



Legal Protection of Song Copyright Works from Music Covers on Youtube with Fair Use Principles

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Abstract. The music trend of cover versions, remakes, cover songs, revivals, or simply called covers is a new recording or performance of a song that has previously been released commercially. Video of music covers is currently rampant on Youtube social media. This is inseparable from the moral and economic benefits that its users get through the features offered by Youtube. Since Indonesia is a country of laws, it has certainly provided legal protection to Music Creators for their creations. This study aims to analyze the legal protection of a song copyright work from a music cover on Youtube and find out the sanctions given against perpetrators or Youtube channels who violate the copyright of the music cover. In this study, the method used is normative legal research with a statutory and conceptual approach. There needs to be legal protection afforded to the creator of the original music. Legal protection is preventive in the formulation of the exclusive rights of Music Creators into Article 5 and Article 9 of Law No. 28 of 2014 concerning Copyright and repressively, Article 99 of Law No. 28 of 2014 concerning Copyright. Criminal sanctions are regulated in Article 113 paragraph (4) of Law No. 28 of 2014 concerning Copyright in the form of a maximum imprisonment of 10 years and/or a maximum fine of Rp. 4,000,000,000.00. is the article that governs this and allows music creators to fight for their rights that have been violated through the courts and out of court. As for sanctions for violating music copyright as background sound for videos on Youtube, namely sanctions in the form of compensation for losses that have been caused.

Keywords: Copyright, Youtube, Music Cover, Fair Use.

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1 Introduction

The desire to protect and defend the copyright of a work created from the results of human expression, eventually gave birth to the concept that is now known as Intellectual Property Rights. Intellectual Property Rights (IPR) is an exclusive right for parties who are the creators or creators of copyrighted works in the fields of science, art and literature produced based on inspiration, ability, mind, imagination skills or expertise embodied in tangible form.

Music is one of the results of human creativity which is also protected by copyright. Music can also be a medium for humans to express something that is being felt so that it can arouse passion and expression in life.

With the development of technology, the use of music for commercial purposes or making cover music videos has become difficult to control, especially on the Youtube video streaming platform, which has a negative impact on the creators of the original music.

Copyright is regulated in Law Number 28 of 2014 concerning Copyright ("UUHC"). Article 1 number 1 of the UUHC explains that:

"Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation has been realized in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulation."

2 Identification of Problems

1. Can the act of re-singing through Youtube media be categorized as copyright infringement in accordance with article 23 paragraph (2) of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright and what about the principle of fair use?
2. What are the sanctions for the act of covering a song on youtube media without permission and what is the solution so that it does not include violations?

3 Research Methods

This research uses legal research methods with a statutory approach, a conceptual approach, and a case approach. This approach is in the form of looking at laws and regulations related to Copyright, for example Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. 3 Data was collected through library research and online research.

3.1 Copyright Protection

Copyright has an important role for the development of science, art, and culture. Copyright law expressly regulates the economic rights as well as moral rights of creators. Economic rights consist of performing rights, broadcasting rights, reproduction rights, and the right to announce or distribute or distribution rights.

Regulated in article 23 paragraph (2) of Law Number 28 of 2014 concerning what economic rights are owned by performers, including:4

"The performer has economic rights including to exercise himself, give permission, or prohibit other parties from broadcasting or communicating the performance of the performer, fixation of the performance that has not been fixed, duplication of the fixation of the performance in any way or in any form, distribution of the fixation of the performance or a copy thereof, rental of the fixation of the performance or its copy to the public and provision of fixation a show that can be easily accessed by the public."

Meanwhile, the moral rights possessed by a performer are:5

"His name is listed as a performer, unless otherwise agreed upon and no distortion of creation, mutilation of creation, modification of creation, or anything of a detrimental nature or reputation unless otherwise agreed."

In the midst of this digital era, there are many actions of re-singing songs which are then disseminated using existing digital media to make them more practical and cost-effective. The act of doing a cover of this song is often 'uploaded' and disseminated through Youtube media, ie. Regarding this matter, it has actually been regulated in 23 paragraphs (2) letters a and d of Law Number 28 of 2014, namely:

"Performer has economic rights including to perform alone, to grant permission, or prohibit others from broadcasting or communicating the performance and distributing the fixation of the performance or a copy thereof."

This is because the act of uploading a cover of a song in the form of a music video to youtube media is the act of performing and broadcasting a created work. And by "uploading" the music video from the cover to youtube media, it can be said that the YouTuber has distributed the results of the cover of the song. In addition, an attempt to re-sing someone else's song with distinctive vocals owned by the party doing the cover is an act of doubling the fixation of the performance in any way or form in accordance with what is regulated in article 23 paragraph (2) letter c of Law Number 28 of 2014. It is also regulated in Article 22 of Law Number 28 of 2014 that if there are parties who cover a song, they are required to include the name of the performer who performed or performed the song originally, unless otherwise agreed and the party who covers the song cannot distort, mutilation, modify the song, or things that are detrimental to the personal honor or reputation of the performer unless approved Instead.

3.2 Definition of The Fair Use Principle

Within the copyright protection imposed both nationally and internationally there are exclusion rules and/or restrictions on exclusive rights that have been granted to copyright holders which are a very essential part of the copyright protection system itself. This exception became known as fair use. In other words, fair use in copyright is the fulfillment of certain conditions in accordance with the law that a copyrighted work can be used freely without having to ask permission or pay compensation to the copyright holder.

Fair use is also defined as a copyright principle based on the belief that the public has the right to use freely portions of copyrighted works for the purpose of commentary and criticism. Based on that definition, fair use is a doctrine or principle that allows others to use certain copyrighted creations for a specific purpose or purpose. 6 If the copyright holder objects to this, the copyright holder may sue the user of the unauthorized copyright work for copyright infringement and the user may use an affirmative defense of it as a fair use. 7

In Indonesia, the provisions regarding the concept of fair use are contained in articles 43 to 51 of Law Number 28 of 2014 concerning Copyright which states

" Some acts that are not considered copyright infringement include, announcement, distribution, communication, and/or duplication of the national emblem and anthem according to their original nature and the creation and dissemination of copyright content through information and communication technology media that are not commercial in nature and/or beneficial to the creator or related parties, or the creator expresses no objection to the creation and dissemination of such a thing."

Article 44 of the copyright law of 2014 explains that "The use, taking, duplication, and/or alteration of a work and/or related rights product in whole or in substantial part is not considered a copyright infringement if the source is mentioned or listed in full and it is done limited to noncommercial activities including for social activities." What is meant by the reasonable interest of the creator or copyright holder is an interest that is based on a balance in enjoying the economic benefits of a Creation⁸

The definition of fair use refers to restrictions and / or exceptions in copyright with the fulfillment of certain conditions in accordance with the law- 13 Article 23 paragraph (2) letter c of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. A copyrighted work can be used freely without having to ask permission or pay compensation to the copyright holder. In situations where such exceptions apply otherwise the exclusive rights owned by the copyright holder become void.

There is a restriction in copyright law that is specifically made to regulate the creation and dissemination of copyright content through the medium of information and communication technology contained in article 43 letter d which reads:

"The creation and dissemination of copyrighted content through information and communication technology media that is not commercial and/or beneficial to the creator or related parties, or the creator has expressed no objection to such creation and dissemination." 9

So through the article, it can be concluded that as long as the creation and dissemination of song covers on Youtube media is not commercial and / or beneficial to the creator or related parties, as well as the actual songwriter whose song is covered does not object to this, the cover of the song on the youtube media is allowed.

In the article, there is an explanation using the word and/or which can have two meanings, namely that both must be fulfilled or only refer to the fulfillment of the provisions, namely as long as it is not commercial only or can benefit the creator or related parties and the creator does not object to the cover of the song on the Youtube media only. So that the main fairuse arrangements in article 43 that the guidelines used in making this study have different interpretations according to the understanding of the reader.

So if an act of covering a song uploaded through youtube media aims to be something that is traded or commercialized, one of which is by monetizing the youtube account, the action of covering the song is not allowed, because it is not in line with the principle of fair use and violates the restrictions contained in the Copyright Law Number 28 of 2014. The commercial actions in this study focus on commercial actions caused by song cover actions through youtube media due to the monetization process, but it does not rule out the possibility that there are commercial benefits from song cover actions through youtube media outside of monetization actions such as endorsement offers to parties who cover songs from parties who are interested in working together after seeing song covers performed by the youtuber.

3.3 Sanctions for the act of covering songs on Youtube media without permission and not in accordance with the principle of fair use

Everyone who wants to do a song cover action through youtube media is allowed if they meet the basic requirements of fair use (Fair Use), but if they do not meet these requirements because the cover of the song is commercial, then the party must obtain a license along with the obligation to pay a certain amount of money in the form of royalties if the cover of the song is on youtube media. However, if the party does not fulfill its obligation to ask for permission and pay royalties to the creator / owner of the relevant rights, the YouTuber who covers the song can be said to have committed copyright infringement. This is provided for in article 116 paragraph (3), which reads: 10

"Any person who without rights has committed a violation of economic rights as referred to in Article 23 paragraph (2) letter c, and/or letter d to use it commercially shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

Based on the explanation above, it can be concluded that the act of uploading a song cover in the form of a music video to youtube media is an act of performing rights, namely "performing" or "broadcasting" a created work. And by "uploading" the music video of the cover to youtube media, it can be said that the YouTuber has done "dissemination" or "distribution" of the cover results of the song. In addition, the attempt to re-sing someone else's song even with the distinctive vocals owned by the party doing the cover, is classified as an act of doubling the fixation of the performance in any way or form. 11 So that in accordance with article 23 paragraph (2) of Law Number 28 of 2014, the party who will re-sing the song on youtube media from a performer, is required to fulfill the economic rights of the performer in the form of a request for permission. If the party who covers the song does not get permission / license from the performer, the party can be categorized as having violated copyright. In accordance with article 116 paragraph (3) of Law Number 28 of 2014 concerning Copyright, the party who covers the song can be subject to a maximum imprisonment of 4 (four) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Such is the case with singer Hanin Dhiya who covered a song from Umbrella Shady entitled "Akad" without valid permission and license. Hanin Dhiya covered and uploaded the cover video on the Youtube platform and has a larger number of views than the original band as the copyright holder, namely Shady Umbrella. The cover video sung by Hanin Dhiya has reached 28.7 million viewers. 12

Youtuber Hanindhiya himself has joined a management, namely Star Media Nusantara and the music label Warner Music Indonesia. So it can be indicated that all activities he does in the digital world are for commercial purposes. With several advertisements that appeared during the screening of the cover video of the song "Akad" by Hanindhiya, it can also be indicated that the youtube channel has made efforts to monetize, This is what then becomes a problem because of the information from the shady umbrella that there has been no communication or permission from the hanin dhiya party.

Based on Law Number 28 of 2014 concerning Copyright, there are several parameters that are used as guidelines for regulating the principle of fair use or the principle of fair use, this is stated in article 26 and article 43 to article 51. It contains limitations on which a person can use someone else's work without violating the copyright or related rights of the creator. These limitations include that the use of the work without the permission of the creator or the owner of the relevant rights is allowed as long as it is used for purposes:13

- a. Teaching, education, and development of science;
- b. Announcement, distribution, communication, and/or duplication of everything that is carried out on behalf of the government;
- c. Complete inclusion of the source;
- d. As long as it does not conflict with morals, religion, decency, public order, or the defense and security of the state; and

e. Creation and dissemination of copyrighted content through information and communication technology media that are not commercial in nature and/or beneficial to the creator or related parties.

The action taken by YouTuber Hanindhiya and other parties who covered the song "akad" can be said to be an act of copyright infringement. Because it has violated the economic rights of the owner of the relevant rights, namely the Shady Umbrella band as stated in article 23 paragraph (2) letters a, c and d of Law Number 28 of 2014 concerning Copyright, because the cover of the song cannot be justified according to the principle of fair use in article 43 paragraph (3) letter d of Law Number 28 of 2014 concerning Copyright.

YouTuber Hanindhiya's actions in covering other people's songs to be uploaded on Youtube media and commercialized cannot be justified in not in line with the restrictions or principles of fair use. The upload of the song cover video for commercial purposes is evidenced by the monetize action that can be seen when there is an advertisement that is included in the playback of the cover video of the song "Akad" and the involvement of YouTuber Hanindhiya into a management, namely Star Media Nusantara and also joined the label 28 Warner Music Indonesia music, so it can be indicated that all activities he does in the digital world are for commercial purposes.

Based on this presentation, YouTuber Hanindhiya was proven to violate the provisions contained in article 23 paragraph (2) because YouTuber Hanindhiya had committed performing rights, namely "performing" or "broadcasting" a created work. And by "uploading" the music video of the cover to youtube media, it can be said that the YouTuber has done "dissemination" or "distribution" of the cover results of the song. In addition, attempts to re-sing someone else's song even with the distinctive vocals of the party doing the cover are classified as an act of doubling the fixation of the show in any way or form. 14 So that the act without permission to cover a song which is then announced or distributed via Youtube media is an act of copyright infringement and can be subject to civil sanctions in the form of compensation or criminal sanctions in the form of imprisonment and/or fines in accordance with those listed in article 116 paragraph (3) of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright.

3.4 License Agreement for Song Covers Through Youtube Media

In order not to infringe on the copyright of others, in order to reproduce, record, distribute and or announce a song belonging to someone else, especially for commercial purposes, then one needs to obtain permission (license) from the owner of the relevant rights of the song to be covered. This is more clearly stated in article 9 paragraphs (2) and (3) of the Copyright Law 2014 which reads:

"Everyone who will exercise economic rights must obtain permission from the creator and/or copyright holder. Any person who without the permission of the creator or copyright holder is prohibited from committing acts of duplication and/or commercial use of a work."

The permit application is then better known by the name of license, the license itself can be interpreted as:¹⁵

"A license is a written permission granted by a copyright holder or related rights owner to another party to exercise economic rights to his or her work or related rights products under certain conditions."

Through the explanation of the article above, it can be concluded that this license is manifested in the form of a written agreement as a letter of application for permission from a person who will carry out duplication, distribution and other activities of an economic nature to the copyright holder or related rights owner whose work will be used for commercial purposes. Such license grant may be valid for a period of time, as long as it does not exceed the validity period of the copyright and related rights themselves.

In the case of making a license agreement, one needs to obtain permission (license) from the creator or owner of the relevant rights in accordance with its designation, which can be broadly distinguished as follows:¹⁶

1. License to mechanical rights, i.e. the right to duplicate, reproduce (which includes re-arranging) and recording a musical composition or song on CDs, recording tapes and other recorded media; and or

2. License to performing rights, namely the right to perform a song or musical composition, including singing, playing, whether recorded or performed live, via radio and television, including through other media such as the internet, live concerts and programmatic music services.

So in the event that a YouTuber covers a song through youtube media, he is required to make a license agreement for the right to perform or performing rights with the performer for the cover of his song. However, if the YouTuber who covers the song also does some arrangements such as changing the word or musical component, the party is required to make a license for mechanical rights as well, as an application for permission to the creator for the arrangement of the lyrics of the song and the original music.

After making a license agreement, the licensee, namely the party who covers the song, is required to fulfill their obligations by providing royalties to the creator, copyright holder, and related rights holder, namely the performer whose song has been covered. The regulation regarding the obligation to pay royalties is contained in article 80 paragraph (3) of Law Number 28 of 2014, which reads:

"Unless otherwise agreed, the execution of the act as referred to in article 80 paragraph (1) is accompanied by the obligation of the licensee to provide royalties to the copyright holder or the owner of the relevant rights during the term of the license."

The payment of a sum of money for the performer is an attempt to repay the fulfillment of the economic rights of the performer for his creation, this reward is then referred to as royalties.

4 Conclusion

The act of uploading a song cover to youtube media is an act of performing rights, namely the act of "performing" or "broadcasting" a created work. attempts to re-sing someone else's song are classified as an act of doubling the fixation of the performance in any way or form. So that in accordance with article 23 paragraph (2) letters a, c and d of Law Number 28 of 2014 concerning Copyright, the party who will re-sing the song on Youtube media from a performer is required to fulfill the economic rights of the performer in the form of a request for permission or license accompanied by the obligation to pay royalties.

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