding music therapy, such as a code of ethics for music therapists in Indonesia. Therefore, in conducting the music therapy, music therapists in Indonesia refer to the regulations issued by WFMT and AMTA. Music therapists can use any type of songs and music based on patients’ needs, including musical works that are still protected by copyright. The Copyright Law in Indonesia has not regulated the use of copyrighted music and/or songs therapeutic purposes.

In music therapy, the primary purpose and significance of using musical works is for public health, rather than pursuing economic benefits (commercial), which is the primary objective of the original musical works held by the copyright holders. The purpose and nature of using the musical works in music therapy are transformational, focusing on functional

¹⁹ Australian Music Therapy Association, ‘Governance’, *Australian Music Therapy Association*, <<https://www.austmta.org.au/about-us/governance/>>

²⁰ Amanda Reid and Pablo Miño, ‘When Therapy Goes Public: Copyright Gatekeepers and Sharing Therapeutic Artifacts on Social Media’, *International Journal of Communication*, 15 (2020), 956 <<https://ijoc.org/index.php/ijoc/article/view/16525>>

²¹ Music Rights Australia, ‘Using Music in Therapy’, *Music Rights Australia*, <<https://www.musicrights.com.au/fact-sheets/musicintherapy/>>

objectives, differing from the primary intent of the original musical works. Moreover, music therapist does not always use the entire musical work in a music therapy session, for instance, only certain parts of a song's melody may be used to help the patient pronounce short daily phrases based on their specific needs. Musical works involve in music therapy are used within a limited scope as it is only used in accordance to the patients' needs in private one-on-one session and not distributed to the public. The use of musical works for music therapy purposes is also limited in nature, as it is employed solely for the patient's needs in a private one-on-one session and not distributed to the public. Therefore, the use of musical works in music therapy does not compete with, nor serve as a significant substitute for, the markets reserved for the original author by Copyright Law. Furthermore, it does not prejudice the copyright holders' ability to obtain economic benefits from their works.²² Similar to doctors, although music therapists may receive compensation in the form of money and involve commercial use, it is not the primary objective of music therapy. The compensation received is not for the use of the songs; rather, the compensation received is for the music therapy services provided to the patient. Thus, based on these factors, the use of music in music therapy can be regarded as a fair use. Referring to the doctrine of fair use and private use applied in the United States and Australia regarding the use of musical works still protected by copyright, and considering that music therapy sessions are generally conducted in private or one-on-one settings, music therapists in Indonesia may employ musical works that are still protected by copyright, provided that the use is neither publicized nor distributed to the public.

When music therapists intend to conduct music therapy sessions publicly, such as performing public demonstrations of music therapy with commercial purpose, it could raise a legal issue concerning the balance of rights and obligations between the music therapists and musicians. Based on an interview with Kezia Karnila Putri, a music therapist at Siloam Hospital, it was indicated that music therapists often composed songs personalized to the needs of their patients. Therefore, music therapists may also transfer the rights of their original songs to the institutions where they conduct music therapy practice. According to Article 58 paragraph (3) of Copyright Law, those musical works are protected by copyright for 50 years since the date of the first publication. Consequently, in addition to using their own original songs, there are several alternatives that can be undertaken to provide legal certainty for the parties involved, namely: (1) the use of songs that are part of the Public Domain; (2) the use of musical works with a Creative Commons License; (3) establishing an agreement with musicians concerning the use of the musical works; or (4) making royalty payments to the National Collective Management Organization (*Lembaga Manajemen Kolektif Nasional*, hereinafter referred to as the LMKN).

1) The Use of Songs which are Parts of the Public Domain

A musical work by musicians becomes a part of the public domain once the copyright protection period for the work has lapsed.²³ As such, music therapists can freely access and use it for commercial purpose without requiring permission from the musicians, provided

²² Fair Use Principles in Cover Song Based on Indonesian Copyright Law, 123. Op.Cit.

²³ Fitriayu Penyalai, 'Domain Publik di Indonesia', *Goethe-Institut Jakarta*, (2020), 9

they acknowledge and mention the musician's name, as this constitutes their permanent moral right.

2) The Use of Musical Works with Creative Commons License

In addition to music therapists using songs that become part of the public domain, they can also employ musical works with Creative Commons Licenses (CC License).²⁴ In such cases, musicians that have registered their works to CC License will still have the copyright of their works as the creators, but indirectly have let others to use their works without requiring their permission and without payment, provided their name is acknowledged and mentioned as the owners or creators of the musical works.²⁵ Types of CC Licenses that can be used, include: (1) CC BY, this license enables other parties to distribute, remix, adapt, and build upon the works for commercial use, provided that the attribution is given to the creators; (2) CC BY-SA, this license enables other parties to distribute, remix, adapt, and build upon the works for commercial use, provided that the attribution is given to the creators and license or shared the modified works under identical terms; (3) CC BY-ND, this license enables other parties to duplicate and distribute the works for commercial use, provided that the attribution is given to the creators, and no derivatives or adaptations of the original works are permitted.²⁶ Music therapists can also use musical works with Creative Commons Zero (CC0), where it enables the creators to give their copyright up and put their works in the worldwide public domain, which enabling other parties to distribute, remix, and build upon the works without any conditions.²⁷

3) Establishing an Agreement with Musicians Concerning the Use of Musical Works

According to Section 1 Number 20 of Copyright Law, Section 3 and Section 4 of the Government Regulation Number 36 of 2018 on Registration of Intellectual Property License Agreements (hereinafter refer to as Government Regulation 36 of 2018), license is a "written authorization granted by the intellectual property rights holder to another party to exercise exclusive rights (including economic rights), provided that the copyright protection period has not lapsed or been revoked."

Music therapists or the institutions (hospitals) may contact the musicians or agencies to establish a written license agreement in the Indonesian language regarding the use of licensed or copyrighted musical works that have been posted by the creator on platforms that implementing monetization mechanism, such as YouTube, Spotify and iTunes, for music therapy purposes. This agreement will be reported and registered with DGIP as stated in

²⁴ World Intellectual Property Organization, 'What is Intellectual Property?', WIPO, 2020, <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf>

²⁵ Minjeong Kim, 'The Creative Commons and Copyright Protection in the Digital Era: Uses of Creative Common Licenses', *Journal of Computer-Mediated Communication*, 13.1 (2007) 187 <<https://doi.org/10.1111/j.1083-6101.2007.00392.x>>

²⁶ Creative Commons, 'About CC Licenses', *Creative Commons* <<https://creativecommons.org/share-your-work/ccllicenses/>>

²⁷ *Ibid.*

Section 5 and Section 7 of Government Regulation 36 of 2018. The parties involved may determine that the licensee only needs to pay the license fee or require additional with the royalty. Musicians as the licensor may submit a request for the registration of the licensing agreement to GDIP through a representative, as stated in Section 8 of Government Regulation 36 of 2018. According to Section 15 point (4) of Government Regulation 36 of 2018, the registration of the licensing agreement aims to give legal certainty and protection for the parties involved, particularly music therapists or institutions (hospitals) as the licensee or the second party. Once the licensing agreement is registered and published in the public register of licensing agreements, music therapists or the institutions are entitled to use the licensed or copyrighted songs for music therapeutic purposes within the timeframe agreed upon by the parties in the agreement. Meanwhile, the musicians are entitled to receive compensation in the form of licensing fee and/or royalty payments from music therapists or institutions (hospitals).

4) Making Royalty Payments to the National Collective Management Organization

Given that obtaining a license to use a licensed or copyrighted music is time-consuming, alternatively music therapists or hospitals may make royalty payments to the authorized party, as stipulated in the Government Regulation Number 56 of 2021 on the Management of Copyright Royalties for Songs and/or Music (hereinafter refer to as Government Regulation 56 of 2021). In Indonesia, royalty payments are made to LMKN and can be conducted either online or onsite. The royalty rates for the use of music in public has been determined and regulated by the Ministry of Law and Human Rights through the Decree of the Ministry of Law and Human Rights Number HKI.2.OT.03.01-02 of 2016, based on considerations such as international references, input from LMKN, feedback from users, as well as appropriateness and fairness.

Music therapy may be conducted in public settings, however, generally it is conducted in private and individually. Considering that the regulation concerning copyright of music and/or songs in healthcare, particularly for music therapy and in private settings has not been governed, therefore, the rate determined for music therapists and hospitals may differ from the use of music in public settings which is stated in the legislations. There are two alternatives that may be pursued by music therapists or hospitals regarding royalty payments: (1) entering into an exclusive agreement with LMKN, or (2) establishing a cooperation agreement with LMKN.

a) Exclusive Agreement with the National Collective Management Organization

Music Therapists and hospitals may enter into an exclusive agreement with LMKN regarding the royalty fees and payment timeframe. LMKN may offer music therapists or hospitals several options regarding the payment timeframe for royalties. The exclusive agreement regarding these royalty payments impacts the relationship between music therapists or hospitals with LMKN, where the relationship is limited solely to the royalty fee and payment timeframe. The use of music in music therapy strives to achieve a prosperous society by enhancing the quality of life for patients, thus serving as a matter of public interest. Music therapy sessions are generally conducted privately, either with a single person or more than three people in group sessions.²⁸ In a music therapy group session, the number of

²⁸ Kezia Karnila Putri, S.Sn., MMT, MTA, MT-BC, *Interviewed by Asahanna Metta Adhe Herlambang, Siloam Hospital Bandung.*

patients may range from 4 – 6 up to 10 – 15 people. The purpose is to build and maintain a closer, stronger connection and communication between the music therapist and each patient.²⁹ Given that music therapy sessions are generally conducted privately with a small number of patients, typically fewer than 30 people; serve the public interest; and the musical works used are not always licensed or copyrighted songs of other musicians, but may also include improvised songs or original works composed by the music therapists themselves; LMKN may determine reasonable and affordable fees for music therapists and musicians. The fees may be adjusted based on the number of songs used by music therapist, as reported or summarized at the end of the year. The total fees shall not exceed the royalty rates applied to other fields that involve public use, with participants often exceeding 50 to 100 people per usage. Royalty payments may be made after usage, specifically at the end of the year, and will be charged based on the number of songs and/or music used during that year. LMKN may offer several timeframes, which will automatically affect the amount of fees that can be charged to music therapists or hospitals, such as payments for short-term to long-term periods or annual payments.

LMKN may provide exclusive agreement regarding one-time royalty purchase, with terms ranging from a short-term period of 5 years to a long-term period of 10 years. These timeframes may refer to the patents rights period for medicines, which lasts for 20 years as stated in Article 8 paragraph (1) Law Number 14 of 2001 concerning Patents (hereinafter referred to as Patents Law). The duration of 5 to 10 years is determined based on considerations of the ongoing and evolving use of music and/or songs.

LMKN may also provide an exclusive agreement regarding annual royalty payments for a specified period of time. For instance, annual royalty payments for 5 years. This duration may ease the burden of music therapists, as the amount for each payment will be lower compared to the one-time purchase system for a specified period. The royalty annually payment system may help music therapists or health institutions, such as newly established hospitals or therapists just starting to practice, as the payment burden will be lower for each installment. This agreement may also include provisions regarding the use of musical works, allowing music therapists to modify song lyrics based on the patient's needs, without commercial distribution or claiming the song as their own creation.

b) Cooperation Agreement with the National Collective Management Organization

Music therapist or hospitals may also apply for a cooperation agreement with LMKN. The subject of the cooperation agreement between the parties may vary and is not limited to royalty payments, including the provision of music therapy sessions for LMKN's employees. The duration of the agreement may also be more flexible. For instance, the parties involved may agree to enter into a contract for 5 years, which will be automatically renewed unless otherwise agreed upon by both parties.

4. Conclusion

During music therapy sessions, music therapists can employ various types of music based on the patients' needs, including musical works that are still protected by copyright. In the United States, music therapists are allowed to use copyrighted musical works with patients either individually or in small groups, in conditions and situations similar to "family

²⁹ National Music Therapy Institute, 'A look at how music therapy sessions are conducted', *National Music Therapy Institute* <<https://www.inmt.ca/en/session-structure>>

gathering.” However, when it is conducted in large groups, the institutions providing music therapy must pay the licensing fees, either to BMI or ASCAP. Meanwhile, in Australia, music therapists may use licensed musical works without permission or a license for one-on-one music therapy sessions. However, when using sound recordings protected by copyright, therapists must obtain a license through OneMusic Australia. In Indonesia, the Copyright Law has not regulated the use of copyrighted music and/or songs for therapeutic purposes. Based on four factors test, the use of music in music therapy can be regarded as a fair use, as the primary purpose and significance of using musical works is for public health, rather than pursuing economic benefits (commercial), and does not prejudice the copyright holders’ ability to obtain economic benefits from their works. Referring to the doctrine of fair use and private use applied in the United States and Australia, music therapists in Indonesia may employ copyrighted musical works, provided that the use is neither publicized nor distributed to the public. When music therapists intend to conduct music therapy sessions publicly, in addition to using their own original songs, there are several alternatives to be undertaken, namely: (1) the use of songs that are part of the public domain; (2) the use of musical works with a Creative Commons License; (3) establishing an agreement with musicians concerning the use of the musical works; or (4) making royalty payments to the National Collective Management Organization (Lembaga Manajemen Kolektif Nasional/LMKN). In this regard, the authors recommend the Indonesia Music Therapy Association to consider the private use of music for therapeutic purpose (one-on-one) as a fair use based on the four factors test, in order to provide legal certainty for music therapists and musicians. In addition, the authors also recommend the Government to issue regulations that regards the private use of music for therapeutic purpose (one-on-one) as a fair use.

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