



## Copyright Protection Against the Act of Covering Songs on Youtube Channels in the Regulation of Intellectual Property Rights in Indonesia

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**Abstract:** This study aims to determine and describe the form of copyright protection against the act of covering songs on YouTube channels in the regulation of intellectual property rights in Indonesia. The research method used is normative juridical by examining through literature studies. The results of the research based on Article 5 and Article 9 of Law Number 28 of 2014 concerning Copyright, the creator gets legal protection related to songs uploaded by other parties through Youtube which applies anywhere regardless of the media used to announce a song. In addition, songwriters get legal protection from Youtube, namely Youtube will delete videos that violate copyright, but this is only implemented by Youtube if it has received notification of copyright infringement. The legal consequences for Youtube that continues to broadcast songs uploaded without the creator's permission is the closure of the Youtube site as a whole.

**Keywords :** Copyright Protection, Song Cover, YouTube

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## 1. Introduction

Today, the development of science and technology (science and technology), especially regarding information technology is experiencing very rapid development so that it is able to penetrate the boundaries of territorial dimensions, privacy and other matters that are closed to the public. This cannot be avoided from the tendency of every human being in today's modern era to patterns that follow technological developments so that technology becomes a culture that cannot be separated from every human life.

Current practice shows that there is nothing that can be hidden by a person or a country with specific purposes, in order to gain profit through dishonorable acts or can even harm other people or countries through creations that are protected by legal instruments. The development of science and technology has certainly been able to reveal the existence of fraud that has occurred so far against creations that have economic value. The development of science and technology referred to by the author is regarding the increasingly massive use of the internet.

The internet besides having positive benefits for humans can also have the opposite impact on other humans. The internet can facilitate the affairs of information management, data management to inform all audiences as part of supporting the sustainability of social life. There are also negative impacts from the internet and harm to society, such as in cases of data falsification, fraud, data theft, provocation to pornography, defamation to copyright piracy.<sup>1</sup>

Such conditions lead to the development of a new paradigm regarding the protection of Intellectual Property Rights (IPR). This development makes acts such as plagiarism, pirating, imitating, falsifying, mutilating a creation or recognizing it as the result of one's own creation of another person's creation (plagiarism) or the holder of a permit for said creation, is a prohibited act and can be subject to legal sanctions. This development causes all sectors of life such as the economy, law and culture to also need to race against time to catch up in the era of global competition which is now increasingly discriminatory, comparative and competitive.<sup>2</sup>

Intellectual Property Rights first appeared in Venice (Italy) in 1470 and related to patents then were adopted by the British Empire in the 1500s and began to be adopted by many countries in the world and harmonization was first carried out in 1883 with birth of *the Paris Convention* on patents, trademarks and designs.<sup>3</sup>

Substantively, the notion of IPR can be interpreted as a right to property that arises or is born due to human intellectual abilities. IPR is categorized as a right to property considering that IPR ultimately produces intellectual works in the form of;

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<sup>1</sup> WIDODO, "Hukum pidana di bidang teknologi informasi: telaah teoritik dan bedah kasus" (Aswaja Pressindo, 2013).

<sup>2</sup> Abdul Gani Abdullah, "Laporan Tim Naskah Akademik Rancangan Undang Undang Tentang Cipta (Perubahan UU No. 19 tahun 2002)," *Departemen Hukum HAM RI Badan Pembinaan Hukum Nasional, Jakarta, 2008.*

<sup>3</sup> Nurachmad Much, "Segala Tentang HAKI Indonesia (Buku Pintar Memahami Aturan HAKI Kita) Cetakan Pertama," *Penerbit Buku Biru. Yogyakarta, 2012.*

knowledge, art, literature, technology, which in realizing it requires sacrifice of energy, time, money, and thought. The existence of these sacrifices makes the intellectual work to have value. When coupled with the economic benefits that can be enjoyed, the inherent economic value fosters a conception of property for intellectual works.<sup>4</sup>

In the digital era, all community activities can be carried out online via the internet network. Various social media that use the internet network have even become a means of promotion and trade. Even though it has a positive impact on the country's economic growth, in fact the existence of the digital world can be detrimental to several sectors, for example, related to copyright.

In practice, according to Gunawan Suryomurcito, copyright issues<sup>5</sup> are explained that today's digital technology developments inevitably have an impact on the digitization of Copyright content and Related Rights products which are disseminated through *Over The Top media* without the knowledge or approval of the Author or Copyright Holder. Dissemination either directly or indirectly brings financial benefits to the perpetrators, on the other hand it is detrimental to the Author or Copyright Holder. It was further explained that copyright infringement through the *Over The Top media* requires effective legal action.

One of the acts of infringement that can harm the creator with regard to copyright is the act of covering songs. The act of covering a song is an act of singing back someone else's song. There is no limit to songs sung again, across musical genres, also including singers, both solo and duets, groups and bands. Not only singing back, but performing cover songs for output in the form of new recordings released in audio and video form.<sup>6</sup> Covers of these songs are usually published on social media, more often the platforms used are YouTube.

In general, the act of re-singing the original singer's song is a form of appreciation to the owner of the song and is not meant to be a rival. However, when this action is actually intended as a job and intends to benefit from the song being sung after it has been uploaded to social media or often referred to as monetization, it becomes something that should be categorized as a violation of the law.

The songwriter essentially has exclusive rights when creating a work. This relates to copyright within the IPR framework. Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions.<sup>7</sup>

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<sup>4</sup> Budi Agus Riswandi dan Muhammad Syamsudin, "Hak kekayaan intelektual dan budaya hukum," *Language* 10, no. 218p (2004): 22cm.

<sup>5</sup> "Perlindungan Hukum Terhadap Pelanggaran Hak Cipta Daring Belum Efektif," diakses 4 Mei 2023, <https://www.hukumonline.com/berita/a/perlindungan-hukum-terhadap-pelanggaran-hak-cipta-daring-belum-efektif-lt62b9c07a6478a>.

<sup>6</sup> "Aturan Cover Lagu di YouTube Agar Tak Langgar Hak Cipta," diakses 4 Mei 2023, <https://tirto.id/aturan-cover-lagu-di-youtube-agar-tak-langgar-hak-cipta-f3Xh>.

<sup>7</sup> "Pasal 1 angka1 UU Hak Cipta.," t.t., 1.

Meanwhile, what is meant by exclusive rights are rights that are only intended for the Author so that no other party can take advantage of these rights without the Author's permission.<sup>8</sup> Thus, when a songwriter as the holder of the exclusive rights has objections to the action of covering a song carried out by another party with the aim of monetization, the songwriter can file a lawsuit both criminally and civilly when his rights as the holder of the exclusive rights are impaired.

One example of a song cover case that has become a national problem is the case of a song cover by Zinidin Zidan and Tri Suaka who are well-known for covering songs they performed. Both were subpoenaed by various parties including being asked to pay royalties by the Indonesian Minang Artist Communication Forum (FORKAMI). Zinidin Zidan and Tri Suaka were also asked to pay royalties by Erwin Agam as the composer of the song Emas Hantaran, as well as a band from Jogja Ngatmombilung because Zinidin Zidan and Tri Suaka covered the band's song without permission.

In Copyright itself attached exclusive rights consisting of moral rights and economic rights. Specifically regarding economic rights, Article 9 of Law Number 28 of 2014 Concerning Copyright qualifies that these economic rights consist of publishing Works; reproduction of Works in all its forms; translation of Works; adaptation, arrangement, or transformation of Works; Distribution of Works or copies thereof; Creation Show; Announcement of Creation; Creation Communication; to Hire of Creations.<sup>9</sup>

From these provisions, the act of *covering* songs that are carried out by adapting or arranging other people's songs with the aim of monetization is a form of violation of copyright in a song. Thus the act of covering a song can be considered as an act of violating Copyright if the cover of the song is done by commercialization so as to gain economic benefits.

The copyright of songs and creators is of course a very important thing for intellectual workers in this field of art. Song copyright is the exclusive right of the Author that arises automatically based on the declarative principle after a song can be heard. Song copyrights are born automatically not when the song is finished being recorded, but song copyrights are born automatically when the song can be heard, as evidenced by the presence of musical notation and/or without lyrics.<sup>10</sup>

## 2. Research Method

The research method in this paper uses normative legal research which means researching law from an internal perspective with the object of research being legal norms. Writing in this study uses a statutory approach in which this study examines

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<sup>8</sup> "Pasal 4 UU Hak Cipta," t.t.

<sup>9</sup> Putri Kaliandra Hermawan, Miranda Risang Ayu, dan Muhammad Amirulloh, "Pelindungan Hukum Hak Cipta Atas Lagu Dan/Atau Musik Yang Berkaitan Dengan Kover Lagu (Song's Cover) Dalam Situs Youtube Berdasarkan Hukum Positif Terkait," *Jurnal Sains Sosio Humaniora* 6, no. 1 (2022): 956–70.

<sup>10</sup> Whendy Pratama Hutagalug, "TINJAUAN YURIDIS ASPEK HAK MORAL TERHADAP COVER VERSION LAGU PADA PLATFORM YOUTUBE (Studi Kasus Mahkamah Agung putusan Nomor 910 K/Pdt. Sus-HKI/2020)" (Hukum, 2022).

the provisions of the law or other library materials. This research is descriptive in nature by analyzing how copyright protection for song cover actions on the YouTube *channel* is in the regulation of intellectual property rights in Indonesia. The materials used in this study are primary legal materials and secondary legal materials. Based on primary law, namely UUNRI Number 28 of 2014 Concerning Copyright, then on secondary legal material, namely using library materials (literature) related to Copyright.

### **3. Legal protection for creators for the act of uploading songs by other parties via Youtube**

Legal protection is an action taken to protect a person's right to achieve justice based on applicable law in a preventive or repressive manner. Legal protection of intellectual property rights is necessary because intellectual property rights are existences rather than rights born because of human intellectual creativity which is embodied in a real work.<sup>11</sup>

Where in creating a work the creator has sacrificed his time, cost, effort and mind, if protection is not given to the work it will facilitate imitation by other parties freely which of course is detrimental to the creators. Legal protection for intellectual property rights is an award for someone who has put his idea into a work.

Legal protection for intellectual property rights, especially copyright for songwriters, has been regulated in Law Number 28 of 2014 concerning Copyright. The law recognizes that copyright has existed automatically since the work was completed. That is, after the creation has been completed, it is realized in a real form or material form according to the wishes of the creator. So that legal protection for creators of their creations has been obtained since the creation has been realized in a tangible form.<sup>12</sup>

Copyright does not require the work to be registered, but if registration is done then this will be better, because registration will provide formal proof of ownership of the copyright. Copyright is an exclusive right in the form of moral rights and economic rights owned by the creator, which means that no one else can use these rights without the consent of the creator or copyright holder. These moral rights and economic rights are protected by Law Number 28 of 2014 concerning Copyright.<sup>13</sup>

Moral rights are a reflection of the creator's personality, while economic rights are a reflection of the creator's needs. Moral rights are rights that are eternally attached to the creator and cannot be removed or separated, only the creator can exercise these moral rights unless the creator asks someone else to do so. Moral rights apply eternally

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<sup>11</sup> Anak Agung Mirah Satria Dewi dan Anak Agung Mirah, "Perlindungan Hukum Hak Cipta Terhadap Cover Version Lagu Di Youtube," *Jurnal Magister Hukum Udayana* 6, no. 4 (2017): 508–20.

<sup>12</sup> Mahmuda Pancawisma Febriharini, "Eksistensi hak atas kekayaan intelektual terhadap hukum siber," *Serat Acitya* 5, no. 1 (2016): 15.

<sup>13</sup> Habi Kusno, "Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 3 (2016).



meaning that even though the creators have passed away, these moral rights must still be recognized and respected by everyone.<sup>14</sup> Moral rights based on Article 5 paragraph (1) of Law Number 28 of 2014 concerning Copyright consist of:

- a. Keep including or not including his name on a copy of his work for general use,
- b. Using a fake name or pseudonym,
- c. Changing his creations to suit the order in society,
- d. Make changes to the title of his work,
- e. Defending what is rightfully his when there is deviation, changes to his creation that are detrimental to the creator

Economic rights in accordance with Article 8 are rights to obtain economic benefits from works that have been created. The validity period of this economic right is for the life of the creator and can be extended 70 years after the creator dies. Economic rights are a form of appreciation for works that have been created by creators that can be enjoyed by the public. The economic rights that copyright holders can exercise in accordance with Article 9 paragraph (1) on their creations are :

- a. publish,
- b. reproduce,
- c. translate,
- d. Adapt, arrange,
- e. share,
- f. Show,
- g. Announce,
- h. Communicate, and
- i. Rent.

To use the economic rights of the copyright holder or creator in accordance with Article 9 paragraph (2) of Law Number 28 of 2014 concerning Copyright, it requires permission from the creator, and when it is used for commercial purposes other than requiring permission, the user is required to provide royalties or compensation to creator, in accordance with Article 80 paragraph (3) of Law Number 28 of 2014 concerning Copyright and the amount of royalties is regulated in accordance with the license agreement made, and of course the distribution of these royalties must be in accordance with the element of justice.

Copyright based on Article 16 paragraph (2) of Law Number 28 of 2014 concerning Copyright can be transferred or transferred either in whole or in part due to inheritance, grants, endowments, wills, written agreements or other reasons in accordance with the provisions of laws and regulations. As a result of this copyright transfer, other parties who are determined as copyright holders can exercise the exclusive rights owned by the creator. The act of uploading a song on the YouTube site is called an announcement. Actions that are included in the announcement of a work are reading, broadcasting, exhibiting, selling, and distributing a work. This

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<sup>14</sup> Made Reditiya Abhi Pawitram, Ni Ketut Supasti Dharmawan, dan A. K. S. Indrawati, "Pengaturan Lembaga Manajemen Kolektif berkaitan dengan Penarikan Royalti Berdasarkan Undang-Undang NO 28 Tahun 2014 Tentang Hak Cipta," *Jurnal Ilmiah Hukum Kertha Semaya* 5 (2017).

announcement can be made with any device or media, including via the internet such as YouTube so that the work can be seen, heard or read by other people.<sup>15</sup>

So that when someone uploads a song video via Youtube without the permission of the creator, either with non-commercial or commercial purposes, it is a copyright infringement. The act of announcing a song that is said not to violate copyright is when the uploaded song is the national anthem according to its original nature or has not been changed. For the actions of this uploader, the creator can file a civil lawsuit in the form of a lawsuit for compensation and criminal charges. This is in accordance with Article 96 paragraph (1) of Law Number 28 of 2014 concerning Copyright where creators who feel their economic rights have been harmed are entitled to compensation.

A civil lawsuit in the form of a claim for compensation was filed by the creator to the Commercial Court, this is in accordance with Article 100 paragraph (1) of Law Number 28 of 2014 concerning Copyright. Compensation that can be demanded from copyright infringers based on Article 99 paragraph (2) of Law Number 28 of 2014 concerning Copyright is in the form of a request to provide the income earned to the creator either in part or in whole. In addition to claims for compensation under Article 99 paragraph (3) of Law Number 28 of 2014 concerning Copyright, copyright holders can request a request to confiscate the work produced, and a request to stop the announcement, duplication or distribution of the work produced. known as an interlocutory decision. And in accordance with Article 105 of Law Number 28 of 2014 concerning Copyright, creators can also be prosecuted criminally. If the uploader uploads a video via Youtube without the permission of the creator for commercial purposes, he may be subject to criminal sanctions in accordance with Article 113 paragraph (3) of Law Number 28 of 2014 concerning Copyright, namely imprisonment for a maximum period of 3 years and / or a fine with a maximum amount of IDR 500,000,000.00 (five hundred million rupiah).<sup>16</sup>

Apart from Law Number 28 of 2014 concerning Copyright, legal protection for songwriters for their songs uploaded on Youtube also receives protection from the Youtube site. Legal protection for creators provided by Youtube is regulated in Youtube's policy regarding copyright which can be viewed on the Youtube site itself. However, the legal protection provided by Youtube is still weak.

In Youtube's policy to protect the rights owned by the creator, Youtube regulates when uploading works that are bound by copyright such as songs so that they don't infringe on copyright, they can be uploaded by the creator himself and if another party wants to upload a video song, they must have permission from creators, but this provision does not become a barrier for uploaders because when a Youtube user

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<sup>15</sup> Otto Hasibuan, "Hak Cipta di Indonesia Tinjauan Khusus Hak Cipta Lagu," *Neighbouring Rights, Dan Collecting Society, Bandung: PT Alumni*, 2008.

<sup>16</sup> Ni Ketut Supasti Dharmawan, "Buku Ajar Hak Kekayaan Intelektual (HKI), cet. II," *Deepublish, Yogyakarta*, 2017.

uploads someone else's song, the video for the song can still be uploaded without the requirement to prove as the creator or having obtained permission from the creator.

In addition, to protect copyright, Youtube also regulates assistance and troubleshooting when copyright infringement occurs. The assistance provided is that Youtube will delete videos uploaded without the permission of the creator or have violated copyright. However, this will only be done by Youtube when Youtube receives a notification of copyright infringement.

This notification is sent by the copyright holder by filling out the form provided on the Youtube website. This resulted in weak legal protection for creators on the YouTube site, because if there is no reporting and evidence from the copyright holder, videos that violate copyright will still be seen and heard by Youtube users.

#### **4. Legal Implications For Youtube Broadcasting Uploaded Songs Without The Creator's Permission.**

YouTube in the current era of the creative industry is starting to be loved by many groups, YouTube is a medium that can be used to get income which is given based on the number of viewers for each video that is commercialized. Uploading video songs to the Youtube site without permission from the creator is a violation of the economic rights of the creator. Youtube as a means of providing information in the form of videos should act more decisively in making rules for uploading a video so as not to violate copyright.<sup>17</sup>

Violations related to copyright on the YouTube site are very common, both with commercial and non-commercial purposes. This makes artists or creators of copyrighted works, especially in the field of cinematography, experience anxiety, because in creating works the creators have sacrificed time, ideas and thoughts in order to create a work that can be enjoyed.

The responsibility given by Youtube is related to copyright infringement that occurs on its platform, namely, YouTube provides protection in the form of protection by disabling and immediately deleting videos that violate copyright from irresponsible parties, but this will be done when there is complaints from parties who feel disadvantaged because of these actions. Youtube also cooperates with government policy makers, industry representatives and creators of copyrighted works to protect intellectual property and individual expression.<sup>18</sup>

YouTube complies with notifications of copyright infringement under the Digital Millennium Copyright Act (DMCA) and in line with the notification and takedown provisions in applicable national laws, The action of removing a video for copyright

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<sup>17</sup> Gusti Agung Putri Krisya Dewi dan I. Wayan Novy Purwanto, "Pelaksanaan Hukum Terhadap Pelanggaran Hak Cipta Di Bidang Pemajakan Sinematografi (Film/Video)," *Fakultas Hukum Universitas Udayana*, 2018.

<sup>18</sup> Ayup Suran Ningsih dan Balqis Hedyati Maharani, "Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring," *Jurnal Meta-Yuridis* 2, no. 1 (2019).



infringement is a legal and formal right granted by YouTube in the event of a violations related to videos that violate copyright.

In addition, Youtube has also provided education related to copyright, such as providing an introduction to the public about what copyright is, how to manage copyright, directing copyright permissions, etc. That is the responsibility that can be given by Youtube regarding videos that violate copyright. Law Number 28 of 2014 Regarding Copyright also regulates legal consequences for sites that trigger copyright infringement. YouTube may be boycotted or completely blocked if the YouTube site itself has been reported by parties who feel aggrieved in the field of copyright.<sup>19</sup>

Currently anyone can upload a video to the YouTube site and any video can be uploaded even if it turns out to be copyright infringement. This is of course very detrimental to the creator. Broadcasting of video songs uploaded without the permission of the creator by the YouTube site can result in the YouTube site being closed in its entirety so that no one can access this in accordance with Article 54 and Article 55 of Law Number 28 of 2014 concerning Copyright.

Based on Article 54 of Law Number 28 of 2014 concerning Copyright to prevent copyright infringement through internet media, the government has the authority to:

- a. Supervise the creation and distribution of copyrighted content,
- b. Collaborate with various parties both from within and outside the country and,
- c. Supervision of the act of recording with any media on works.

And based on Article 55 of Law Number 28 of 2014 concerning Copyright, anyone who is aware of a copyright infringement through the electronic system for commercial use can report it to the Minister who administers government affairs in the telecommunications and informatics sector. Reports received will be checked.

Commercial use here means direct (paid) commercial use as well as the provision of free content services that obtain economic benefits from those who benefit from the use of copyrights. When sufficient evidence is found, the Minister in charge of government affairs in the telecommunications and informatics sector may close the Youtube site as a whole so that it cannot be accessed by anyone.<sup>20</sup>

## 5. Conclusion

Legal protection for Intellectual Property Rights, especially for songwriters, has been regulated in Law Number 28 of 2014 concerning Copyright, namely in Article 5 and Article 9. Legal protection for songwriters applies wherever it does not depend on the media used to announce a song, including via the Youtube site. In addition, songwriters get legal protection from Youtube, namely Youtube will delete videos that

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<sup>19</sup> Muhammad Rafa Abimanyu, "SPERLINDUNGAN HUKUM KARYA MUSIK TERHADAP PENGCOVERAN YANG DIUNGGAH KE YOUTUBE" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, t.t.).

<sup>20</sup> P. Dina Amanda Swari dan I. Made Subawa, "Perlindungan Hukum Lagu Yang Diunggah Tanpa Izin Pencipta Di Situs Youtube," *Kerta Semaya: Journal Ilmu Hukum* 6, no. 10 (2018): 1–15.

violate copyright, but this is only implemented by Youtube when it has received notification of copyright infringement.

Therefore, the implications that arise as a result of broadcasting songs uploaded without the creator's permission by Youtube based on Article 54 and Article 55 of Law Number 28 of 2014 concerning Copyright can result in the complete closure of the Youtube site by the Minister who carries out government affairs in the field of telecommunication and informatics.

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