

LEGALITY: JURNAL ILMIAH HUKUMJournal homepage: <http://www.ejournal.umm.ac.id/index.php/legality>**Legal Protection for Copyright Holders of Commercialized Remix Song Cover Version**AAA. Ngurah Sri Rahayu Gorda,^{1*} Ida Ayu Ketut Artami,² Putu Eva Ditayani Antari,³ Kadek Januarsa Adi Sudharma,⁴ Robert Vaisile Moisa⁵^{1,2,3,4} Faculty of Law, Universitas Pendidikan Nasional, Bali, Indonesia⁵National University of Political and Administrative Studies, Bucharest, Romania* Corresponding author: januarsa.adi@undiknas.ac.id**Article****Abstract****Keywords:**Legal Protection;
Copyright; Cover Version.**Article History**Received: Jun 24, 2021;
Reviewed: Jul 13, 2021;
Accepted: Jan 26, 2022;
Published: Feb 10, 2022

Copyright is legal and registered work. a copyright holder has two exclusive rights: economic and moral rights. A song or music copyright is one of the copyrights in the realm of art. However, there have been several copyright infringements in the music industry recently, and the cover version of a song is one of many. Many performers cover songs without the consent of original composers. They also sell and buy the music, which has obviously taken away the creator's economic and moral rights. As a result, legal protection for composers is required to prevent future instances of copyright infringements of music. The objective of this study is to determine the legal protection afforded to copyright holders of the commercialized version of a cover song, as well as the purposeful conclusion of the case involving the marketed version of the covered song. This research employed a normative approach based on literature. This study's technical analysis employed descriptive - qualitative methods. Two types of legal protection for songwriters constitute preventative and repressive protection, where the former is achieved by registering works held by the Directorate General of Intellectual Property Rights and undertaking public awareness campaigns emphasizing the significance of copyright recognition. Meanwhile, repressive protection is sought by filing a civil complaint, and criminal charges to the District Court. There are two options to resolve copyright issues over songs: in court or outside court, where the litigation process involves filing a case to the district court, and the non-litigation process may require negotiation.



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INTRODUCTION

Intellectual property is the ability of human intellect to generate new ideas to fulfil requirements and people's welfare (Santoni de Sio & Mecacci, 2021). Inventions, works

of art, and literature have a great impact on human life. when products of human creativity are used for commercial purposes, intellectual works and their rights must be respected at all costs (Al-Fatih, 2021).

Intellectual Property Rights (KI) refer to the intellectual property of human works, which is the right to the creative brainchild of a human being. Individuals possess the intellectual ability to generate works that should be under the protection of Intellectual Property Rights, such as in the field of Copyright, profit from intellectual property rights (Valensia & Sartono, 2020). A copyright is a monopolistic right owned by a creator as a copyright holder to regulate their work or give permission to other parties to do something about the work but within the limits of the applicable law (Slutskiy, 2021).

The song is a copyrighted work which has been protected by law number 28 of 2014 concerning copyright (UUHC) (Swari & Subawa, 2018). These days, as a cutting edge and sophisticated piece of technology, Internet provides easier access to millions of songs, but this technology exists not without shortcomings. While it is easier for people to listen to songs and for songwriters and it is easier to promote their work, many people misuse technological advances for personal gain, namely by making money by covering songs that are uploaded on several social media sites (Yasa & Sukranatha, 2016). Social media networking sites used by the public to access or upload cover versions include iTunes, YouTube, Spotify, or Sound cloud.

Cover versions of songs or re-sung songs represent a phenomenon that occurs in the world of music today. Many cover singers upload their works on social media, expecting that the members of public access their work. One of the social media that does not limit cover version actors is sound cloud, a music player application with online media services. This application allows people to record their own music and upload it on cloud application intended to make the reproduced songs viral. Sound Cloud is in great demand by music lovers because downloading or uploading a song no longer requires an application, and it has become one of the audio-based alternative digital media.

Conventions such as the Berne Convention, the Universal Copyright Convention, and the TRIPs Agreement are all examples of international agreements that provide information on international copyright arrangements. Copyright is the exclusive creation that emerges spontaneously based on declaratory principles when a work is realized in a physical form without lowering restrictions in line with the requirements of laws and regulations (Jaelani et al., 2019), according to Article 1 of Law No. 28 of 2014. Through copyright, moral rights and economic rights arise (Salam et al., 2021). Moral rights are regulated in Article 5 paragraph (1) of Law no. 28 of 2014 concerning Copyright which includes the right to continue to include or not to include the name of the creator on the copy in connection with the public use of his/her creation, to use his pseudonym, to defend his rights in the event of distortion, cutting, modification,

and other things that violate the honour or reputation of the creator. Meanwhile, economic rights are regulated in Article 8 of Law no. 28 of 2014 concerning Copyright includes publishing, duplicating in all forms, adaptation, arrangement, transformation, distribution, to broadcasting of one's creations.

Currently, many people are making cover versions of other people's songs and then commercialize them. The cover versions also vary, some are playfully made, and some are made professionally. The term cover version of a song can be interpreted as singing a song of a famous artist or singer without changing the lyrics and the original song. Copyright protection is for an existing product of a creation, not referring to a 'Concept' or knowledge obtained from an inexistent product of a creation (Santos et al., 2020). In the activity of making a cover version of a song, the other party has the freedom to express the same idea or reuse it.

METHOD

This research employed a normative legal research method-conceptualized based on a library research to obtain legal materials (Arliman, 2018). This method is intended to elaborate legal issues based on secondary data sourced from legislation, legal theories, and the notions of legal scholars (Benuf & Azhar, 2020). This legal writing employed a Statutory approach and a case approach. The legal materials involved Law number 28 of 2014 concerning copyright, case decisions regarding copyright infringement and also using secondary legal materials constituting related books, journals, reports, and dictionaries, which were collected from literature studies. All the legal materials were analyzed based on a qualitative descriptive method describing a legal event or legal situation. This research explains that the acknowledgment to the copyright follows the registration of the song copyright, and the Nurbayan's song covered by Eni Sagita represents this case.

RESULTS AND DISCUSSION

Legal Protection for Copyright Holders over Cover Versions of Commercialized Songs

Playing a song/music in public as if no legal issue resulted from this act is an example of copyright infringement. Currently, a number of people are covering original songs, recording, and uploading them for commercial purposes. The covers also vary, ranging from those made without particular efforts and those professionally composed. Copyright Law may refer cover version of a song to a duplication/remix or the song that is re-sung. Since it is not set forth in the Copyright Act, cover song was deemed illegal, and songwriters must be legally protected.

Legal protection is intended to fulfil the rights and provide assistance to provide a sense of security to witnesses and/or victims (E. S. Salsabila, 2020). The legal protection for victims of criminal acts given as community protection may involve restitution, compensation, health services, and legal assistance. A legal safeguard is a

measure taken to ensure that one's rights are justly protected in a preventive and repressive manner based on the law that is currently in place (Hidayah et al., 2020). Basically, legal protection guarantees a work of creation (Finck & Moscon, 2018). However, in the case like song remix, they do not get copyright protection because it requires authenticity as a form of real and original work so that the creation can be heard, read, or seen (F. M. Salsabila et al., 2021).

Copyright infringement of music/songs takes place when people broadcast music/songs without paying royalties or consent of original composers. Copyright Act (UUHC) does not recognize the term cover version but the term duplication which is implied in the provisions of article 1 number 12 UUHC.

Legal protection in copyright for songwriters regulated in UUHC, but copyright protection does not have to go through a recording process in IP known as registration. However, it is advisable to register the work in the interest of the creator. For this reason, the registration serves as written evidence in case of plagiarized or violated copyrighted works.

Legal protection for songwriters related to commercialized cover versions of songs can be taken in two ways, namely preventive actions (preventing) and repressive actions (suppressing). Preventive actions are set forth in UUHC Articles 66-67 which require recording or registration of works. Even though works are protected soon after the creation is made, copyright registration is required in case of a dispute in the copyright. Meanwhile, repressive actions are regulated from articles 95 to 120 UUHC regarding the settlement of arbitration disputes (courts) with civil lawsuits and criminal charges submitted to the District Court (Satria Dewi, 2017). The existence of preventive legal protection is to prevent disputes in copyright, while repressive legal protection is to resolve disputes in copyright whose lawsuits are filed to the commercial court (Herwastoeti & Hidayah, 2020). Criminal charges to the district court deal with a complaint offense in Article 120 UUHC (Fadhila & Sudjana, 2018).

The provisions of Article 16 paragraph (2) of the UUHC imply that in addition to being transferable, copyright can also be granted a license-- a permit obtained from the copyright holder which is given to other parties to use their creations or reproduce their creations with certain conditions between the two parties related to the period of time and royalty fees (Utama et al., 2019). By its nature, copyright is a movable object that can be transferred through the process of inheritance, grants, endowments, wills, written agreements that are justified by the provisions of the applicable legislation (Lucia Antoinette Shipley, 2013). A license must be issued under a written agreement of a deed and must be recorded by the minister in the general register of Copyright license agreements for which a fee will be charged (Sudirman & Disemadi, 2021). The object of the license not only covers copyright, but also other rights related to the copyright. For example, recorded sound/music will require copyright, while the recorded sound broadcast or played in public will lead to a broadcasting right

(economic right) , That is, recording rights and broadcasting rights are within the scope of the license object (Harini et al., 2021). Therefore, a compulsory license is regulated in articles 80 to 86 of the UUHC but the license agreement is valid for the agreed period which is usually less than the period of the protection of copyright and related rights themselves (Quintais, 2019).

With the license, the creator will receive compensation in the license of the song he/she creates, which is known as royalty. Such an arrangement is a form of legal protection for songwriters against any violations of their music/song copyrighted works (Sasongko, 2019). The right in question is copyright of songs or music, where the song is related to sound that can be recorded, giving rise to rights in the recording sector. When the creation is distributed to the community, it results in broadcasting rights. In addition to a license, the economic rights of the creator or the owner of the rights can be obtained by means of a royalty mechanism, namely an imbalance in the utilization of the Economic Rights of a Work or Related Rights Product received by the creator or the owner of the related rights (Harini et al., 2021).

Doctrinally, Moral Rights consist of the following:

1. The right to recognition as a creator in the situation where the copyrighted work produced by the composer is reproduced, announced or exhibited in public. When this is the case, the work must include the name of the composer;
2. The right to the integrity of the work constitutes the right not to change the copyrighted work without the consent of the creator, or the heirs of the creator himself. Such changes may involve twisting, destroying, cutting, and replacing copyrighted work;
3. The right of the creator to reproduce the results of changes to the copyrighted work in accordance with the dynamics of the times and the propriety that applies (Dornis, 2019).

In the case of the cover version of the song by Eni Sagita, it can be seen that the cover version of the song has violated the moral rights of the original creator, namely Nurbayan because the cover version of the song does not include any identity regarding the creator, thereby violating the rules in copyright. In the Copyright Law, Moral Rights require that the identity of the creator be mapped to the work (Aditya & Al-Fatih, 2017), either with a personal name or a pseudonym (Alghofiki et al., 2021) where these rights involve the following:

1. Continuing to include or not to include his/her name on the copy in connection with the public use of his/her creation.
2. Using his alias or pseudonym; and
3. Defending his/her rights in the event of a distortion of the work, mutilation of the work, modification of the work, or others that are detrimental to his/her honour or reputation.

The moral rights of the creator are valid for the duration of the copyright on the work in question, namely in the case of:

1. Changing his creation in accordance with the propriety in society.
2. Change the title and sub-title of the creation (Harini et al., 2021).

From this arrangement, it can be understood that the Copyright Law in general has protected the moral rights of the creator.

Legal protection in copyright for songwriters is regulated in UUHC. Despite this fact, copyright protection does not have to go through the process of recording in Intellectual Property or known as registration, but registration is recommended in the interest of the creator. For this reason, if there is plagiarism or imitation of copyrighted works, the creator can easily prove it because of the presence of written evidence of registration (F. M. Salsabila et al., 2021). Legal protection is divided into two, namely preventive protection and repressive protection, where the former represents a form of protection given to raise objections to opinions before a government decision is given. Meanwhile, repressive protection is given following violations of legal rules or if someone feels that his/her rights have been violated (Mentari, 2021).

Preventive protection is given to prevent a violation of a copyrighted work, especially in this case in the form of a song. Preventive action may involve recording or registering the work as stated in Articles 66 and articles 67 of the UUHC. The work has actually been protected since the creation, so it is not required to be registered, but the function of the copyright registration is intended to make it easier to prove in case of a dispute in the copyright. In addition, the Director General of Intellectual Property Rights (IPRs) and law enforcement officers can conduct socialization aimed at educating the public on the importance of respecting someone's copyright. It is hoped that the public will no longer cover the song version without any consent of the songwriter.

Repressive protection is given after an infringement is committed on a copyrighted work belonging to the creator. In addition, this protection is given to seek a form of settlement to be able to maintain the rights of the creator. In this case, the protection provided is in accordance with UUHC. Regarding the violation that could harm the creator, of course, this needs to be stopped by imposing sanctions or fines over the violations of the creator's copyrighted work according to the provisions of articles 95 to 120 of the UUHC concerning the settlement of arbitration disputes with civil claims and criminal charges submitted to the District Court (Wibowo, 2021).

Measures to Settle the Dispute of Cover Versions of Commercialized Songs

Measures to settle the song version cover dispute can be divided into two paths, which can be explained as follows:

1. Dispute Resolution in Court

Music or songs are creations that are no less important in the ranks of the copyright protection system. The importance of adequate protection for music and songs can be related to aspects of cultural development and aspects of economic potential (Alghofiki et al., 2021). In the case of Eni Sagita, what has been done has certainly violated the economic rights and moral rights of Nur Bayan, causing a copyright dispute. Furthermore, Copyright is an exclusive right consisting of moral rights and economic rights. Disputes over copyright are those over assets which in terms of copyright are referred to as economic rights (Dewi et al., 2021). Disputes do not only stem from illegal acts that harm the creator or recipient of rights committed by other parties as well as acts of default as a result of violating the clauses set forth in the license agreement. The two forms of legal action are generally regulated in Book III of the Civil Code, namely acts that are categorized as: (1) *Onrechtmatigdaad*, (2) Default (Dewi et al., 2021).

Against copyright infringement, in accordance with article 1365 of the Civil Code, there must be sanctions to enforce:

- a. Determination of compensation to parties deemed to have committed a violation;
- b. Cessation of activities, reproduction, distribution, and sale of illegal (pirated) works resulting from copyright infringement;
- c. Confiscation and destruction of illegal goods resulting from copyright infringement (Yasa & Sukranatha, 2016).

Civil law measures in resolving copyright infringement cases are quite effective because these measures focus more on the compensation process intended to alleviate burdens the violating party has to come to terms with. In criminal law, on the contrary, the imprisonment imposed seems to leave burdens on the violators recalling that jail sentence takes the freedom of the person concerned.

Settlement in court can be taken as a solution to decide the compensation for the aggrieved party, as intended in Article 96 of the Copyright Law No.28 of 2014. The process of filing a lawsuit to Court involves the stages as regulated in Article 100 of the Copyright Law No.28 of 2014, requiring maximum 90 (ninety) days and can be added up to a maximum of 30 (thirty) days as stipulated in Article 101 of the Copyright Law No.28 of 2014.

1. Out of Court Dispute Resolution

Dispute resolution outside the Court can take place through several methods, namely mediation, negotiation, conciliation and arbitration (Yasa & Sukranatha, 2016). Based on several alternative forms of dispute resolution as described above, negotiation is seemingly a simple form and can be used in an effort to resolve disputes because it runs on the principle of deliberation for consensus between the disputing parties (Situmeang & Kusmayanti, 2020). Negotiation is a two-way communication process that aims to establish an agreement where both sides have similar or opposing

interests and there is no need for a third party to act as an intermediary (Puspasari et al., 2020). Negotiations are carried out by discussing differences that arise between the disputing parties through "Deliberations for consensus" with the aim of achieving a "win-win solution" (Fadhila & Sudjana, 2018). Successful resolution of the dispute; really depends on the wishes and good faith of the disputing parties (Asyikin, 2020).

Settlement of copyright disputes can take place in two ways, involving courts and non-courts (Anggraeny & Al-Fatih, 2020). Both options provide legal certainty for the disputing parties. However, settling the case outside the court will be more time- and cost-efficient, giving a chance of win-win solution beneficial for both parties of Eni Sagita, can be resolved outside the court through negotiation (Puspasari et al., 2020). So, Eni Sagita can pay the royalties to Nurbayan, followed by request of consent to cover the version of the song originally owned by Nurbayan by paying for the license of the song to avert any possibilities of disputes.

CONCLUSION

In terms of legal protection for copyright holders for copyrighted songs and music from the perspective of UUHC, the law will provide appropriate protection with these properties and copyrights to ensure that the creativity and music/song-composing activities keep running. The birth of the creation of new songs and music or the creation of songs and music pre-existing conditions must be supported and protected by law. This form of protection is confirmed in the Law by placing criminal sanctions against people who violate copyright unlawfully. Criminal Sanctions in Copyright piracy itself is outlined in Article 113 paragraph (3) Copyright Law. To realize protection in this case, the creator can take a preventive measure, namely by registering the creations they own, so that their creations can be protected by law as regulated in Article 66 - 67 Copyright law. In addition, the Directorate General of Intellectual Property Rights (IPRs) and law enforcement officers can conduct appropriate socialization aiming to educate the public on the importance of appreciating copyright. Thus, it is expected that people will no longer cover songs without consent from the songwriter. The second measure involves proof in rights there is a dispute regarding copyright which is called a repressive measure. carried out through arbitration dispute resolution or Court Article 95 paragraph (1) UUHC. Civil lawsuit filed to Commercial Court and criminal charges are submitted to the District Court.

ACKNOWLEDGMENTS

Gratitude is expressed to the Editor in Chief, Reviewer and Editor of Legality: Jurnal Ilmiah Hukum, all lecturers of the Faculty of Law, Universitas Pendidikan Nasional for knowledge and supports contributed to the preparation of this article.

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