

## LEGAL PROTECTION COPYRIGHT SONGS AND/OR MUSIC THAT ARE SUNG AGAIN (COVER SONG)

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### *Abstract*

*This research aims to determine the form of legal protection in cases of song Copyright infringement by being linked to relevant legal theories and knowing and analyzing the legal consequences given to violators of song Copyright as an intellectual property right. This research uses a type of normative juridical research. The approach used is a legal approach, with secondary legal material consisting of primary legal material, literature, articles, opinions and teachings of experts. A cover version or song cover is a re-sing of an existing song, either by changing certain parts. Many people upload it on social media or YouTube. However, without the songwriter's permission, this could violate copyright. For example, Gen Halilintar covered "Lagi Syantik" without permission, which resulted in a lawsuit and a decision that had to pay compensation. Copyright legal protection can be carried out in two ways: preventive efforts, namely recording works at the Ministry of Law, and repressive efforts through resolving disputes in court.*

**Keywords:** *Legal Protection, Copyright, Song/Music.*

## A. INTRODUCTION

Intellectual Property Rights (IPR) are rights that arise because of the results of a person's intellectual creativity, where the results of these thoughts are expressed in real form, there are elements of creativity, so they cannot only be certain ideas, ideas, concepts or facts that do not have physical or real form. Intellectual property (IP) is part of property law, IPR is very abstract in comparison with respect to movable objects in general, such as ownership rights to land that can be seen and are tangible.<sup>1</sup> One area of Intellectual Property Rights that receives protection is Copyright. Based on natural law theory, copyright is born naturally (*natural right*) after the copyrighted work is completed so that its protection is automatic (*automatically protection*) there is no need for registration or registration.<sup>2</sup> Recognition of Copyright to the Creator as a moral right (*moral right*), adhered to by Indonesia and France. As regulated in Republic of Indonesia Law number 28 of 2014 concerning Copyright, it explains that Copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with statutory provisions.

Song or music is one of the areas of Copyright that receives protection. Songwriting works have high economic potential. The use of Internet technology currently brings profits and also brings losses in the music industry, especially in record companies. Music is one of the most searched content on social media networks. Interestingly, the music videos you are looking for are not always created by the musician who performs the song. Not a few people are also interested in looking for alternative versions of popular songs, which are usually called cover songs. Songs as a form of work in the field of art, are included in the protected IPR domain as regulated in article 40 letter (d) of Law Number 28 of 2014 concerning Copyright (UUHC),

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<sup>1</sup> M. Citra Ramadhan, Fitri Yanni Dewi Siregar, Bagus Firman Wibowo, 2023, "Intellectual Property Rights Textbook", North Sumatra: University of Medan Area Press, P. 1.

<sup>2</sup> Haryono, "Principles of Copyright Protection as a Property Right Intelektualin Philosophy Studies Dan Theory", <https://Conference.Upgris.Ac.Id/Index.Php/Snk/Article/View/2792/1635>, P.11, Accessed On March 20, 2024.

namely copyright protection for song or music creations with or without text. As protected by the UUHC, songwriters have the right to economic rights to their works.

Even though there are these regulations, there are still many singers who sing songs written by other people without permission. There are those who deliberately make a profit, there are also those who accidentally make a profit. A cover version or cover is a reproduction or re-performance of a song that has previously been recorded and performed by another singer/artist. In practice, quite a few cover songs become more famous than songs sung by the original artist or singer, so that some people who sing cover songs try their luck by performing the song in the hope of quickly becoming famous and earning income from the cover songs they sing, without realizing it this violates the economic rights of the creator or copyright holder of the song being sung. Due to a lack of legal awareness, many song covers do not pay attention to the limitations of working with other people's creations.

One of the cases regarding violations of song copyright, namely in 2021 Halilintar Anofial Said and Lenggogeni Umar Faruk, known as the halilintar gene, were declared proven to have violated copyright in a song entitled "again syantik". Gen Halilintar is considered to have changed the lyrics of the song "again syantik" and recorded, made a video and uploaded it to the gen halilintar YouTube account without permission from PT Nagaswara Publisherindo which oversees the songwriters "again syantik".<sup>3</sup> From this problem, the author formulated the problem, how to protect song copyright as an intellectual property right in Indonesia and the legal consequences imposed on song copyright violators.

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<sup>3</sup> CNN Indonesia, 2021, "Violating the copyright of Syantik songs, Gen Halilintar must pay IDR 300 million" <https://www.cnnindonesia.com/nasional/20211223210427-12-738041/Langgar-Hak-Cipta-Lagu-Syantik-Gen-Halilintar-Must-Pay-Rp.300-Million>, Accessed On March 19, 2024.

## B. RESULTS AND DISCUSSION

### 1. Use Of Songwriting And/Or Music That Is Sung Again (Cover Song) Based On Copyright Law

Copyright is the exclusive right for creators to announce or reproduce their creations in the fields of science, art and literature, which, among other things, can consist of books, computer programs, lectures, lectures, speeches and other similar creations. Copyright basically contains the exclusive right of the creator or copyright holder to take advantage of the economic benefits of a work through various means, it also contains the right to prohibit other parties from using their work (for commercial purposes) without the permission of the creator or copyright holder. International copyright protection includes *Berner Convention Inversal Copyright Convention, Rome Convention and Geneva Convention*.<sup>4</sup>

Copyright is regulated in law No. 28 of 2014 concerning copyright, copyright law is further improved from previous copyright laws and regulations, this right aims to create a better climate for the growth and development of the spirit of creation in the fields of science, art and literature accompanied by increased protection and guarantees of legal certainty for creators. <sup>5</sup>Creation in article 1 paragraph (3) of the Copyright Law (UUHC) No. 28 of 2014, defined as the results of creative works in the fields of science, art and literature are produced based on inspiration, ability, mind, imagination, dexterity, skills or expertise expressed in real form. UUHC details nineteen groups of creations, according to the type and nature of the creation, one of which is songs and/or music with or without text as contained in Article 40 paragraph (1) letter d. Songs are a variety of rhythmic sounds (in speaking, singing, reading, etc.), singing or a variety of singing. In this explanation, the meaning of song and music is separated. A song is a poem or lyric that has a

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<sup>4</sup> Dr. Nanda Dwi Rizkia, Dr. Hardi Fardiansyah, 2022, "Intellectual Property Rights An Introduction", Bandung: Widina Bhakti Persada Publisher Bandung, P. 32.

<sup>5</sup> Prof. Em. Dr. Eddy Demian, SH, 2021, "Copyright Law" Alumni Publisher, P. 3.

rhythm, while music is a composition filled with notations that have a rhythmic melody.<sup>6</sup>

In social life, songs and/or music are a means of communication, expressing ideas, or expressing certain feelings.<sup>7</sup> Songs and/or music can also be an identity for individuals or groups. Songs and/or music can also become cultural works which are the result of work, creation and a sense of life together, which is then embraced by society. And songs can also have economic value that can be useful for the person concerned. So songs and/or music should be protected by Copyright.

Article 40 paragraph (1) letter d UUHC, which means songs or music with or without text, is defined as a unified copyrighted work that is complete. The complete definition means that the song or music is a unified creative work. The song creations that are protected are lyrics, melody, notation and music. That this protection includes protection of copyrighted works that have not or have not been announced but have been realized in a concrete form that allows duplication of the work.<sup>8</sup> In the person of a creator, economic rights are the exclusive right of the creator or copyright holder to obtain economic benefits for the work as explained in article 8 of the UUHC. Article 9 of the UUHC explains that economic rights are described into 8 types, namely, publication of works, duplication of works in all forms, translation of works, adaptation, arrangement or transformation of works, distribution of works or copies, performance of creation, announcement of creation, communication of creation, and rental of creation. Economic rights protection for works in the form of songs is provided for as long as the creator lives and 50 years after the creator dies. The protection of economic rights in works in the form of songs is protected for 70 years after the author dies, if there are two or more creators then protection is given for 70

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<sup>6</sup> Hulman Panjaitan and Wetmen Sinaga, *Performing Right, Copyright for Music and Song Works and Legal Aspects*, Ind Hill Co, 2010, P. 56.

<sup>7</sup> Fatimah Nurul Aini, Indirani Wuran, 2021, "Fulfillment of the Fair Use Principle in Cover Songs Based on Indonesian Copyright Law (Fair Use Principles In Cover Song Based On Indonesia Copyright Law)", Vol. 15, No. 1, P. 116.

<sup>8</sup> Raden Ayu Putu Wahyu Ningrat, Dewa Gede Sudika Mangku, I Nengah Suastika, 2020, "Legal Consequences for Perpetrators of Copyright Violations of Songwriting Works Reviewed Based on Copyright Law Number 28 of 2014 and the Copyright Act (Chapter 63, Revised Edition 2006), Ganesha Law Riview, Vol.2, P. 184.

years from the creator who last died, and in cases where this right is owned by a legal entity then it receives protection for 50 years in accordance with the Copyright Law Article 58.<sup>9</sup>

A cover version or song cover is the result of reproducing or re-performing a song that has previously been recorded and performed by the singer.<sup>10</sup> Covering a song can be interpreted as someone re-singing someone else's song by adding, changing or following the original version of the song. Usually people do cover songs to upload them on social media or platforms such as YouTube. The widespread use of cover songs has raised problems regarding economic rights for songwriters because it is often found that people use cover songs without permission from the creator. *Cover version* songs created without the permission of the songwriter and then commercialized certainly violate Article 9 paragraph (3) of Law Number 28 of 2014 concerning Copyright, namely: "Everyone who, without the permission of the Creator or Copyright Holder, is prohibited from duplicating and/or Commercial Use of Creation"

One of the copyright violations for sung songs (cover songs) is a song copyright violation committed by one of the YouTuber families, namely the lightning gene. The song "again syantik" sung by siti badriah has become one of the most popular songs since its release around 2018. This song was named a popular Pali song of its time and the video has been watched by more than 699 million.<sup>11</sup> because of the popularity of this song, many musicians or creators cover the song "and Syantik", but it is very unfortunate that there are individuals who use this song without permission from the creator. One of the things at issue is the cover by the lightning gene. Apart from not being licensed, the cover also changes most of the song's

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<sup>9</sup> Wiraatmaja Lookman, Andri Kurniawan, Kuras Purba, 2024, "Copyright Responsibility Song Cover Towards the Creator of Youtube" Digital Content, Vol. 2, No. 1, P. 39.

<sup>10</sup> Bernadetha Aurelia Oktavira, S.H. "Does the Song Cover Need Creator Permission?",

<https://www.hukumonline.com/klinik/a/is-singing-relatives-songs-other-people-breaking-copyright-lt506ec90e47d25/>, Accessed At 20 March 2024.

<sup>11</sup> Noviandi Ferry, 2022, "Chronology of Nagaswara's Lawsuit Against the Lightning Gene, Ending With Beauty", <https://www.suara.com/entertainment/2022/05/21/154216/Chronology-Gugatan-Nagaswara-Terhadap-Gen-Halilintar-Ending-With-Syantik>, Accessed At 20 March 2024.

lyrics. Nagarswara as the label that oversees Siti Badriah filed an official lawsuit against central Jakarta district court number 82/Pdt.Sus-Copyright/2019/PN.Niaga.Jkt.Pst. magaswara claims that his party suffered quite large losses due to uploading the video on the Youtube Halilintar TV channel. In total, losses could reach IDR 9.5 billion materially and immaterially. After going through a long trial, on May 20 2022 the Supreme Court sentenced the families of Atta Halilintar Anofial Said and Lenggogeni Umar Faruk, who are famous for the Gen Halilintar family, to pay compensation of IDR 300 million. The panel of judges stated that Gen Halilintar violated the copyright for the song "Lagi Syantik" in accordance with decision number 41PK/Pdt, Sus-HK/2021.

## **2. Legal Protection For Songs And/Or Music Created Works That Are Sung Again (Cover Song)**

Law is a means of renewing society based on the assumption that order or order in development or renewal efforts is something that is desired or even seen as (absolutely) necessary. Another assumption contained in the conception of law as a means of renewal is that law in the sense of legal rules or regulations can indeed function as a tool (regulator) or means of development in the sense of channeling the direction of human activities in the direction desired by development or renewal.<sup>12</sup> In Indonesia, law is the main way of legal regulation, community reform through legal means legal reform, especially through legislation. Legislation in Indonesia generally guarantees order, justice and legal certainty as well as legal protection in society.

According to Satijipto Raharjo, legal protection is to protect human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights provided by law.<sup>13</sup> Laws can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially,

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<sup>12</sup> Iswi Hariyani, 2016, "Copyright Guarantee Through Pawn and Fiduciary Schemes", *Ius Quia Iustum Law Journal*, Vol. 23, Nr.2, P 294–319.

<sup>13</sup> Annisa Justisia Tirtakoesoemah, Muhammad Rusli Arafat, 2019, "Application of Legal Protection Theory to Copyright for Broadcasting", Vol.18, No.1, P. 5.

economically and politically to obtain social justice.<sup>14</sup> In the opinion of Phillipus M. Hadjon that legal protection for the people is a preventive and repressive government action.<sup>15</sup> Preventive legal protection aims to preventing disputes, which directs government action to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in the judiciary. Legal protection theory is a very important theory to study, because the focus of this theoretical study is on legal protection provided to people who are in a weak position, both economically and weak from a juridical aspect.

International copyright protection, songs and music are known as musical works (musical works), which are then classified into four elements, namely:<sup>16</sup>

- a. Melody, namely a special arrangement of tones that produces its own characteristics which when played can be immediately recognized.
- b. Lyrics, namely an arrangement of words resembling poetry that is pronounced in harmony with the melody.
- c. Arrangement, namely the arrangement of melodic and lyrical elements to form a work of art that is continuous from one part to another.
- d. Notation, namely writing a melody in the form of recording notes which are regulated by certain rules so that it can be understood by the performer (performer).

The copyright protection scheme for musical works internationally described above is essentially the same as copyright protection for musical works in Indonesia (Article 40 letter d of the 2014 Copyright Law), songs are melodies, lyrics and arrangements combined into a musical work, while music is melody and arrangement combined into a musical work. So it can be said that copyright protection for musical works in Indonesia and

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<sup>14</sup> Nur Adi Kumaladewi, 2015, 'Execution of Motor Vehicles as Guarantee of Fiduciaries in Third Parties', *Repertory Journal*, Vol.II, Nr.2, P 60–77.

<sup>15</sup> *Op.Cit.*, Pg 5

<sup>16</sup> Andree Nugroho Saragih, 2023, "Examining the Legal Protection for Songwriters' Copyrights Regarding the Performance of Cover Songs They Create by Other Musicians on Social Media Platforms", Vol.7, No.1, P. 310.

internationally is similar, that protection of these rights covers all elements contained in a musical work.

Copyright protection adheres to an automatic system, which means that protection for a copyrighted work is obtained by the creator without having to go through a registration process. Even though in the legal regime copyright protection is automatically obtained by the creator since the work is realized in real form, and is not required to go through a recording process, if it is registered it is better and more profitable, because with recording, there is an official fact that copyright exists if the opposite is not tested. With recording, if it occurs imitation or plagiarism of copyrighted works, the creator can submit convincing demands to law enforcement, because there are official recording facts. The records in question were submitted to the Ministry of Law and Human Rights in Indonesia. If in relation to covering a song, the perpetrator may consciously or unconsciously have exercised the moral rights and economic rights of the creator in the form of:<sup>17</sup>

- a. Modification of the cover version so that it is more “in accordance with the perpetrator's musical expression, related to the author's moral right to defend the integrity of his work from modification (can be seen in Article 5 paragraph (1) letter e of the 2014 Copyright Law). This moral right is eternal in nature attached to the creator and should not be violated except on the basis of the creator's consent.
- b. Rearranging or changing and/or adding to the arrangement of the musical elements of the cover version to display the unique style of musical expression of the perpetrator, related to the moral right of the creator to defend the integrity of his work from distortion and mutilation (can be seen in Article 5 paragraph (1) letter e of the Copyright Law 2014). ). This moral right is eternal in nature attached to the creator and should not be violated except on the basis of the creator's consent.
- c. Adaptation and/or change the cover version of the music genre to display the unique expression style of the performer's music, related to the moral right of the creator to defend the integrity of his creation from distortion and the creator's economic right to

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<sup>17</sup> Ibid. P. 312

adapt and transform (can be seen in Article 5 paragraph (1) letter e jo. Article 9 paragraph (1) letter d of the Copyright Law of 2014). In the context of moral rights related to adaptation and/or genre change, these moral rights are eternal in nature attached to the author and should not be violated except on the basis of the author's consent, while regarding the implementation of economic rights in the form of adaptation and transformation of original works, the creator should have the right to license these economic rights and obtain economic rewards in the form of royalties on licenses.

Settlement of copyright disputes related to song covers in Indonesia is regulated in Law Number 28 of 2014 concerning Copyright. In the event of a dispute, the party who feels aggrieved can file a settlement through two main channels: non-litigation (deliberation) or litigation (through the courts). Non-litigation solutions are preferred and can be carried out through mediation or arbitration facilitated by the Directorate General of Intellectual Property (DJKI) or approved alternative dispute resolution institutions. This process enable the parties to reach an agreement without having to go through time-consuming and costly court proceedings. However, if the dispute cannot be resolved peacefully, then dispute resolution can be carried out in commercial courts. This court has the authority to handle disputes related to copyright, including song cover cases involving claims of copyright infringement. In this case, the court will examine the evidence submitted and determine whether or not the use of the original song in the cover infringes copyright. Under Act No. 28 of 2014, if a violation is proven, the court can impose sanctions in the form of compensation, termination of use of songs, or other appropriate legal action. Thus, the resolution of the song cover copyright dispute seeks to balance the protection of the original creator's rights and the rights of the musician who created the cover, as well as providing legal certainty for both parties.

Copyright protection of song covers can be analyzed through three main aspects in the philosophy of science, namely ontology, epistemology and axiology. Ontologically, copyright in the context of song covers is related to the existence of works of art as legal objects that can be protected. In this case, the song cover is

considered a derivative work built from the original song, but with new creative elements from the singer or musician who created it. While the covered song contains existing elements, the new interpretation offered by the cover creator creates a new entity that has its own artistic value, which deserves to be protected as a copyrighted work separate from the original song. In the epistemological aspect, the protection of song cover copyright is related to the way we understand and identify the process of creating the work. This includes knowledge of the legal mechanisms of copyright, how song covers are valued as original works, and how batasa.

### **C. CONCLUSION**

A cover version or song cover is when someone resings an existing song, either by adding or changing certain parts or following the original version. Many people do this to upload on social media or platforms like YouTube. However, using cover songs without permission from the songwriter can violate copyright. For example, YouTuber Gen Halilintar's family covered the song "Lagi Syantik" by Siti Badriah without permission, changing some of the lyrics. Nagaswara's label, which houses Siti Badriah, filed a lawsuit, claiming losses of up to IDR 9.5 billion. On May 20 2022, the Supreme Court decided that Gen Halilintar had to pay compensation of IDR 300 million for violating the song's copyright.

Legal protection for copyright holders for copyright infringement in the field of music and songs in the form of commercialized covers can be carried out in two ways, namely preventive efforts and repressive efforts. Preventive efforts include recording creations at the Ministry of Law and Human Rights. The work has been protected since the work was born so it is not mandatory to be registered, but the function of recording copyright is intended to facilitate proof in the event of a dispute regarding copyright. Repressive efforts are through resolving arbitration disputes or courts. Civil suits are filed in commercial courts and criminal charges are filed in state courts.

Legal protection of song copyrights, including in the context of cover songs, is essential to ensure that the creative work of

songwriters is valued and protected. In the case of cover songs, although a person can create a new version of an existing song, they must still obtain permission from the original copyright holder, either through a license or valid agreement. Without such permission, unauthorized use of the song may be considered a copyright infringement. Therefore, the government and related institutions must strengthen regulations that regulate copyright, ensure that there are mechanisms to provide fair compensation for original songwriters, and increase awareness about the importance of permits in making cover songs. Apart from that, digital platforms that enable cover song distribution must also be responsible for ensuring that published works do not violate copyright. With clear legal protection, songwriters can feel appreciated.

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