



# The Violation of Copyright Music in the Form of Cover Song By Recording Through Social Media Related To Law Number 28 Of 2014 Concerning Copyright And Law Number 19 Of 2016 Regarding Electronic Transaction Information

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## **Abstract**

The objectives of this study were to: 1) Determine whether cover songs that were recorded via social media violated Law Number 28 of 2014 Concerning Copyright in the sphere of music. 2) To identify the factors that contribute to copyright infringement when cover songs are recorded and shared on social media. This thesis was written using a statutory approach, specifically by analyzing the changes to Law Number 28 of 2014 concerning Copyright and its implications for copyright and its implementation by high state institutions and the Law of the Republic of Indonesia Number 19 of 2016 Regarding Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions. The following are the findings of the author's research: It is a copyright infringement when someone performs a cover song on social media without permission from the artist, whether for non-commercial or commercial purposes. Among the factors influencing the occurrence of copyright infringement in Indonesia are: 1) Weak law enforcement against infringement violators. 2) Internet creations can be quickly replicated and spread internationally in a very short period of time and in big numbers. 3) There is no geographical restriction on the location of the perpetrator because a domain name or website can be viewed by anybody worldwide. 4) The procedure for inter-state events in dealing with copyright infringement on the internet, such as ascertaining who the perpetrator is and when the infringement happens (*tempus delicti*) and determining the legal region of the infringement (*locus delicti*), remains inconsistent.

**Keywords:** Copyright, Cover song, Music.

## **A. Introduction**

Copyrighted works emerging from the inventions of the human intellect and mind gave birth to a right known as Copyright. The Copyright is tied to a creator or Copyright holder, and the Copyright gives rise to economic and moral rights. (Ranggalawe Suryasaladin and Safina Meida Baqo, 2014) A copyright license, also known as a license agreement, is one method of transferring copyright. To make the license itself, the transfer of copyright must be written in the form of a license. Copyright is essentially an intangible right of individual property and arises because human intellectual property rights as copyright rights can also be transferred by the creator or those entitled to the creation itself (Amin, 2018).

Since the Dutch East Indies Colonial Government issued IPR regulations, such as the Auteurswet 1912 Stb. 1912 No.600 for copyright protection, the Reglement Industriële Eigendom Kolonien Stb. 1912 No. 545 jo. Stb. 1913 No. 214 regarding the

protection of trademark rights, and the Octrooiteit 1910 S.No. 33 yis S.11-33, S.22-54 regarding patent protection, the legal system of copyright.

IPR is no longer referred to by its initials and is now referred to as "KI." According to Article 25 Part Seven of Presidential Regulation of the Republic of Indonesia Number 44 of 2015 regarding the Ministry of Law and Human Rights, this word has changed. The word "Directorate of Intellectual Property" is used in that paragraph, which states that "The Directorate General of Intellectual Property is under and responsible to the Minister." Not "Directorate General of Intellectual Property Rights," but "General Intellectual Property" (Dharmawan, 2016).

The government issued Law Number 28 of 2014 concerning Copyright (hereafter referred to as UUHC) to replace Law Number 19 of 2002 about Copyright for this purpose (Sudjana, 2018). UUHC protects copyrights for a variety of works, including songs and/or music, songs or music with or without text, including karawitan, and sound recordings. Copyrights in the disciplines of science, art, and literature are also covered. According to Article 40 Paragraph One of the UUHC, songs and/or music are one of the copyrights that are protected. The state expresses appreciation to the Creators since creating a work necessitates not only skill and knowledge but also the expenditure of time, effort, and sometimes even money. We are all familiar with songs and music; in daily life, they resemble a way of life that we may access through a variety of media, including television, cell phones, the internet, and other outlets. Songs can now operate as a companion in the many activities we engage in and as a source of inspiration. (Tarigan, 2017).

Many people these days record their own renditions of other people's songs, then publish them to social media. Singing back, also known as a cover song, is the act of reproducing music or a song that has been written by someone other than the song's author or original performer. A cover song version may also be made available in an effort to rekindle the song's initial success with a younger audience. The original edition has long been deteriorating (Permana, 2018) The kind of cover versions produced vary as well; some are amateurish and some are expertly produced. The other party is free to express the same idea or reuse information from the protected work in a later work while creating a cover version of a song, as long as the idea is represented in a different way. A challenge about copyright infringement from the party entitled to the work arises when the cover version produced is commercial in character (Creator) (Dewi, 2017).

The public currently uses the internet as one of the media to share covers of songs and music. The benefit of the internet is that record labels are no longer required to rely on direct marketing or physical sales; instead, they can promote their work through social media networks, where the public can view the promotion. On the other hand, there are drawbacks, one of which is the large number of parties. someone performs a well-known song once again (also known as a cover song) and then posts it on various social media platforms. In reality, many cover songs become more well-known than the original songs played by the artist or singer. As a result, some singers who attempt to sing cover songs do so inadvertently in the hopes of becoming famous quickly and making money from the songs they sing, that this has infringed on the performer's economic rights as the creator or copyright holder of the song being covered.

Indirectly, neither the creator nor the copyright holder will gain anything. This has now become a fairly normal and everyday occurrence. It is unfair if the rights of perpetrators are not at all safeguarded, even though their rights can be regarded as being distinct from those of the creator. We can see that something is wrong with our intellectual property rights protection system given the sheer number of works that are protected and the number of losses that have been incurred by business (entrepreneurs), the government, and the inventors themselves. The system of intellectual property rights combines the functions of creators, businesspeople (industry), and defenders of the law. The community's lack of a comprehensive understanding undermines the IPR system and hampers its implementation. (Anjelfa, 2015).

It governs numerous protections against copyright infringement through the internet, including a number of sanctions imposed on offenders of copyright infringement, both in the form of jail and a specified amount of fines, not only in the UUHC but also in the ITE Law (Prasetyo, 2017) Copyright violators can be sued in civil court to obtain compensation for what the entitled creator has suffered, but they can also be prosecuted in accordance with the applicable criminal procedural law, because copyright infringement not only harms the creator's personal interests, but also harms the interests of society as a whole. (Lopes, 2013)

Research Objectives, to determine copyright infringement in the sphere of music in the form of cover songs recorded via social media and related to Copyright Law Number 28 of 2014. To identify the factors that impact copyright infringement in the realm of music through cover songs recorded on social media.

## **B. Method**

This paper takes a statutory approach, namely by evaluating modifications to Law No. 28 of 2014 concerning Copyright and its consequences for Copyright and its implementation by high state institutions, as well as the Law of the Republic of Indonesia No. 19 of 2016 concerning Copyrights. Amendment to Information and Electronic Transactions Act No. 11 of 2008. The author additionally employs a concept technique to finish this thesis.

### **1. Legal Material**

Primary Legal Material, It is a legally binding material, in the form of (a) Basic Norms or Basic Rules, namely the Preamble to the 1945 Constitution; (b) Basic Regulations: Body of the 1945 Constitution; (c) Legislation, namely: Laws, Government Regulations, Presidential Decrees, and other regulations related to copyright; (d) Jurisprudence that is relevant to this writing and research.

Secondary Legal Material, Secondary legal materials are legal materials that provide explanations of primary legal materials, such as journals on constitutional law, especially those related to amendments and implementation of sovereignty, legal books, papers, workshops, seminars, symposia, discussions, and research results. magazines/newspapers, internet media and treatises related to the object of this research.

Tertiary Legal Material, Tertiary legal materials, namely supporting legal materials to clarify or provide complete information about primary legal materials

and secondary legal materials such as legal dictionaries, large Indonesian language dictionaries, English-Indonesian dictionaries, and others.

### **C. Research Results And Discussion**

#### **1. Copyright infringements in the music industry in the form of cover songs are linked to Copyright Law Number 28 of 2014.**

Copyright, which is a component of positive law first adopted and upheld by the Dutch government in Indonesia, is inextricably linked to the previous national legal order both before and after the declaration of the Republic of Indonesia's independence. Within the scope of the development process that we are presently working really hard on, Indonesia has no little issues, particularly in the sphere of law (Hutagalung, 2012). According to the regulations of Law Number 28 of 2014 about Copyright, the following are examples of copyright infringements:

Does not mention the identity of the Creator of any action, such as distorting, mutilating, or altering the Works without the owner of the song's or music's consent. This is in line with the assertion made by the UUHC in Article 5 that; The moral rights as referred to in Article 4 are rights that are eternally attached to the Creator to: Continue to include or not include his/her name on the copy in connection with the public use of his/her Works, Using his/her nickname or pseudonym, Changing the creation in accordance with the propriety in society, Change the title and sub-title of the Works; and Defending their rights in the event of distortion of Works, mutilation of Works, modification of Works, or things that are detrimental to their honor or reputation. While the Author is still alive, the moral rights mentioned in paragraph (1) cannot be transmitted; nevertheless, the implementation of these rights may be done so through a will or for other reasons in line with the law after the Author has passed away. When moral rights mentioned in paragraph (2) are transferred, the recipient has the option of releasing or rejecting the implementation of such rights, provided that decision is made in writing.

In this case, there are several violations that are still frequently carried out, particularly on social media, such as the re-arrangement of a song and/or music, which can actually be said to be a violation, and action can be taken, in accordance with the UUHC statement in Article 8 regarding the Economic Rights of a Work, which states that; Economic rights are the exclusive rights of the Author or Copyright Holder to obtain economic benefits from the Works. Then, in Article 9 The Creator or Copyright Holder as referred to in Article 8 has the economic right to perform: Publishing Works, Reproduction of Creation in all its forms, Creation Translation, Adapting, arranging, or transforming Works, Distribution of Works or copies thereof, Creation Show, Creation Announcement, Creation Communication and Creation Rental. Every person implementing economic rights as referred to in paragraph (1) must obtain permission from the Author or Copyright Holder. Any person without the permission of the Creator or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works.

The case handled by Hanin Dhiya is one of the cover songs cases; there are still many violations of copyright of songs and/or other music in society, especially the right to reproduce, which is evident in the form of piracy, and violations of the right to announce, which take the form of using and using songs and/or music creations

without permission, have given the impression that our country does not seriously address copyright issues and is seen as still weak.

## **2. Infringement of Music and Song Copyrights is linked to Law Number 19 of 2016 concerning Electronic Transaction Information**

Other laws, such as Law Number 19 of 2016 Concerning Electronic Transaction Information, have also been discovered that address copyright infringement especially for works found in electronic information, electronic documents, and websites. In accordance with the provisions of the Laws and Regulations, electronic information and/or electronic documents combined into intellectual works, internet sites, and intellectual works on them are protected as intellectual property rights, according to Article 25 of Law Number 19 of 2016 concerning Electronic Transaction Information and Law Number 11 of 2008 concerning Electronic Information and Transactions.

Furthermore, the techniques connected to banned acts in connection with electronic information or electronic documents protected by intellectual property rights are established in Article 32 of Law Number 19 of 2016 and Law Number 11 of 2008 respecting Electronic Transaction Information, as follow.

Unrighteously or against the law in any way alter, add, reduce, transmit, destroy, delete, transfer, or hide an electronic information belonging to another person or the public, Unlawfully or against the law in any way remove or transfer electronic information or electronic documents to other people's electronic systems that are not entitled.

The aforementioned article raises the question of whether performing a cover song is against the law. The definition of "electronic information" and "electronic documents" is given in article 1 paragraph 1 of the ITE Law, which states: "Electronic Information" is defined as "one or a set of electronic data, including but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or perforations that have been processed that have meaning or can be understood by people who are able to understand them.

Additionally, according to paragraph 4, an electronic document is any electronic information that is created, transmitted, received, saved, or displayed using a computer or other system and can take the form of analog, digital, electromagnetic, optical, or similar signals. Electronic, including but not limited to writing, sound, images, photographs, graphics, maps, or the like, letters, numbers, access codes, symbols, or perforations that have meaning or meaning that can be understood by those who are able to understand them.

## **3. The phenomenon of cover songs through internet media**

Presently, it appears that copyright infringement, particularly when it takes the form of cover songs, continues to occur without any significant legal resolution. Many people perform cover songs without paying royalties or getting the artist's consent. Many people create cover songs today utilizing songs by other singers, record them, and post them to social media sites. The cover songs that are made are also varied, some are made simple and some are made professionally. Therefore, it is only natural that legal protection is needed for the song's copyrighted work. The following are

factors that influence the occurrence of copyright infringement in Indonesia (Ginting, 2012), among others are as follow:

Weak law enforcement against violators, The low integrity of law enforcement officers such as police, judges, prosecutors and advocates. Positive law enforcement paradigm or more emphasis on formal legal aspects. Legal awareness is still low from the community, Creations on the internet can easily be duplicated and distributed globally in a very short period of time and in very large numbers, There is no limit on the place of the offender because a domain name or website can be accessed by everyone globally, Procedures for inter-state events in dealing with copyright infringement on the internet, such as determining who the perpetrator is and when it occurs (*tempus delicti*) and determining the legal area of the infringement (*locus delicti*) still varies, Information, data, or a creation on the internet is vulnerable to be manipulated, changed, or modified by others even though it has been protected by means of technological control, Not only from the copyright holder who is infringed, but also the moral rights of the creator. Advances in technology that are very fast and continuous allow someone to violate copyright in various forms of *modus operandi* by using advanced technology. Some trends in actions on the internet, such as framing or linking to a site containing copyright infringing works, have not been identified as copyright infringement.

There are negative impacts obtained when a copyright is violated by the public without permission (Asmanto, 2015), as follow:

Reducing Creative Ability, creativity, or the ability to create something new, will be challenged by extinction. Because a cover/arrangement solely relies on the labor of others, while the performer only requires improvisation techniques, specifically arranging a song from its original form to a new form, yet a breach is not viewed negatively, but rather as something that has recently evolved and is ubiquitous on social media and is thought to be capable of increasing the fame of the creators of other people's covers/arrangements.

Stealing the Popularity of the Original Singer, the song took a long time to produce, it was carefully composed, then formulated to fit the musical style of the performer, penned by a highly compensated composer, meticulously recorded, and master before it was eventually released. The song was eventually released onto the market and became highly successful as a result of other people singing it on social media without the author's consent or paying royalties. This had an effect on lowering creativity as a result.

Taking Part of the Income of Original Singers, Consciously or unconsciously, stealing the original singer's popularity implies taking the original singer's money. The "song fans" will be sorted into two groups: cover singers and original performers. The "song fan" did not purchase the original CD because they preferred the cover/arrangement videos on social media platforms such as YouTube and others, and the "song fan" did not purchase concert tickets because they preferred the cover/arrangement songs over the original, indirectly. This is against the creator's morals.

As if Produced Own Song, this song cover/arrangement activity is only done by a small group to channel their hobbies and talents. However, after the "cover/song arrangement trend" turned into an "industry" that could make a lot of money, the

cover/arranger of this song produced someone else's work as if it was his own work and was presented very nicely, produced with details ranging from recording, mixing, mastering to making video clips, in order to attract the attention of viewers on social media as much as possible. Then, with the number of viewers, they can increase their popularity in the music industry, this can also be said as a shortcut even though it is said to violate the provisions of UUHC.

Lowering the Prestige of Some Instruments, indirectly, as more and more musical instrument applications become available on social media and are packaged in a way that makes it simple for cover artists and arrangers to transform the work of others into their own, the number of musicians in Indonesia will decline. Naturally, this will have an effect on the musician's interest declining.

#### **4. Copyright Violation in the Music Industry in the Form of Cover Song by Recording Through social media Linked to Copyright Law Number 28 of 2014**

Covering music is one instance of copyright violation in online media. The act of bringing/reproducing a song/piece of music that belongs to someone else but has already been recorded and performed by another singer or musician is known as a cover song. Generally speaking, creating a cover song is legal within specific parameters. If neither party, meaning the performer of the cover song and the Creator or Copyright Holder whose work is used to be sung and who then receives financial benefits from the cover song, agrees to it, it is a violation. The forms of copyright infringement are based on the provisions of Law Number 28 of 2014 concerning Copyright, as follow:

Does not include the name of the Creator of any action, namely distortion, mutilation and modification of the Works without the permission of the owner of the song and/or music. This is in accordance with the UUHC statement in Article 5, that; The moral rights as referred to in Article 4 are rights that are eternally attached to the Creator to: Continue to include or not include his/her name on the copy in connection with the public use of his/her Works;, Using his/ her nickname or pseudonym, changing the creation in accordance with the propriety in society, change the title and sub-title of the Works, Defending their rights in the event of work distortion, mutilation, modification, or other acts that are adverse to their honor or reputation. The moral rights mentioned in paragraph (1) cannot be transmitted while the Author is still alive, but the implementation of these rights can be transferred by will or other means after the Author dies, in conformity with the restrictions of the legislation. In the event of a transfer of the implementation of moral rights as described in paragraph (2), the recipient may release or refuse the implementation of his/ her rights, provided that the release or refusal is declared in writing.

In this case, there are several violations that are still frequently committed, particularly on social media, namely the re-arrangement of a song and/or music, which can be considered a violation, and action can be taken, as stated in the UUHC statement in Article 8 regarding the Economic Rights of a Work, that; Economic rights are the exclusive rights of the Author or Copyright Holder to obtain economic benefits from the Works. Then, in Article 9, that. The Creator or Copyright Holder as referred to in Article 8 has the economic right to perform publishing Works reproduction of Creation in all its forms, creation Translation, adapting, arranging, or transforming

Works or Creation, aistribution of Works or copies thereof, creation Show, creation Announcement, creation Communication; and creation Rental.

Every person implementing economic rights as referred to in paragraph (1) must obtain permission from the Author or Copyright Holder. Any person without the permission of the Creator or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works. As a result, the case of cover songs is contradictory to the rules of Article 9 paragraph (2) UUHC, where the arrangement of a copyrighted work requires authorization from the Creator or Copyright Holder, because the arrangement is an activity covered by Economic Rights. This is also in violation of UUHC Article 9 paragraph (3), which states that anyone who does not have the consent of the Author or Copyright Holder is prohibited from duplicating and/or economically exploiting the work.

It is considered a copyright violation when someone performs a cover song on social media without the author's consent, whether it is for profit or not. The author of this cover song has the right to bring a civil lawsuit for damages and a criminal complaint against the conduct of this song. According to Law Number 28 of 2014 about Copyright, which states that creators who believe their economic rights have been violated are entitled to compensation, this is based on Article 96 paragraph (1). In accordance with Article 100, paragraph (1) of Law Number 28 of 2014 Concerning Copyright, the creator files a civil complaint in the form of a claim for compensation with the Commercial Court. (Subawa, 2018).

Copyright is regarded as a movable object, and as such, the owner may transfer, license, sell, and/or transfer it with restrictions in line with the relevant laws and regulations. The change over or transfer of Copyright must be made in writing, either with or without a notarial deed, if it cannot be done verbally. (Hilmar, 2017).

Copyright holders typically enforce copyright laws under civil law, but there is also a criminal law side, where criminal penalties are meted out for significant counterfeiting acts but are now more frequently used in other situations. In Indonesia, copyright violations are often punished by imprisonment for a minimum of one month and a maximum of seven years, along with a fine of at least one million rupiah and a maximum of five billion rupiah, which may or may not be imposed. According to Article 99 paragraph (2) of Law Number 28 of 2014 concerning Copyright, compensation for copyright infringers may take the form of a demand to partially or fully transfer any money earned to the creator. Copyright holders can apply for a request to confiscate the work produced, as well as a request to halt the announcement, copying, or distribution of the work produced, in addition to demands for compensation based on Article 99 paragraph (3) of Law Number 28 of 2014. It is known as an interim decision. (Hilmar, 2017).

The significance of copyright permits stems from the fact that legal certainty in the maker community will encourage investors to invest in Indonesia. The best that can be done is a strong determination and seriousness from the government and specific law enforcement agencies that must be approved for the construction of laws combined with consistent goods that note that law enforcement can renew fur is the most effective way to combat piracy. With a relatively simple verification, law enforcers who have actually been able to take action against piracy tactics might benefit from this provision, reducing state losses caused by piracy practices. If this is

also meant to be an effort to eradicate piracy, it does not appear to be effective. Piracy, which is a violation of the Copyright Act, is appropriate if the criminal consequences imposed are also based on the Copyright Act.

#### **5. Factors Influencing Copyright Infringement in the Field of Music Through Cover Song Recording on social media**

Nowadays, many people make cover songs using songs belonging to other musicians and then record them and upload them to social media networks. The cover songs that are made are also varied, some are made simple and some are made professionally. Therefore, it is only natural that legal protection is needed for the song's copyrighted work. The following are factors that influence the occurrence of copyright infringement in Indonesia, among others. Weak law enforcement against violators, The low integrity of law enforcement officers such as police, judges, prosecutors and advocates. Positive law enforcement paradigm or more emphasis on formal legal aspects, legal awareness is still low from the community.

Creations on the internet can easily be duplicated and distributed globally in a very short period of time and in very large numbers, there is no limit on the place of the offender because a domain name or website can be accessed by everyone globally, Procedures for inter-state events in dealing with copyright infringement on the internet, such as determining who the perpetrator is and when it occurs (*tempus delicti*) and determining the legal area of the infringement (*locus delicti*) still varies; Some of the aforementioned issues prevent Indonesian copyright laws from being upheld there. The creative economy depends on the creative arts, which are supported by copyright laws, which require legal protection for works of art. The community and the government need to be aware of and respectful of one another's intellectual property rights in the age of the digital music industry. Copyright holders typically enforce copyright laws under civil law, but there is also a criminal law side, where criminal penalties are meted out for significant counterfeiting acts but are now more frequently used in other situations.

#### **D. Conclusion**

copyright infringement when someone performs a cover song over social media without the author's consent, whether it be for profit or not. The author of this cover song has the right to bring a legal lawsuit, along with a criminal complaint, for the actions of the song. According to Law Number 28 of 2014 about Copyright, which states that creators who believe their economic rights have been violated are entitled to compensation, this is based on Article 96 paragraph (1). According to Article 100 of Law Number 28 of 2014 concerning Copyright, if a song or piece of music is altered in any way that can be considered to be a violation, the creator may file a civil lawsuit in the form of a claim for compensation with the Commercial Court, and even take legal action in accordance with the UUHC statement in Article 8 of the law.

The cover songs that are made are also varied, some are made simple and some are made professionally. Factors that influence the occurrence of copyright infringement in Indonesia, among others: 1) Weak law enforcement against perpetrators of infringement. 2) Creations on the internet can easily be duplicated and distributed globally in a very short period of time and in very large numbers. 3) There is no limit on the place of the violator because a domain name or website can

be accessed by everyone globally. 4) Procedures for inter-state events in dealing with copyright infringement on the internet, such as determining who the perpetrator is and when it occurs (*tempus delicti*) and determining the legal area of the infringement (*locus delicti*) still varies.

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