

## The Legal Aspects of Covering Songs on YouTube

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**abstract.** *The widespread use of the internet in all sectors has brought its own consequences, in addition to the great benefits provided to service users, the presence of internet media has also created new problems in the field of Intellectual Property. Even YouTubers who are engaged in cover songs need to know how to use other people's songs on YouTube according to legal provisions, including how to get permission to cover songs on YouTube. Because, this action has rules and can have an impact on monetization results. Currently, the creative industry is in great demand, especially in the digital era. Legal protection according to Satjipto Raharjo, namely providing protection for human rights (HAM) that are harmed by other people and that protection is given to the community so that they can enjoy all the rights granted by law. Legal protection for songwriters whose songs are covered without permission for commercial purposes on the internet media in Indonesia is quite adequate with the UUHC. However, the existing protection is still not running well, the contributing factors include a lack of legal knowledge and awareness.*

**Keywords.** *Cover, Youtube, Legal*

### 1. Introduction

In this era of globalization, communication tools and technology are growing. One example of a form of technology that is widely used in modern times is internet technology. In internet media we can access information widely, for education we can easily access knowledge from various learning sites. Not only that, internet media also makes it easier for us to transact, do business and get entertainment, such as watching and listening to videos or audio music.

The widespread use of the internet in all sectors has brought its own consequences, in addition to the great benefits provided to service users, the presence of internet media has also created new problems in the field of Intellectual Property. The rise of cases related to copyright infringement is one example of the influence of internet media on Intellectual Property Rights (IPR).

The internet is also a double-edged sword, because in addition to contributing to increasing human welfare, progress and civilization, it is also an effective means of committing acts against the law.<sup>1</sup>

In this digital era when people can freely develop their creativity and easily access a copyrighted work on internet media, it is not uncommon for individuals to then duplicate, reproduce, and reproduce the copyrighted song, add lyrics or change the arrangement of the song, re-sing it without including the original singer or its creator. From this there is a loophole to use it commercially without the awareness to pay royalties or prior permission to the creator. While it is clear based on Article 9 paragraph (3)<sup>2</sup>Regarding Copyright, it is stated that: Everyone without the permission of the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works.

The phenomenon of covering songs or re-singing songs that have been recorded or performed by other singers/artists is something that has been done a lot. Not least, songs that have been covered by other people (not by the original singer) are even more famous than the original version performed by the original singer. Therefore, many new artists try their luck by first covering other people's songs with the aim of gaining success and popularity more quickly.

Even YouTubers who are engaged in cover songs need to know how to use other people's songs on YouTube according to legal provisions, including how to get permission to cover songs on YouTube. Because, this action has rules and can have an impact on monetization results. Currently, the creative industry is in great demand, especially in the digital era. Through various platforms such as Instagram, YouTube, TikTok and others, everyone is free to upload various content, including performing covers of other singers. There are many cases of covering songs such as in the case of the SID punk rock song sung by Via Vallen with dangdut koplo, the Nagaswara case with Genk Halilintar covering songs produced by Nagaswara without permission, the Trisuaka and Zidan cases with the Andika Kangen Band.

In practice, not a few cover songs become more famous than the songs performed by the original artist or singer, so that some people who sing cover songs try their luck by performing the song in the hope that they will quickly become famous and earn income from the cover song that is sung, without realizing it has violated the economic rights of the creator or copyright holder of the song being sung. Due to a lack of legal awareness, many cover songs do not pay attention to the limitations

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<sup>1</sup> Ermansyah Djaja, *Legal Information Technology Dispute Resolution and Electronic Transactions* (Pustaka Timur, 2010).

<sup>2</sup> Trias Palupi Kurnianingrum, 'New Material in Law Number 28 of 2014 Concerning Copyright', *The Rule of Law: Building Law for Justice and Prosperity*, 6.1 (2015), 93–106.

in working with other people's creations.

## **2. Research Methods**

Legal protection according to Satjipto Raharjo, namely providing protection for human rights (HAM) that are harmed by other people and that protection is given to the community so that they can enjoy all the rights granted by law.<sup>3</sup>The theory of legal protection is a theory that examines and analyzes the form or form or purpose of protection, legal subjects protected and objects of protection provided by law to the subject.<sup>4</sup>

## **3. Result and Discussion**

### **3.1. Song Cover and Copyright**

Songs as a form of work in the field of art, are included in the protected IPR realm as stipulated in article 40 letter (d) of Act No. 28 of 2014 concerning Copyright (UUHC), namely copyright protection for song or music creations with or without text . As protected by UUHC, songwriters are entitled to economic rights over their creations.

Currently, covering songs has been done by many people. This is done one of them to appreciate the work of the creator of the song. However, this is not in line with sufficient understanding regarding legal aspects if you want to cover songs. According to Wikipedia, the definition of covering a song is a new recording or appearance of a song that has previously been released commercially. The new recording in question was performed by different musicians than the original version. Usually the musicians do their covers through the medium of Youtube. It is a video sharing site where users can upload, watch and share videos.

According to Article 40 of the Copyright Act, songs or music are one of the creations that are protected. So, in order for the song to get protection, it needs to be expressed in a tangible form such as being recorded, sung, performed until announced. In copyrighted songs, royalties are not only given to songwriters, but also royalties to musical instrument players and producers).

The rise of musicians covering songs has led to much discussion about copyright. According to Article 1 of the Copyright Law ("UUHC") Number 28 of 2014, Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without reducing

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<sup>3</sup> Satjipto Raharjo, Law Studies (Bandung: PT. Citra Aditya Bakti, 2000).

<sup>4</sup> Salim and Erlies Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation Research (Jakarta: PT. Raja Grafindo Persada, 2013).

restrictions in accordance with statutory provisions.

Based on the Elucidation of Article 4 UUHC, 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. Copyright includes exclusive rights consisting of moral rights and economic rights. So the principle of copyright is to respect economic rights and moral rights. The economic right is the acquisition of royalties, while the moral right is the inclusion of the songwriter's name. In Article 5 UUHC, moral rights are rights that are eternally attached to the Creator himself to:

1. Keep including or not including his name on the copy in connection with the use of his work for the public;
2. Use aliases or pseudonyms;
3. Change the creation according to social decency;
4. Changing the title and subheadings of the Work; And
5. Defend their rights in the event of distortion of Works, mutilation of Works, modification of Works, or things that are detrimental to self-respect or reputation.

Whereas Article 8 of the UUHC explains economic rights which are the exclusive rights of the Author or Copyright Holder to obtain economic benefits from Works. According to Article 9 UUHC, economic rights include:

1. Publishing of Works;
2. Reproduction of Works in all its forms;
3. Translation of Works;
4. Adaptation, arrangement or transformation of Works;
5. Distribution of Works or copies thereof;
6. Creation Show;
7. Announcement of Creation;
8. Creation Communication; And
9. Hire of Creation.

Furthermore, covering songs on YouTube can be an act that violates Copyright or it may not constitute an act that violates Copyright. If a song cover on Youtube is done for commercial purposes without the permission of the creator or related party, they object to the existence of a song cover, then the act of covering the song is an act that violates copyright. The intended commercial purpose is to resell cover songs to the general public. If this happens, the cover actor must have a license for the song.

However, if the song cover is not done for commercial purposes and the Creator or related parties have no objections to the cover song, then the act of covering a

song is not an act that violates Copyright. The person who covers the song must also respect the rights of the creator, both moral rights and economic rights.

In comparison, a group of music publishing companies in the United States called Warner Music Group sued Fullscreen, one of the largest video supplier companies to YouTube in Los Angeles, to the district court in Manhattan, United States. The reason is, many of the videos provided are Fullscreen, especially cover versions of hit songs from their artists which violate their copyrights. Please note, Fullscreen has 200 million subscribers and is watched by more than 2.5 billion people per month. Among the fullscreen videos played on YouTube are cover versions of hits by several Plaintiff artists, usually performed by amateurs or semi-professionals, which are performed without the permission of the publisher and songwriter and without paying royalties. Over time, Youtube already has a feature called Content ID. This feature can detect songs that have the same tone. If detected, Youtube will automatically divide the income of the performers covering the song to the original singers. Youtube will not hesitate to block videos deemed to violate copyright.

### **3.2. Legal sanctions**

Covering songs is included in adapting, arranging, or transforming creations as stated in Article 9 UUHC. So that covering a song can be considered as an act of violating Copyright if the cover of the song is commercialized so that you get economic benefits from the cover and get objections from the creator of the song. If a cover musician wants to commercialize their cover song, they must have a license from the creator. A license according to Article 1 UUHC number 20 is a written permission granted by a Copyright Holder or Related Rights Owner to another party to exercise economic rights over their creations or Related Rights products under certain conditions.

Violations of Article 9 UUHC are regulated in Article 113 UUHC which reads:

1. Everyone who unlawfully violates the economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be subject to imprisonment for a maximum of 1 (one) year and/or a maximum fine of IDR 100,000,000 (one hundred million rupiahs) ).
2. Everyone who without rights and/or without the permission of the Author or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be punished with maximum imprisonment of 3 (three) years and/or a maximum fine of IDR 500,000,000.00 (five hundred million rupiahs).
3. Everyone who without rights and/or without the permission of the Author or Copyright holder violates the economic rights of the Author as referred

to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

Meanwhile, covering a song does not constitute an act of violating copyright if the cover of the song is not intended for commercialization and does not receive objections from the creator as stated in Article 43 UUHC letter d. The article reads: "creating and distributing Copyright content through information and communication technology media that is non-commercial and/or beneficial to the Creator or related party, or the Creator states that he has no objection to the production and distribution.

### **3.3. Settlement of Copyright Violation of Songs Covered Without Permission for Commercial Interests in Internet Media**

Songs are a type of intellectual property that is protected as copyright. Act No. 28 of 2014 concerning Copyright has regulated settlements that can be taken in the event of a copyright infringement. Settlement can be done through Non-Litigation and Litigation.

1. Settlement Through Non-Litigation Channels In the event of a Song Copyright Violation, UUHC makes it possible to resolve disputes through Non-Litigation channels or Settlement of cases outside the court. As stipulated in Article 95 paragraph (1) of Act No. 28 of 2014 Concerning Copyright that copyright infringement can be settled through Alternative Dispute Resolution (APS) and arbitration.
2. Settlement Through Litigation Path Under Article 95 paragraph (1) UUHC, in addition to alternative dispute resolution and arbitration channels, settlement of Copyright infringement can also be carried out through litigation. Litigation is the settlement of legal issues through the courts.

In the litigation route, it can be carried out in 2 (two) ways, namely criminal and civil settlements. In the criminal route, the aggrieved party can report to the authorities, while in the civil route, it can be done through the process of claiming compensation at the Commercial Court.

As stipulated in Article 95 paragraphs (2) and (3) UUHC, the court authorized to resolve copyright disputes is the Commercial Court. Apart from the Commercial Court, other courts have no authority to handle copyright dispute resolution.

Authors, copyright holders, and/or related rights holders or their heirs who experience loss of economic rights are entitled to compensation. The

compensation is given and stated at the same time in the court decision regarding the criminal case of Copyright and/or Related Rights. Compensation payments to creators, copyright holders and/or related rights owners are paid no later than 6 (six) months after a court decision that has permanent legal force.

#### **4. Conclusion**

Legal protection for songwriters whose songs are covered without permission for commercial purposes on the internet media in Indonesia is quite adequate with the UUHC. However, the existing protection is still not running well, the contributing factors include a lack of legal knowledge and awareness. It can be seen from the many covers who do not pay attention to the rights of songwriters, songwriters who are not yet aware of the importance of copyright registration.

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