



Liability of Intermediary Parties in the Context of Copyright Protection: A Case Study of 41pk/Pdt.Sus-Hk/2021

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Abstract

In this study, the researcher aims to examine the practice of re-performing songs, commonly referred to as "song covers," as regulated under Indonesian Law No. 28 of 2014 on Copyright. The research focuses on three main aspects. First, it seeks to identify how copyright regulations are applied in the context of reusing copyrighted works, specifically in the form of songs, in accordance with the copyright law. Second, it analyzes the legal consequences imposed on copyright violators in this context. Third, it evaluates the compatibility of the Supreme Court Decision No. 41PK/Pdt.Sus-HK/2021 with the

principles of Legal Protection Theory. This study employs a Normative Juridical approach, based on the principles of norms and laws applicable in Indonesia. The researcher uses this approach to refer to the legal norms and regulations in effect in the country. The research draws on legal materials from literature as both primary and secondary sources. Based on the analysis, the researcher concludes that anyone intending to upload song covers on social media platforms such as YouTube must comply with the economic rights held by the performers. This includes steps like obtaining permissions or licenses and paying royalties for the copyrighted works.

Keywords

Song Covers; Copyright; Exclusive Rights; Intellectual Works; License; Royalties

Introduction

Protecting every idea that arises from individual or group discoveries and creative expressions, particularly in relation to safeguarding reputation within the context of business and commercial actions or services, is referred to as Intellectual Property Rights (IPR).¹ The primary focus of IPR is on works, creations, thoughts, or intellectual expressions of human beings. The term "Intellectuality" signifies that this intellectual property stems from human intelligence, thought processes, or products of human thinking (The Creation of the Human Mind) (WIPO, 1988:3).² In a theoretical framework, Damian (as explained by Imaniyati, 2010:164) describes intellectual property as intangible wealth, resulting from human thinking or creativity, which leads to works or innovations in the fields of art, literature, science, and technology that possess economic value.³

In the current era of globalization, significant advancements have been made in the information and digital technology sectors. However,

¹ Nanda Dwi Rizkia dan Hardi Fardiansyah, *Hak Kekayaan Intelektual Suatu Pengantar* (Penerbit Widina, 2022).

² S. Karimullah, "Perlindungan Hukum Terhadap Pemegang Ekspresi Budaya Tradisional Sebagai Bagian Dari Kekayaan Intelektual Komunal di Provinsi Jambi" (PhD Thesis, Universitas BATANGHARI Jambi, 2023).

³ Lesson Sihotang, Roida Nababan, dan Besty Habeahan, "Perlindungan Hukum Terhadap Pencipta dan Pemegang Hak Cipta Lagu 'Lagi Syantik' (Studi Putusan No. 82/Pdt. Sus-HKI/Cipta/2019/PN Niaga Jkt. Pst)," *Visi Sosial Humaniora* 3, no. 1 (2022): 18–36.

unfortunately, copyright infringement has become increasingly complex and continues to evolve amidst these advancements. For instance, the act of stealing someone else's creative work and distributing it without permission, as if it were an original creation, is a serious form of copyright violation.⁴ Therefore, regulations or policies are needed to govern the use of electronic and digital information technology, as it has now become very easy for irresponsible individuals to disseminate such works over the internet. These works can be quickly accessed and enjoyed by social media users worldwide. The impact of copyright violations is increasingly common and, regrettably, has become normalized by users of modern technology.⁵

Thus, every individual who creates a work by developing their ideas and concepts has the right to protect that work. One aspect of Intellectual Property Rights (IPR) is copyright, which refers to the right to the creation of intellectual works in science, arts, and literature, expressed in a unique way.⁶ This right applies to ideas, procedures, techniques, or concepts manifested in concrete forms. Literally, the term "copyright" consists of two words: "right," which refers to the authority granted to certain parties to freely use or refrain from using something, and "creation," which refers to the result of human creativity involving intellect, thought, knowledge, feelings, imagination, and experience. Therefore, it can be concluded that copyright is closely related to the intellectual aspects inherent in human beings.⁷

According to Article 1, Paragraph 1 of Indonesia's Copyright Law No. 19 of 2002, copyright is an exclusive right granted to the creator or the recipient of such rights to publish or reproduce their work, as well as to grant permission for such acts, in accordance with the limitations

⁴ Hari Sutra Disemadi dkk., "Perlindungan Data Pribadi di Era Digital: Mengapa Kita Perlu Peduli?," *Sang Sewagati Journal* 1, no. 2 (2023): 66–90.

⁵ Hermin Indah Wahyuni, *Kebijakan Media Baru Di Indonesia: (Harapan Dinamika Dan Capaian Kebijakan Media Baru Di Indonesia)* (Yogyakarta: Ugm Press, 2018).

⁶ Alis Yulia, Rima Duana, dan Nina Herlina, "Pengaruh nft terhadap perlindungan hak cipta dan dampaknya terhadap pencemaran lingkungan," *Jurnal Ilmiah Galuh Justisi* 10, no. 1 (2022): 92–101.

⁷ Muhammad Ridho Rachmatdhan, "Hak Melarang Atas Penggunaan Hak Cipta Musik dan Lagu Oleh Pemegang Hak Cipta (Analisis Kasus Perseteruan Antara Ahmad Dhani dan Once Mekel)" (PhD Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uii.ac.id/handle/123456789/48893>.

set forth in the applicable legislation.⁸ The Copyright Law was established to protect the rights and works created by individuals. However, when there are numerous copyright violations that are disregarded, it raises concerns. When the product of intellectual thought, resulting in works such as copyrights, industrial designs, patents, trademarks, and others, is neglected, this becomes problematic.⁹

Copyright in Indonesia consists of two main aspects: economic rights and moral rights. Economic rights refer to the creator's exclusive right to derive profit from their work, either through direct sales or licensing. Meanwhile, moral rights are the inherent rights of the creator, which cannot be revoked even if the economic rights or associated rights have been transferred to another party.¹⁰ Moral rights can be inherited or transferred for various reasons after the creator's death. Although related, economic rights have economic value, whereas moral rights do not. One example of the application of moral rights is when a creator's name is credited on a piece of art, even if the copyright of the work has been transferred for use by another party for specific purposes. Economic rights, on the other hand, are exclusive rights held by the creator or copyright holder, aimed at obtaining benefits and economic value from the created work. A copyright holder who is not the creator holds only a portion of the exclusive rights, namely the economic rights.¹¹

One of the creative works protected by copyright law is a musical composition or song. This includes elements such as melody, lyrics, and arrangement, including musical notation, which together form a cohesive creative work protected as a copyright. A music or song

⁸ Iin Indriani, "Hak Kekayaan Intelektual: Perlindungan Hukum Terhadap Hak Cipta Karya Musik," *Jurnal Ilmu Hukum* 7, no. 2 (2018): 246–63.

⁹ Arya Utama, Titin Titawati, dan Aline Febryani Loilewen, "Perlindungan Hukum Terhadap Hak Cipta Lagu Dan Musik Menurut Undang-Undang Nomor 28 Tahun 2004," *Ganec Suara* 13, no. 1 (2019): 78–83.

¹⁰ Ghaesany Fadhila, "Perlindungan Karya Cipta Lagu Dan/Atau Musik Yang Dinyanyikan Ulang (Cover Song) Di Jejaring Media Sosial Dikaitkan Dengan Hak Ekonomi B Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 222–35.

¹¹ Agung Basuki Wicaksono, "Perlindungan Hak Cipta dalam Kasus Penggunaan Lagu SKJ88 Tanpa Izin Oleh O Shop (Studi Kasus Putusan Nomor 991/Pdt. Sus-HKI/2022)," *UNES Law Review* 6, no. 2 (2023): 6297–6311.

creator can be an individual or group who, through inspiration, produces music or songs by using their intellectual, imaginative, technical, and artistic abilities.¹² This work reflects unique personal characteristics, and the creator is commonly referred to as a composer. According to Jamalus, music can be considered a form of art embodied in sound, such as a song or composition, that expresses the creator's thoughts and feelings through fundamental musical elements like rhythm, melody, harmony, song structure, and expression, all of which combine to form an artistic whole.¹³

Copyright infringement is an act that can cause harm to the copyright holder, both financially and morally. Such incidents are common in the Indonesian music industry, where many individuals do not fully understand the concept of copyright and commit violations against the rights of others.¹⁴

Article 5, Paragraph 1 of the Copyright Law states that moral rights are perpetual and inalienable rights held by the creator. These rights include: a. The option to include or not include the creator's name on copies of the work for public use; b. The use of a pseudonym or alias; c. Adjusting the work in response to societal demands; d. Changing the name and subtitle of the work; and e. Protecting the creator's rights in cases where alterations, destruction, modifications, or other actions could harm the integrity or reputation of the work.¹⁵

Economic rights, on the other hand, refer to the exclusive privilege held by the creator or copyright holder, with the purpose of deriving financial benefits and economic value from the work. A copyright holder who is not the creator only holds part of these exclusive rights, particularly in the context of economic rights. Article

¹² Andree Nugroho Saragih, "Menelaah Perlindungan Hukum Bagi Hak Cipta Pencipta Lagu Terhadap Penampilan Cover Lagu Ciptaannya Oleh Musisi Lain Di Platform Media Sosial," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 1 (2023): 304–17.

¹³ Arina Restian, Belinda Dewi Regina, dan Danang Wijoyanto, *Seni Budaya Jawa dan Karawitan* (Malang: UMMPress, 2022).

¹⁴ Markus Bona Andiano Sitohang dan Surahmad Surahmad, "Urgensi Pedoman Plagiarisme Sebagai Instrumen Perlindungan Hukum dalam Pendaftaran Hak Cipta di Indonesia," *DIVERSI: Jurnal Hukum* 9, no. 2 (2024): 292–330.

¹⁵ Vika Afrilia, "Fungsionalisasi Hukum Pidana Sebagai Ultimum remedium Pada Tindak Pidana Selain Pembajakan Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Yogyakarta, Universitas Islam Indonesia, 2023), <https://dspace.uii.ac.id/handle/123456789/42806>.

9, Paragraph (1) of the Copyright Law outlines various aspects of economic rights held by the creator or copyright holder, including but not limited to: a. Reproducing the work; b. Making copies of the work in various forms; c. Translating the work; d. Adapting, arranging, or transforming the work; e. Distributing copies of the original work; f. Publicly performing the work; g. Announcing a work; h. Communicating the work; and i. Renting the work.

Based on the background outlined above, the author aims to conduct research on how self-regulation functions as a form of digital copyright protection in cases involving song covers, and the extent of intermediary liability in efforts to protect copyright. This research will explore how intermediaries, such as digital platforms, bear responsibility in the enforcement of copyright protection, particularly in scenarios where unauthorized covers of copyrighted songs are distributed. The focus will be on examining the effectiveness of self-regulation measures and the role intermediaries play in preventing and addressing copyright infringements within the context of digital media

Method

This research falls under the category of normative research, referring to the legal norms and regulations in force in Indonesia, particularly the Copyright Law. The research method is descriptive, focusing on the presentation and disclosure of information related to the research title. The planned research will adopt a qualitative approach. According to Moloeng, qualitative research aims to understand phenomena experienced by research subjects in a comprehensive manner. This approach uses descriptions through words and language, focusing on specific contexts experienced by the subjects, while applying various scientific methods.¹⁶

Results and Discussion

Copyright is an exclusive right granted to creators to protect their works from unauthorized use, reproduction, and distribution of songs. The realization of this idea is considered a valuable and exclusive asset.

¹⁶ Komang Ayu Henny Achjar dkk., *Metode Penelitian Kualitatif: Panduan Praktis untuk Analisis Data Kualitatif dan Studi Kasus* (PT. Sonpedia Publishing Indonesia, 2023).

Creative works in the form of songs encompass elements such as melody, lyrics, notes, poetry, notation, and arrangement. YouTube serves as a platform for interaction among individuals, a space for sharing knowledge, and a global source of motivation. This platform also functions as a medium for content creators and advertisers, both on a large and small scale.¹⁷

YouTube began operations in May 2005 and is seen as a platform that facilitates billions of global internet users in searching for and exploring information, as well as enjoying interesting content without geographical limitations. A cover version refers to when an individual or a group sings or re-records a song or musical composition that was previously recorded and performed by another singer or artist.¹⁸ Songwriters hold exclusive rights that consist of Economic Rights and Moral Rights. According to the Copyright Law of 2014, Economic Rights include exclusive rights to commercially exploit the creative work and the right to profit from its use. Several Economic Rights regulated by the Copyright Law of 2014 include:¹⁹

1. Reproduction Rights refer to the right to create one or more copies of a creative work;
2. Distribution Rights pertain to the right to market or lease copies of the creative work;
3. Adaptation Rights encompass the right to create derivative works from an original work, such as translations, musical arrangements, or modifications for new media.

¹⁷ Jeaney Dwi Sapta Aquar, "Tindakan Pelanggaran Hak Cipta Dalam Menyanyikan Ulang Atau Mengcover Lagu Melalui Media Youtube (Kasus Cover Lagu 'Akad' Dengan Pemegang Hak Cipta Band Payung Teduh)" (PhD Thesis, Universitas Brawijaya, 2018), <http://repository.ub.ac.id/163089/>.

¹⁸ Riky Rustam, "Tanggung Jawab Pihak yang Menggandakan Karya Cipta Lagu yang Diaransemen Ulang oleh Penyanyi Cover," 2020, <https://dspace.uui.ac.id/handle/123456789/31202>.

¹⁹ Jeaney Dwi Sapta Aquar, Afifah Kusumadara, dan M. Zairul Alam, "Tindakan Pelanggaran Hak Cipta Dalam Menyanyikan Ulang Atau Mengcover Lagu Melalui Media Youtube," *Jurnal Hukum FH UB 6* (t.t.), diakses 21 September 2024.

Moral Rights under the Copyright Law of 2014 include rights related to the personal honor of the creator and non-economic rights. Moral Rights in the Copyright Law of 2014 include:²⁰

- a. The right to receive acknowledgment as the creator of a work;
- b. The right to determine the name of the author, title, or other attribution of the work;
- c. The right to protect the integrity of the work, including preventing changes or damage to it;
- d. The right to determine the manner of disclosure or publication of the work, such as controlling copyright over that work.

Both sets of rights provide effective protection to creators, allowing them to control the use of their works and benefit economically from them. However, there is a need to balance these rights with fair use rights, including personal use and use for educational and research purposes.

The existence of copyright grants significant authority to songwriters. Conceptually, the creator holds a position at the top of the societal hierarchy. A creative work automatically holds copyright from the moment of its creation, without the need for registration or formal declaration. This principle is stipulated in Article 2, Paragraph (1) of Law Number 19 of 2002 on Copyright, which is recognized as an exclusive right for creators or copyright holders. This legal framework ensures that creators receive copyright protection for their works, allowing authorities to oversee these works and prevent copyright infringements, such as unauthorized distribution. A creative work is the result of ideas and creative expressions that originate from a concept, later manifested into a masterpiece. Copyright is protected by various legal regulations, as its existence requires a legal basis to ensure security for songwriters. Clear regulations are necessary to prevent infringements related to their creations. Copyright in a work is a product of the intellectual ingenuity of a creator, holding high value due to its derivation from intelligence and creativity that may not be replicated by

²⁰ Alin Speriusi-Vlad, "Understanding Intellectual Property: About Moral Rights and Economic Effects," *Available at SSRN 2494901*, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2494901.

others. Aspects such as the use of creative works, payment of royalties, copyright infringements, and provisions for copyright transfer are regulated by Law Number 28 of 2014.

According to Article 1, Paragraph 1 of Law Number 28 of 2014 on Copyright (hereinafter referred to as the Copyright Law), it is stated that copyright is an exclusive right that arises automatically for the creator once the work is materialized, while still adhering to the limitations established by regulations. This copyright encompasses both economic and moral rights, which are valid as long as the work is protected by copyright (Pamungkas, 2019). The latest law, Law Number 28 of 2014, replaces Law 19 of 2002 due to the need to update legislation in line with the ongoing technological advancements. Therefore, Law Number 28 of 2014 aims to provide stronger protection for copyright, considering the evolving landscape of information and communication technology. YouTube, as a platform facilitating interaction, knowledge exchange, and motivation for individuals across the globe, exemplifies the positive impacts of such advancements.

Government Regulation (PP) Number 56/2021 is an additional measure to strengthen the implementation of the Copyright Law. Although the obligation to pay royalties already existed, this regulation enhances the intensity of its implementation, particularly in safeguarding the economic rights of copyright holders and related rights. As a reinforcement of Law Number 28 of 2014 on Copyright, PP Number 56 of 2021 can be regarded as a legal enforcement instrument complementing the Copyright Law. This regulation provides a clearer and more specific legal basis for protecting the economic rights of creators or copyright holders. Regarding the creation of songs and/or music, there exists the term Performing Rights owned by the creator. Performing Rights can be defined as the right to publicly perform the work or the right to broadcast it. A songwriter grants this right to the record producer for recording and subsequently distributing, promoting, or playing their work. In this context, the execution of broadcasting rights occurs. This execution can be conducted through various methods, resulting in indirect reproduction during the broadcasting process.

The term "duplication" can be interpreted as "reproduction." An individual who creates a song or music argues that announcement is not

part of the process of duplication, thus the royalties received are only related to the right of announcement (Performing Rights). This results in difficulties in monitoring songs that have been announced by various parties without commercial permission. This situation has the potential to cause losses for creators, music arrangers, and singers, each holding their respective rights. In accordance with the implementation of Law Number 28 of 2014 on Copyright, issues arise for music creators. Each song and music that is protected constitutes an economic right for the copyright holder to enforce the provisions outlined in Article 9, Paragraph (1) of the Copyright Law.²¹

In efforts aimed at creating legal protection related to copyright at both national and international levels, there are exceptions and limitations applicable to the exclusive rights granted to copyright holders. These regulations are considered fundamental elements in the structure of copyright protection. This policy is referred to as fair use. The concept of fair use in copyright pertains to the fulfillment of certain requirements according to legal provisions stating that a work protected by copyright can be used freely without the need for permission or compensation to the copyright holder, provided that specific conditions are met. This facilitates parties that have specific needs or interests in using a work.

The term fair use refers to the utilization of a creative work without the creator's permission, conducted for urgent purposes such as education and other factors. Fair use is a limitation on copyright that represents the social function aspect of copyright, applied by many countries to facilitate the reproduction of works without violating copyright specifically.²² There are regulations governing fair use with a focus on social function in Articles 43 to 49 of Law Number 28 of 2014 on Copyright.

The principle of fair use first emerged in the United States, where it was originally designed to protect exclusive economic rights. However, in that country, this principle also provides opportunities to

²¹ Rizky Syahputra, Doddy Kridasaksana, dan Zaenal Arifin, "Perlindungan Hukum Bagi Musisi Atas Hak Cipta Dalam Pembayaran Royalti," *Semarang Law Review (SLR)* 3, no. 1 (2022): 84–97.

²² Rika Ratna Permata dkk., "Penerapan Doktrin Fair Use Terhadap Pemanfaatan Hak Cipta Pada Platform Digital Semasa Covid 19 Di Indonesia," *Dialogia Iuridica* 13, no. 1 (2021): 130–48.

achieve broader goals regarding security. Under certain conditions, the U.S. government permits the use of copyrighted works without permission. This is based on the claim that economic rights can hinder the smooth dissemination and development in the education sector. Specifically, research has a significant impact on economic growth and public culture. In U.S. copyright law, Section 107 describes the fair use principle concerning the reproduction of copyrighted works. Such use is permitted for purposes of criticism, teaching, news reporting, research, and scholarship, and is not considered a copyright infringement. Factors to consider in determining whether something aligns with the fair use principle include the uniqueness of the copyrighted work, the composition and main elements taken from the entire work, the intent and purpose of use, whether it is for commercial or educational purposes, and the consequences of use on the market or value of the utilized creative work.

The principles related to fair use are regulated in Articles 43 to 51 of Law Number 28 of 2014 on Copyright. Activities that are not considered copyright infringement include announcements, dissemination, communication, and/or replication of national symbols and national anthems in accordance with their original characteristics. Additionally, the production and distribution of copyrighted material through information and communication technology that is non-commercial and/or provides positive support to creators or related parties is also not considered an infringement, provided that there is permission from the creator for such production and distribution. Article 44 states that if the source is acknowledged or fully mentioned, the use, utilization, reproduction, or modification of a work or product protected by related rights, either in whole or in significant part, will not be considered copyright infringement.

Article 43 of the Copyright Law regulates actions that are not considered copyright infringements, covering several aspects. However, these provisions are optional, and the regulations regarding fair use of music copyright have not been explicitly outlined. Although the term "fair use" can be interpreted as the utilization of copyrighted content for non-commercial purposes, Article 43 emphasizes that permission or a license from the creator is necessary, as stipulated in that article, which states that "the creator has no objection to the creation and

dissemination." Therefore, it can be interpreted that currently, according to the Copyright Law, the use of copyrighted content, including songs/music and other creative works, requires a statement of no objection from the copyright holder (the creator). Thus, any party wishing to utilize the copyright content needs to obtain prior permission or licensing.²³ Consequently, it can be concluded that as long as the process from creating to re-distributing a cover song on YouTube does not generate profit for the creator or the party using the song commercially, and the creator does not object, then the act of singing a cover song on the YouTube platform is considered legitimate. Therefore, there are three key points to consider before covering a song on social media platforms to avoid copyright infringement and ensure the application of fair use of creative works.

1) Non-Commercialization of Creations

"Commercial" refers to activities intended for trade. In copyright law, commercial use refers to the exploitation of artworks and/or products with the intent to generate financial profit from various sources or through payment. Abdullah Gani, as cited in Richard Jatimulya Wibowo Alam, states that creating a new version does not infringe copyright when a song is uploaded on social media and adheres to the principles of fair use, provided it is not for commercial purposes or for financial gain. Additionally, covering songs on social media platforms should not harm the legitimate interests of the original creators, with "legitimate interests" defined as efforts to achieve balanced economic benefits from the work.²⁴

YouTube's policy, as a social media platform for publishing cover songs, allows creators, including those who cover songs, to earn income through their cover uploads on their personal YouTube channels. This income is generated through ads appearing in their videos and from YouTube Red subscriptions viewing their content, particularly cover

²³ Reihan Ahmad Millaudy, Rika Ratna Permata, dan Ranti Fauza Mayana, "Komersialisasi Konten Lagu dan Musik Dalam Platform Digital Dikaitkan Dengan Prinsip Fair Use Menurut Undang-Undang Republik Indonesia Nomor 29 Tahun 2014 tentang Hak Cipta dan Perbandingannya Di Beberapa Negara," *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat* 3, no. 4 (2023): 1391–1403.

²⁴ Richard Jatimulya Alam Wibowo, "Ciptaan Dan Invensi Hasil Kecerdasan Buatan Dalam Perspektif Hak Cipta Dan Paten," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 3 (2023): 269–88.

song videos. These provisions apply to YouTube channels that have registered with ContentID.

2) Benefiting the Creator

In the activity of covering songs, there needs to be a benefit for the original song creators to generate gains concerning both economic and moral rights. The term "gains" can be understood positively, as an increase in interest, and negatively, as providing profit without causing harm.²⁵ Positive gains occur when there is an increase, which supports the moral rights of the creator. This can be achieved by including the creator's name in the music being covered and shared on social media platforms. Such actions recognize the creator and show appreciation for their work.²⁶

Including the creator's name in the covered song on any platform is essential for the creator's recognition. It informs the public about the original creator of the work. When considering negative implications, such as generating passive benefits, this means earning profit without causing loss, particularly in commercial practices of covering songs on YouTube. Cover artists should distribute their earnings fairly and equitably. For example, royalties for anyone covering someone else's song should ensure that the original creator receives revenue from the cover version. This establishes a mutually beneficial relationship between the song creator and cover artists while upholding the economic rights of the creator. Covering songs on social media is typically not a copyright infringement and is viewed as applying fair use, as it continues to provide active or passive benefits to the original song creators.

Cover activities on social media increase the existence of the creators since their names are included in cover videos. This leads to greater public awareness of the music created by the songwriters, who may have been previously unknown. Thus, singing or covering songs uploaded on social media can have benefits in terms of announcing and communicating a musical work. Indeed, covering songs cannot be seen

²⁵ Ayuta Puspa Citra Zuama, "Menciptakan Perlindungan Hukum Yang Efektif Bagi Hak Cipta Karya Sastra Film Nasional: Utopis Atau Logis?," *Jurnal Hukum Dan Pembangunan Ekonomi* 8, no. 2 (2021): 95–111.

²⁶ Fatimah Nurul Aini dan Indirani Wauran, "Pemenuhan prinsip fair use dalam cover lagu berdasar hukum hak cipta Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 111–32.

as an effort that causes harm since it still provides benefits from both the economic and moral perspectives to the creator.

3) Creators Do Not Feel Harmed by Their Songs Being Covered

In Supreme Court Decision Number 41PK/Pdt.Sus-HK/2021, involving Gen Halilintar, represented by Halilintar Anofial Asmid, and Lenggogeni Umar Faruk as the parents of the family, against PT. Nagaswara Publisherindo, Gen Halilintar was found guilty of covering the song "Lagi Syantik" and altering its lyrics without permission from PT. Nagaswara Publisherindo, the copyright holder. In this context, Gen Halilintar was accused of violating rights related to the transformation of works and creative communication, which constitutes a copyright infringement as stipulated in Article 9, Paragraph (1) letters d and h, in conjunction with Article 9, Paragraph (2) of Law Number 28 of 2014 on Copyright.

Article 9 of the Copyright Law does not clearly define which types of creations require permission from the creator when economic rights are exercised. Therefore, all creations referenced in Article 40 of the Copyright Law fall into this category. Consequently, this decision can also serve as guidance to clarify the meaning of "no objection" as stated in letter d of Article 43 of the Copyright Law, which refers to statements obtained indicating lack of objection through permissions from the copyright holder or creator. In this case, permission is an agreement between the songwriter and/or musician and the cover artist. This agreement can be expressed clearly or implied. A clearly expressed agreement occurs when the creator or copyright holder explicitly grants permission for the cover of the musical work.

Conclusion

Based on the formulation of issues related to the topic under investigation concerning copyright law, several conclusions can be drawn from the research findings presented as follows. First, covering a song or performing a rendition of another person's work is permissible if it meets the requirements for using the copyright of the existing song. If the intention behind performing the song is not for commercial purposes or profit, the activity is not considered an infringement. If a cover song is performed for government purposes or

for the advancement of knowledge, and does not contradict existing norms, it can be deemed acceptable as long as the source or the creator's name is fully credited. Using a song, recording it, and uploading the video to a personal YouTube channel can be regarded as an effort to showcase or broadcast an intellectual work, which falls under the category of performance rights. Uploading videos and audio of cover songs is a means to distribute or share the cover work with a wider audience. Law Number 28 of 2014 on Copyright emphasizes that any individual performing must comply with obligations related to the economic rights of performers. This includes obtaining permission or a license, as well as the responsibility to pay royalties according to the provisions stated in letters a, c, and d of Article 23, Paragraph (2). Regarding licensing, regulations are outlined in Article 80 of the Copyright Law 2014. This article governs the rights of those who hold copyright or related rights to grant permission to parties wishing to use the copyrighted work. It also establishes the duration of the license and the amount of royalties required.

Second, concerning copyright infringement in cover songs that adhere to the principle of fair use, there are stipulations or conditions that serve as a reference, indicating that creating cover songs cannot be deemed an infringement of copyright. Singers are allowed to create new versions of existing songs, provided their intention is not for commercial benefit, such as attempting to earn income through monetizing a YouTube channel by adding ads to their videos. This action is considered a copyright violation because it could lead to personal profit through someone else's work. Ethical considerations in broadcasting songs that are creations or property of others necessitate obtaining permission through licensing and royalty payments. Such actions reflect respect for the creativity and intellectual effort invested in creating unique and valuable works.

Third, YouTube provides a facility called Content ID. Through this feature, YouTube facilitates Creative Commons licensing by the creators and the platform itself, allowing content creators to safely and freely use songs available in the YouTube Audio Library without worrying about potential copyright infringements.

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