

Analysis of Content Actions of Creators Who Cover Songs on The Youtube Platform Reviewed from Law Number 28 of 2014 Concerning Copyright

¹M. Akbar, ²Risky Amelia

¹Faculty Of Law, Pamulang University

²Lecturer at the Faculty of Law , Pamulang University

E-mail : dosen010037@unpam.ac.id

Abstrak

In this study entitled Analysis of the Actions of Content Creators Covering Songs on the Youtube Platform in Review from the point of view of Law Number 28 of 2014 Regarding Copyright. In this research, there is a royalty arrangement related to covering songs, where every activity related to covering songs must have permission to cover songs to other parties, especially songwriters or song owners themselves. The goal and purpose of this research is for Content Creators to understand how important a licence is for the act of covering songs. In doing song cover activities, the content creator sings the song again by imitating the original singer or another word known as covering the song, there are also content creators singing with their own distinctive voices. Where in this research method using normative research which in this research is carried out by examining the legislation that has been established.

Keywords: Song Cover, Legal protection, Copyright.

INTRODUCTION

1.1 BACKGROUND

A person usually has a thought pattern ability that they can develop as a result of what they have thought, this thought pattern is produced in various forms in everyday life which aims to help support everyday life. A person is born with a mind that is used for the ability to think creatively in creating works, art, knowledge and technology. Where every person's development requires a very long process to give birth to a right for someone who creates a property or what is better known as copyright (copy rights).¹ The word "Creation" refers to a literary creation, drama creation, music or song creation, or artistic creation. A person has the right to create their work which they can share on several social media networks such as Instagram, YouTube, Websites and etc. based on the mindset they think and develop for their work.

Intellectual property is creativity resulting from human thought in order to fulfill the needs and welfare of human life. Creative work and art have other words in English, namely Art and Literarywork, which can influence a person's life when the results of a person's creativity are used commercially.² So the idea or notion of a special appreciation for someone's intellectual work emerged. Intellectual Property Rights are a form of appreciation for the creativity produced by someone, whether in the form of inventions or in the form of creative works and art produced. Intellectual Property Rights have undergone changes to "KI" where this provision has been regulated in Article 25 Part Seven of the Presidential Regulation of the Republic of Indonesia Number 44 of 2015 concerning the Ministry of Law and Human Rights Paragraph 1 "The Directorate General of Intellectual Property is under and responsible to the Minister", in this article the term "Directorate General of Intellectual Property" is used, not "Directorate General of Intellectual Property Rights". In this case,

¹ I Gusti Putu Agung Angga Aditya, et al. "Protection of Related Rights in Relation to Cover Versions of Songs Based on the Copyright Law". Udayana University Faculty of Law, p. 2.

² Sudaryat, Sudjana, and Rika Ratna Permata. (2010). Intellectual Property Rights: Understanding Basic Principles, Scope, and Applicable Laws. Bandung: Oasis Media, p. 21.

KI has an object in the form of copyright protection which is science, art and literature. Copyright is a work of song or music creation. In this era of development, science and technology have an important role for someone to improve their economy.

In everyday life, songs and music have the opportunity to be heard and disseminated through information and technology media in the form of TV, radio and smartphones which have developed with the YouTube application. The use of songs and music has been accompanied by economic activities, one of which is purchasing a song on one of the YouTube platforms, one of which is the YouTube paid platform where someone who has creativity is required to always be creative in order to attract someone's attention so that someone will later be interested. and join YouTube's paid application program with someone who has creative results. Songs and music have both positive and negative impacts on technological development.

The positive impact is that people are entertained and enjoy music from the work produced by someone, and it also makes it easier for creators to promote their works. Meanwhile, negative impacts include violations of works in the form of piracy and covers of songs or videos uploaded to the YouTube platform by someone repeatedly or periodically and not from the person who owns the work of art itself. One case of copyright infringement is in the form of plotting which is carried out repeatedly and periodically by a second party and not by the first party who produces and produces an original work as well as the use of a song that has been patented by the first party and is used and recognized by second party, the YouTube platform will automatically detect any copyright violations committed by the second party and so on.³

In this case, many content creators carry out activities to disseminate songs or music without permission from the party who wrote the song, so that the song creator does not receive royalty payments. It is stated in article 40

³ Anak Agung Mirah Satria Dewi, (2017), "Copyright Legal Protection of Cover Versions of Songs on YouTube", Udayana Law Masters Journal, Vol. 6, no. 4, p. 509- 511.

paragraph (1) letter D that songs and/or music with or without text are copyright protected.

Copyright is regulated in Law Number 28 of 2014 concerning Copyright. According to Article 1 number 1 of Law no. 28 of 2014 concerning Copyright, copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with statutory provisions. Copyright has two types, namely Moral Rights and Economic Rights, where normal rights are contained in Article 5 paragraph (1) of Law no. 28 of 2014 concerning Copyright.

In committing copyright infringement, someone usually includes or at least the name of the creator on the cover of the song that someone distributes.⁴ In general, it is a violation of copyright that someone uses a pseudonym to disseminate their work to the public, which will result in a modification of the copyright, which is detrimental to the creator. According to the provisions regulated in Article 8 of Law no. 28 of 2014 concerning Copyright, where there is a connection with economic activities in the form of publishing, procurement, arrangement, transformation, distribution, and broadcasting in the creation.

Nowadays, many people become content creators to create their own creations, but many content creators still cover other people's songs without permission and upload them to several platforms, one of which is YouTube. Where song covering activities are made in various types, some are simple and some are made professionally. The meaning of the word cover a song can be interpreted as re-singing a song from a famous artist or singer and not changing the lyrics and original song. Copyright protection covers expression and not ideas or information resulting from a work. Usually, problems arise when covering songs are made commercially, which can give rise to disputes regarding copyright infringement from the party who has the rights to the work.

⁴ Rahmi Jened. (2014). Copyright Law (Copyright's Law). Bandung: PT Citra Aditya Bakti, p. 215.

FORMULATION OF THE PROBLEM

Based on what has been described previously, there are several problem formulations, namely :

1. What are the procedures for processing licensing for song covers in terms of Law Number 28 of 2014 concerning Copyright?
2. How are royalties regulated for song covers in terms of Law Number 28 of 2014 concerning Copyright?

METHOD

The research method used is the normative legal research method, namely a research method that emphasizes secondary data and secondary materials in the form of all publications about law. Publications about law include textbooks, legal dictionaries, and legal journals. Researchers in preparing their research first refer to secondary materials in the form of legal writings in the form of books and journal articles. So by first referring to these materials, researchers can find out the latest developments in the targets to be studied.

RESEARCH RESULTS AND DISCUSSION

1. Legal Protection for Song/Music Owners Regarding Song Cover Uploads

The scope of legal protection in Law no. 28 of 2014 concerning Copyright has been regulated in article 40, namely Creations in the fields of science, art and literature, consisting of :

- a. Books, pamphlets, published forms of written work, and all other written works;
- b. Lectures, lectures, speeches, and other similar Creations;
- c. Teaching aids made for educational and scientific purposes;
- d. Songs and/or music with or without text;

- e. Drama, musical drama, dance, choreography, puppetry and pantomime;
- f. Works of fine art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collage;
- g. Works of applied art;
- h. Architectural works;
- i. Map;
- j. Batik artwork or other motif arts;
- k. Photographic works;
- l. Portrait;
- m. Cinematographic work;
- n. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from transformation;
- o. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. Compilation of works or data, either in a format that can be read by computer programs or other media;
- q. The compilation of traditional cultural expressions during the compilation is an original work;
- r. Video games; And
- s. Computer program.

Legal protection is an action with the aim of protecting a person's rights in order to achieve justice based on positive law. Legal protection for copyright owned by the owner of the original song is very necessary, because if protection is not provided the work can be misused by parties which could cause losses to the owner of the original song. So the song must have permission to cover the song. How to cover songs according to the rules is very important for all parties to know so that they don't experience legal problems.⁵ It is stated in article 40 paragraph (1) letter D that songs and/or music with or without text are copyright

⁵Soerjono Soekanto, (1984), Introduction to Legal Research, Jakarta: UI Press, p. 133.

protected. This work is protected as a separate work without prejudice to the Copyright of the original work. Protection as intended, includes protection of works that are not or have not yet been announced but have been realized in a tangible form that allows duplication of the work.⁶

However, if the cover of the song is done without any arrangements or other transformations, then a license from the original copyright holder is required. Furthermore, in the music industry, from the point of view of copyright protection, a distinction is made between music/song compositions and sound recordings. A musical composition consists of music, including poetry/lyrics. A musical composition can be a copy of the notation or a preliminary recording (phonorecord) on a cassette tape or CD. The composer/songwriter is considered the creator of a musical composition. Meanwhile, sound recording is the result of perfecting a series of sounds originating from music, human voices and/or other sounds. Considered as the creator of a sound recording is the actor/performer (in the case of a performance) and/or the recording producer (record producer) who has processed the sounds and perfected them into a final recording. So that copyright in a sound recording cannot be equated with, or cannot replace copyright in the musical composition on which the sound recording is based.

For cover songs that were created without rearranging for commercial purposes, simply including the name of the original singer on the cover work is certainly not enough to avoid legal action from the copyright holder. In order not to infringe other people's copyrights, to reproduce, record, distribute and/or publish a song belonging to someone else, especially for commercial purposes, someone needs to obtain a license. Licenses can generally be interpreted as granting permission, this is included in an agreement. License from the creator/copyright holder as follows :

⁶Article 40 paragraph (2) and paragraph (3) of Law no. 28 of 2014 concerning Copyright.

- 1) License for Mechanical Rights, namely the right to reproduce, reproduce (including rearranging) and record a musical composition/song on CD, cassette and other recording media; and or
- 2) Performing rights, namely the right to announce a song/musical composition, including singing, playing, whether in the form of a recording or performed live, via radio and television, including via other media such as the internet, live concerts and programmed music services.

And regarding the protection of the rights of songwriters whose songs are made into cover versions and commercialized, there needs to be effective protection and law enforcement. To obtain registration of creations at the Ministry of Law and Human Rights of the Republic of Indonesia, applicants can submit applications using three alternatives, namely :

- a) Through the Directorate General of Intellectual Property Rights (Ditjen IPR).
- b) Through the Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia.
- c) Through a registered IPR Consultant Legal Attorney

Legal protection for song owners is regulated based on Law Number 28 of 2014 concerning Copyright. Copyright is a real form, where the creation has been completed according to the creator's needs. Copyright is a right that is attached to the rights owner, which is usually known as exclusive rights. Exclusive rights are rights where only the right owner is free to copyright his work, while other people are prohibited without permission from the copyright owner.⁷ Exclusive rights such as moral rights and economic rights. An explanation of each right is as follows :

1. Moral Rights

Moral Rights are rights that exist in the owner of the rights eternally, which cannot be shared or relinquished except at the will of the creator. Eternity is defined as rights that are still owned by the creator even though the creator has died, the work created must be respected, which is stated in

⁷Anak Agung Mirah Satria Dewi. (2017). "Copyright Legal Protection for Cover Versions of Songs on YouTube". Udayana Master of Law Law Journal. Vol. 6, no. 4, p. 515.

Article 5 paragraph (1) of Law Number 28 of 2014. Moral rights as intended in Article 4 are rights that are eternally inherent in the creator to :

- a. Continue to include or not include his name on the copy in connection with the public use of his work;
- b. Using an alias or pseudonym;
- c. Changing his Creation according to appropriateness in society;
- d. Changing the title and sub-title of the Work; And
- e. Defend their rights in the event of distortion of the Work, mutilation of the Work, modification of the Work, or anything that is detrimental to their personal honor or reputation.

2. Economic Rights

Economic rights are the right to obtain economic benefits and also gain profits with a certain nominal amount of money from works that have been published. The difference between economic rights and moral rights is that moral rights are eternal while economic rights have a period of 70 (seventy years) after the creator dies. According to article 9 paragraph (1) of Law 28 of 2014 which reads "Creators or Copyright Holders as intended in Article 8 have the economic right to carry out :

- a. Creation Publishing;
- b. Multiplication of Creation in all its forms;
- c. Translation of Creations;
- d. Adapting, arranging, transforming creations;
- e. Distribution of the Work or copies thereof;
- f. Creation Show;
- g. Creation Announcement;
- h. Creation Communications; And
- i. Creation Leasing".

Economic rights owned by creators such as announcing, publishing, sharing, showing and so on. According to article 9 paragraph (2) of Law Number 28 of 2014 which states "Every person who exercises economic rights as referred to in paragraph (1) must obtain permission from the

Creator or Copyright Holder". So you need permission from the creator to cover a song if it is used commercially. And must provide royalties in accordance with the license agreement to the creator in accordance with Article 80 paragraph (3) UUHC.⁸

2. Ways to get permission to cover songs :

- a. Ask permission from the owner of the original song.

What the party covering the song must do is ask permission from the song's creator. So that covering songs does not violate the law and complies with predetermined rules. Usually, you ask permission from the songwriter by contacting him and a second party, namely the record label, because it has the rights to a song that will be uploaded. Because, if the songwriter dies, the record label could be an option to obtain official permission and comply with predetermined rules.

- b. Ask for permission via E-mail in a kind and polite manner.

Apart from contacting the person, we also have to ask for permission via e-mail. When requesting permission via e-mail, we must behave well and politely, so that the composer of the song responds well and politely too. For example, in sending the main content of the proposal until the end contains a good and correct permit request. The aim is to obtain good quality permits and obtain profits if the party covering the song uploads it. So the party requesting permission also needs to state other benefits related to royalties related to the quality obtained from each uploaded video.

- c. Song Cover Agreement

In song covering activities, of course there is an agreement that must be fulfilled by someone who wants to carry out song covering activities, where the agreement itself is made by the owner of the song or the person who has created the song. One of the agreements contains a royalty

⁸P. Dina Amanda Swari and I Made Subawa. "Legal Protection of Songs Uploaded Without the Author's Permission on the YouTube Site". Udayana University Faculty of Law, p. 7-9.

arrangement between the owner or creator of the song and someone who cover songs. By having an agreement in the agreement, such as changing the tune or lyrics of the song you want to sing, this is done with the aim of ensuring that no party suffers a loss and also that each party can benefit from each other. The next agreement can also be related to a binding agreement, this can be strong evidence if legal problems arise later. This permission will usually be processed after someone who wants to cover a song receives a reply via email, telephone or other media. This is done so that the agreement between both parties is binding on each other which is outlined in the agreement accompanied by a stamp of 10 thousand, and several signatures from several witnesses and if necessary, the agreement can be executed in the presence of a notary.

3. Royalty Settings for Covering Songs

In Intellectual Property Rights there are rules and laws regarding copyright. Intellectual Property Rights Law regulates the rights of a work based on human thinking regarding moral and economic rights.⁹

Copyright in Indonesia is regulated in Law Number 28 of 2014 concerning Copyright. Authenticity criteria have also been regulated in Law Number 28 of 2014 concerning Copyright Article 1 Paragraph (3) states that "Creations are the result of creative works in the fields of science, art and literature which are produced based on inspiration, ability, thoughts, imagination, intelligence. skills or expertise expressed in real form".

The criteria for the authenticity of a work become a benchmark for whether the work is truly the original work of the creator. Song creators are created to provide entertainment for the public so that songwriters must receive compensation or royalties, because it concerns the executive affairs of the songwriter. And if this exclusive right is not exercised then copyright

⁹Suyud Margono, 2010, Indonesian Copyright Law Theory and Analysis of Harmonization of the Provisions of the World Trade Organization/WTOTRIPS Agreement, Ghalia Indonesia : Bogor, p. 35.

infringement will occur. The exclusive right owned by the creator is the right to make copies of previous works, so that copies of the work can be resold. Song creators can also market their creations to the public and can sell or transfer the rights to other people. This right is where only the original creator can use it.

Royalties on mechanical rights received are paid by the party reproducing or recording directly to the rights holder (usually the music publishing company (publisher) representing the composer/songwriter). Meanwhile, royalty collection for the granting of performing rights in Indonesia is carried out by the Collective Management Institute (LMK) based on an agreement between the creator and the institution. WAMI (Indonesian Music Forum) and YKCI (Indonesian Karya Cipta Foundation) are two of several LMKs in Indonesia that are currently active in collecting and distributing royalties from the use of performing rights to be passed on to composers/songwriters and publishers.

Based on Article 1 Paragraph 21 of Law Number 28 of 2014 concerning Copyright, Royalty is compensation for the use of the economic rights of a creation related to the rights received by the creator. Meanwhile, according to Article 40 Number 1 Letter d of Law Number 28 of 2014 concerning Copyright, there is legal protection for songwriters who have created songs that are the result of human intellectual work. Thus, songwriters have economic rights to use their work in commercial activities. So, other parties who want to cover the song for commercial purposes must ask permission from the song holder. And other parties who cover the song must pay royalties to the composer of the song because of the economic rights obtained by the composer by licensing his work for commercial purposes.

When covering songs commercially, there is no violation of copyright as long as it fulfills obligations based on the agreement with the collective management institution to pay royalties based on article 87 paragraph (4) of Law Number 28 of 2014 which reads "It is not considered

a violation of this Law, commercial use of creations and/or related rights products by users as long as the user has carried out and fulfilled obligations in accordance with the collective management institution agreement." Royalty provisions are not mentioned in the Copyright Law, but are explained in the licensing agreement between the song cover and the song creator. The party covering the song must pay royalties to the songwriter.

CLOSING

Conclusion

In this research, there is legal protection for songwriters as regulated in Law no. 28 of 2014 concerning Copyright, Copyright is a real form that has completed its existence and is Copyright owned by the owner of the song and if consumer protection is not provided, it can be misused by other parties so that it can cause losses to the owner of the original song. Therefore, when covering songs, you must have permission according to existing regulations and be known to all parties so that you do not experience legal problems.

According to Law No. 28 of 2014 concerning copyright, copyright is a right owned by the rights owner, which is usually called exclusive rights. Exclusive rights are rights that are owned only by the owner so that the song owner is free to copyright his work, so that other people cannot cover the song without permission from the Copyright owner. However, if someone wants to cover a song from the original owner, they should first ask permission from the original owner of the song. And the royalty regulations for covering songs are contained in article 1 paragraph (21) of Law no. 28 of 2014 concerning Copyright, royalties are compensation for the use of the economic rights of a work related to the rights received by the creator.

Suggestion

Regarding copyright violations, YouTube should act more firmly regarding sanctions and requirements for uploading videos so that content that contains copyright violations does not occur.

BIBLIOGRAPHY

BOOK

- Dharmawan, N.K.S. (2016). *Hak Kekayaan Intelektual*. Yogyakarta: Deepublish.
- Jened, R. (2014). *Hukum Hak Cipta (Copyright's Law)*. Bandung: PT Citra Aditya Bakti.
- Margon, S. (2010). *Hukum Hak Cipta Indonesia Teori Dan Analisis Harmonisasi Ketentuan World Trade Organization/WTOTRIPS Agreement*. Bogor: Ghalia Indonesia.
- Peter, M.M. (2009). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Soekanto, S. (1984). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- Sudaryat, Sudjana, dan Permata, R.R. (2010). *Hak Kekayaan Intelektual: Memahami Prinsip Dasar, Cakupan, dan Undang-undang Yang Berlaku*. Bandung: Oase Media.

JOURNAL

- Agung Sujatmiko. 2008. Aspek Yuridis Lisensi Merek dan Persaingan Usaha. *Jurnal Hukum Pro Justitia*, 26 (2). hlm. 11-13.
- Anak Agung Mirah Satria Dewi. (2017). "Perlindungan Hukum Hak Cipta Terhadap Cover Version Lagu di Youtube". *Jurnal Hukum Magister Hukum Udayana*. Vol. 6, No. 4, Halaman 515
- Dharmawan, Ni Ketut Supasti., Landra, Putu Tuni Cakabawa., Wiryawan, I Wayan., Bagiastra, I Nyoman., & Samsithawrati, Putu Aras. (2017). Ketentuan Hak Cipta Berkaitan Dengan Pembayaran Royalti Atas Pemanfaatan Ciptaan Lagu Secara Komersial Pada Restoran/Cafe Di Daerah Pariwisata Jimbaran Bali. *Buletin Udayana Mengabdi*, 16 (1), hal. 10.

LEGISLATION

- Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. 16 Oktober 2014. Lembaran Negara Republik Indonesia Tahun 2014 Nomor 266. Jakarta

ONLINE/WORLD WIDE WEB

Wikipedia. Hak Cipta. https://id.wikipedia.org/wiki/Hak_cipta, diakses pada tanggal 20 September 2022 pukul 16.05

Wikipedia. Kekayaan Intelektual.

https://id.wikipedia.org/wiki/Kekayaan_intelektual, diakses pada tanggal 21 September 2022 pukul 18.26 WIB.

Wikipedia. Lisensi. <https://id.wikipedia.org/wiki/Lisensi>, diakses pada tanggal 21 September 2022 pukul 20.50 WIB.