

# Legal Analysis Regarding the Protection of the Original Work of Music Towards Music Cover That is Posted on Youtube

Justin Amadeus<sup>1\*</sup>, Cludio Hitipeuw<sup>1\*\*</sup>

<sup>1</sup> Faculty of Law, Universitas Pelita Harapan, Indonesia

\*[justin4madeus11@gmail.com](mailto:justin4madeus11@gmail.com)

\*\*[cludiohitipeuw@gmail.com](mailto:cludiohitipeuw@gmail.com)

## Abstract

Intellectual property right is classified universally as a right that falls into the notion of human rights, where the state is obliged to ensure the fulfillment of such right. One of the major intellectual property rights that is commonly utilized in this modern day is copyright. Due to the advancement of technology that leans towards a digital society, many people have obtained economic benefit from copyright as a new source of income. Yet, technological advancement needs to be assisted with dynamic legal provisions that promote continuous refinement, in which Indonesian Copyright Law fails to do so. In the context of protecting the original work of music towards music covers that is posted on Youtube, there are still many cover artists that enjoyed the economic right of the creator without any form of valid permission. Additionally, YouTube's policy on resolving such issues is limited only to the extent if there is a valid request from the creator. Departing from such fact and issue, this paper will display a comprehensive discussion on the legal protection that given by the Indonesian Copyright Law and Youtube's policy as well as effort to create a more thorough and certain legal protection is needed as a solution, which can be realized through registering the copyright work and obligating the creator to make a thorough legal agreement in regards to the utilization of economic rights by other parties.

**Keywords:** Intellectual Property Rights; Indonesian Copyright Law; Music Works

## A. Introduction

In this era of globalization, society has evolved and has figured out modern ways to fulfill their needs. One of the things that is modernized is through the utilization of intellectual property rights ("IPR") as a new source of income to fulfill economic needs. Such modernization has been acknowledged by many countries, one of which is Indonesia. Article 1 paragraph 3 of the 1945 Constitution stating that "The State of Indonesia is a state based on law". As a state that is based on law, there exists a concept called the rule of law. A.V. Dicey has once stated that the rule of law shall consist of three elements, which are the supremacy of law, equality before the law, and due process of the law.

One of the universal thresholds of a state that is based on law is the recognition and protection of human rights, where in regards to such threshold, intellectual property is considered as an inherent right that shall be protected by the state.<sup>1</sup> This is ensured in Article 28c paragraph 1 of the 1945 Constitution, in which the state shall acknowledge the protection of each individual's right for self-development and to obtain the benefit of science and technology, arts and culture, for the sake of enhancing his/her quality of life and for the sake of the welfare of mankind.

According to Article 1.2 the Trade Related Aspects of Intellectual Property Rights ("TRIPs") agreement, which has been ratified by Indonesia, intellectual property consists of copyright, trademark, patent, industrial design, geographical indication, integrated circuit layout, and trade secret. The protection of these

---

<sup>1</sup> Taufik Simatupang, "Hak Asasi Manusia dan Perlindungan Kekayaan Intelektual dalam Perspektif Negara Hukum," *Jurnal Ham*, no. 1 (2021): 115-116.

IPR would also bring a positive paradoxical effect. Each individual will not only be able to utilize intellectual property as an instrument for self-development and welfare, but the state will also benefit from intellectual property, especially in regards to the country's economic development through the implementation of optimal and high level of protection of IPR. When each individual feels secure regarding their work in scope of IPR, it can boost innovation that also serves as a stimulus for raising better quality of goods and services in various economic sectors.<sup>2</sup>

One of the most well-known IPR in Indonesia is copyright. Due to the advancement of technology, copyright can now be a new source of income, where such rights have generated new job opportunities, such as being a content creator, film maker, photographer, etc. Copyright is regulated under Law No. 28 of 2014 regarding Copyright ("Indonesian Copyright Law"), where it is stated in Article 1 paragraph 1 that "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions". A trend that has been going on in Indonesia within the scope of copyright is music covers that are posted on social media platforms, such as youtube (a well-known international platform that could connect people from different parts of the world to enjoy videos and music published in it).

Nowadays, people use YouTube to boost the publication of their work and to receive monetary rewards from their work. As a

---

<sup>2</sup> A. Sattar, "Intellectual Property Rights and Economic Growth: Evidence from High, Middle, and Low Income Countries," *Pakistan Economic and Social Review* no. 2 (2011): 164.

result, Youtube has become a major business industry where music and video creators compete to market their work and obtain the most profit out of it. Article 40 paragraph 1d of the Indonesian Copyright Law stated that “songs and music are protected inventions in the field of art”. The Indonesian Copyright Law also guarantees the fulfillment of the economic rights of the music creator and those who possess the related rights in the form of royalties as stipulated under Article 58 and Article 89 of the Indonesian Copyright Law.

Furthermore, music copyright is divided into two parts; music compositions and sound recordings. Music compositions consist of music, including verses/lyrics. The musical composition may be a copy of the notes or a prerecorded form of music on a tape or CD. Composer or songwriter is considered as the creator of a musical composition. On the other hand, sound recording is a refinement of a series of music sounds and other sounds such as human voice. Thus, the creator of sound recording are the performers who own related rights and/or record label who have processed the sounds and perfected them into a final recording.<sup>3</sup>

However, there is still a barrier within the Indonesian positive law in regards to protecting the copyright of music from presumably illegal music covers that are posted on Youtube. Within the platform, people are given the liberty to not only publish their own music work, but also a new recording of a previously released song that someone else wrote which is called a cover. This could eventually result in an unfair competition between the original artist under a music label and individual cover artist, where the cover artist could

---

<sup>3</sup> Setiawati Lucky, “Apakah Menyanyikan Ulang Lagu Orang Lain Melanggar Hak Cipta?” Hukumonline, <https://www.hukumonline.com/klinik/a/apakah-menyanyikan-ulang-lagu-orang-lain-melanggar-hak-cipta-lt506e-c90e47d25>.

obtain more profit than the original music creator. This is further worsened when the cover artist violated the copyrights of the original music by posting the cover without the permission over the economic and the mechanical rights of the creator.

Hence, questions are raised on (1) the legal certainty of Indonesian copyright law in protecting music works and (2) whether there is a difference between the protection that is given by the copyright law and the policies that are implemented by Youtube towards the original creator and the cover artists. Taken from Youtube official policy regarding copyright protection, "Creators may only upload their own videos or those of others they have permission to use. That means they may not upload videos they don't own, or use other people's copyrighted content, such as music tracks, copyrighted program snippets, or videos created by other users, in their videos without obtaining the necessary permissions."<sup>4</sup> At a glance, the policy seems to be in accordance with the Indonesian Copyright Law, but factually there are still many illegal music covers that have not been suspended or given any sanctions by the platform, leaving Youtube's protection policy questionable.

Thus, from the questions that are raised, the writer of this paper will first display the history and theories that formulate the existence of intellectual property and copyright law in Indonesia. Second, the writer will further emphasize on how the Indonesian Copyright Law protects the original work of music when a cover of that original work is posted on Youtube without the permission to obtain economic as well as mechanical rights from the original

---

<sup>4</sup> YouTube, "Apa itu Pengecualian Hak Cipta?" Youtube, [https://www.youtube.com/intl/ALL\\_id/howyoutubeworks/policies/copyright/#copyright-exceptions](https://www.youtube.com/intl/ALL_id/howyoutubeworks/policies/copyright/#copyright-exceptions).

owner. Lastly, this paper aims to answer whether Youtube protection policies regarding the copyright of the original work of music is in compliance with the Indonesian Copyright Law.

## **B. Discussion**

### **B.1. History and Theories that Formulate the Existence of Intellectual Property and Copyright Law in Indonesia**

Intellectual Property is the set of legal rights applying to intellectual activities in the field of industry, science, literature, and the arts. It arises from the creative effort of the human mind and results in products of all kinds being brought to market.<sup>5</sup> Thus, intellectual property rights are the exclusive right given over the creation of their mind for a certain period of time.<sup>6</sup> Philosophically speaking, the notion of exclusive rights over one's own work emerged in the 18th century by John Locke.<sup>7</sup> John Locke emphasized that by nature everyone has the right to himself, the results of the work done by him require sacrifice in finding, processing, and adding personality to a work or creation. Thus, everyone has natural rights to the work or creation.

John Locke emphasizes the importance of giving awards to people who have made sacrifices to find and cultivate something that comes from nature, in the form of property rights. In terms of

---

<sup>5</sup> Sherri L. Schornstein, *Criminal Enforcement of Intellectual Property Rights US Perspective* (San Francisco: LexisNexis, 2013), 3.

<sup>6</sup> World Trade Organization, "What are intellectual property rights?"

[https://www.wto.org/english/tratop\\_e/trips\\_e/intel1\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm)

<sup>7</sup> John Locke, *The Second Treatise of Government* (USA: Barnes & Noble Publishing, 2004), 17-19.

intellectual property, this concept is known as Labour Theory.<sup>8</sup> In line with that, John Locke emphasizes that "...Labor often creates social value, and it is this production of social value that deserves 'reward', not the labor that produced it."<sup>9</sup> Specifically for the history of copyright, it started in the midst of the 15th century when Guttenberg created the first printing machine. With this new creation, works could be mechanically reproduced easily. This then leads to the notion of copyright.<sup>10</sup> In England, copyright is introduced to protect the publisher from those who duplicate the books. This protection is not given to the author but to the publisher of the book.<sup>11</sup> After England, the granting of certain rights to authors also happened in France which arose as a result of the French revolution. In its further development, copyright is transformed into an exclusive right for the author, both for economic exploitation and rights for other facilities related to his work.<sup>12</sup>

Indonesia also has a long history regarding copyright protection. Copyright was made known in Indonesia in 1912 by the Dutch during the colonization era. Based on the concordance principle, the Dutch law regarding copyright called Auterswet 1912 is applicable in Indonesia. After the Independence Day of Indonesia in 1945, Auterswet 1912 remains applicable through the transitional rule. In

---

<sup>8</sup> William Fisher, *Theories of Intellectual Property*. Dalam Munzer, *New Essays in the Legal and Political Theory of Property*, (Cambridge: Cambridge University Press, 1987), 170-172.

<sup>9</sup> Justin Hughes, *The Philosophy of Intellectual Property*, (Georgetown: Law Journal, 1988), 12.

<sup>10</sup> Yusran Isanaini, *Hak Cipta dan Tantangannya di Era Cyber Space* (Bogor: Ghalia Indonesia, 2009), 8.

<sup>11</sup> Muhammad Djumhana, R. Juabaedillah, *Hak Milik Intelektual Sejarah, Teori, dan Praktiknya di Indonesia* (Bandung: PT Citra Abadi Bakti, 2014), 48.

<sup>12</sup> Sudargo Gautama, *Segi-segi Hukum Hak Milik Intelektual* (Bandung: PT Eresco, 1990), 7.

1982, the government of Indonesia repealed Auterswet 1912 and created Law No. 6 Year 1982 regarding Copyright. However, within five years upon the creation of this new law, the government revised this law as the spread of copyright infringement was massive and encouraged greater infringement to obtain large economic benefits quickly by ignoring the interests of copyright owners or holders.<sup>13</sup>

Furthermore, in 1997, the government enacted a new copyright law called Law No. 12 Year 1997 regarding copyright law due to the low level of public understanding of the meaning and function of copyright, the attitude and desire to obtain trade benefits in an easy way, coupled with the insufficient development of common understanding as well as unsupportive attitudes and actions of law enforcement officials in dealing with copyright infringement. This 1997 Copyright law is the first law that Indonesia enacted after the ratification of TRIPs, which is an international legal agreement signed by all World Trade Organization member countries (WTO). This agreement is critical because it establishes minimum standards for the availability, scope, and use of seven types of intellectual property, including copyright. TRIPs, in essence, establishes standards for the entire scope of Intellectual Property Rights, including the application of those standards through administrative and legal actions. Indonesian 1997 copyright law is tailored upon TRIPs. In addition, the Indonesian government also ratified Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention”) to further complete the protection of intellectual property in Indonesia. However, there are still a number of things that need to be perfected to provide protection for intellectual works in the field of copyright.

---

<sup>13</sup> *Ibid*, 58.



Therefore, the government reissued a new law, namely Law No. 19 of 2002 concerning copyright and finally Law No. 28 of 2014 concerning copyright.

The development of the creative economy and the rapid development of information and communication technology require the renewal of the copyright law, bearing in mind that copyright is the most important basis of the national creative economy. Reflecting on developed countries, adequate protection of copyright has succeeded in bringing about significant growth in the creative economy and making a real contribution to the economy and people's welfare. Proportional arrangements in copyright law are needed so that positive functions can be enhanced and negative impacts minimized.

## **B. 2. Legal Certainty of The Indonesian Copyright Law in Protecting the Original Work of Music from Unauthorized Music Cover**

Legal certainty is important towards the *justitiabelens* or citizens that abide by the laws, where it has a function of protecting these citizens from arbitrary actions (*tindakan sewenang-wenang*) by other irresponsible parties for the sake of public order. This would mean that there will be certain sanctions given by the authorities whenever there is an action that violates certain laws and regulation. A detailed, clear, and comprehensive law and regulation is important to give a thorough legal certainty towards the citizens.<sup>14</sup> In the scope of copyright, it would then be vital to have a detailed regulation that covers all of the possibility of violation from other

---

<sup>14</sup> Moho, H. Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan, *Jurnal Warta* (2019): 7

irresponsible parties so that the creator of the work is able to obtain a secure protection from the state. The principle of legal certainty must be adhered by the state in protecting the copyrights of every creator of the work. If the state fails to provide full and sufficient protection, then according to Widyopramono, it will not only lead to the failure of the state to protect the individual's right of self-development, but it will also affect economic growth of the nation.<sup>15</sup> Thus, it is important to analyze whether the Indonesian Copyright Law has a given thorough protection towards intellectual property works in the scope of copyright, which can be seen from the case of unauthorized music covers that is posted on Youtube.

Before moving towards the analysis, it is crucial to understand the basic understanding of copyright, such as the definition, rights related to copyright, and the intellectual property works within the scope of copyright. According to Article 1 paragraph 1 of the Indonesian Copyright Law, copyright is the exclusive right of the creator (*pencipta*) that arises automatically based on the declarative principle after a creation (intellectual property work) is realized in a tangible form without reducing restrictions in accordance with statutory provisions. Within exclusive rights, there consist two other related rights, which are moral rights and economic rights. Moral rights is defined as the right that is eternally attached to the creator to (a) continue to include or not include his name on the copy in connection with the use of his work for the public; (b) use aliases or pseudonyms; (c) change his creation according to the decency in society; (d) change the title and subtitles of creation; and (e) defend

---

<sup>15</sup> Widyopramono, *Tindak Pidana Hak Cipta, Analisis dan Penyelesaiannya* (Jakarta: Sinar Grafika, 1992), 4.

their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation (Article 5 paragraph 1). Moral rights within the scope of the Indonesian Copyright Law adopted the principle stipulated in the Berne Convention, where copyright is considered to be perpetual towards the creator, it cannot be revoked (inalienable) and flows as an inheritance right to the creator, even if the economic rights are transferred to a company or other party. Copyright work is the personality of the creator, an extension of the character and personification of the creator in which such personality cannot be transferred to other parties even until the death of the creator.<sup>16</sup>

On the other hand, economic right is defined as the exclusive right of the creator or Copyright Holder to obtain economic benefits for copyright works (Article 8 paragraph 1). In this context, economic rights are rights to commercialize or utilize copyright works in certain methods based on the permission of the creator or copyright holder. Referring to the elucidation of Article 4 of the Indonesian Copyright Law, exclusive right can only be granted towards the creator of the work and there aren't any other eligible parties that can obtain such right without the permission from the creator. Even if there is a permission from the creator, the copyright holder (pemegang hak cipta) is only qualified to acquire a portion from the exclusive right through economic rights. Furthermore, Article 40 paragraph 1 of the Indonesian Copyright Law also recognizes several types of intellectual property work that falls into the lens of copyright, namely books, pamphlets, literary works that published,

---

<sup>16</sup> Haryono. "Prinsip Perlindungan Hak Cipta Sebagai Hak Kekayaan Intelektual Dalam Kajian Filosofi dan Teori", (Seminar Nasional Keindonesiaan VI, March 2022), 12.

seminary, photography works, architectural works, music and songs, cinematography works, etc in which they must all be protected in an equal manner.

Next, it is needed to understand that many copyright violation cases in Indonesia revolve around the economic rights that are obtained illegally without the permission of the creator. One of which can be seen in the case of unauthorized or illegal music covers that are posted on Youtube, where it has become a new trend nowadays as a new source of income. In some cases, there are even cover music artists that earned more profit than the original creator. This can be seen in the case of Zinidin Zidan and Tri Suaka, where they both posted a music cover on YouTube with viewers reaching up to millions. However, they did not pay the royalty fee towards the original creator of the music, which is Kangen Band, even though they have already received monetization (compensation for their work) from YouTube. Zinidin Zidan and Tri Suaka have enjoyed the economic rights of Kangen Band without their permission. Another case example can be seen revolving around the famous singer, Hanin Dhiya, where she commercially published a music cover titled "Akad" in YouTube without the formal permission of the original creator. Even though she has changed the lyric within the cover music, it should also be done with a valid permission from the original creator.<sup>17</sup>

As mentioned in the introduction, there are two types of legal intellectual work in the scope of music, namely music compositions and sound recordings. Music compositions consist of music that

---

<sup>17</sup> Rahmadhanty C. et al., "Aspek Hukum Dalam Penggunaan Hak Cipta Lagu Oleh Pelaku Pertunjukan pada Kanal YouTube," *Jurnal Krisna Law* 3, no.3 (2021), 64-66.

includes verse or lyrics. The musical composition may be a copy of the notes or a prerecorded form of music on a tape or CD. Composer or songwriter is considered as the creator of a musical composition. On the other hand, sound recording is a refinement of a series of music sounds and other sounds such as human voice. Thus, the creator of sound recording are the performers who own related rights and/or record label who have processed the sounds and perfected them into a final recording. This would mean that music cover falls into sound recording.

To be eligible to create and post cover music on YouTube for commercial purposes, there needs to be a license from the original creator, which is in the form of mechanical rights, performing rights, synchronization rights, and print rights. Mechanical rights is defined as the right to obtain royalties from the reproduction of songs on several media, for example CDs, cassettes, etc. Next, performing rights is defined as the right to announce a song/musical composition, including singing, playing, either in the form of a recording or being performed live, via radio and television, including through other media such as the internet, live concerts and programmed music services. Then, synchronization rights are defined as the right to get royalties from songs that are used in various other forms of creation, for example, advertisements, films, videos, etc. Lastly, print rights is defined as the right to obtain royalties if the song is sold in a printed form.<sup>18</sup> Every individual should be aware of such a right and they must utilize it depending on the form of music reproduction they want to produce. If it is in the form of music cover that is posted on Youtube, they must have

---

<sup>18</sup> Ibid., 64.

mechanical and performing rights related to the original work of music.

If the cover artists enjoyed the economic right of the original creator without their permission, the Indonesian Copyright Law has provided sanctions that can be imposed towards the violators. According to Article 113 Paragraph 2 of the law, it is stated that every person that committed the act of (1) publishing certain work; (2) reproduction of the work in all of its form; (3) distribute the work or its copies; and (4) communicate the work without any permission shall be punished with maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). In addition, according to Article 113 Paragraph 3 of the law, it is stated that every person that has committed (1) translation of the work; (2) adaption, arrangement, or transformation of the work; (3) performing the work; and (4) announcing the work without permission from the creator, they could be imposed with maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

In a sense, the law has given a legal certainty regarding the rights of the original creator, the mechanism to transfer the rights, and the sanctions that can be imposed towards the violators. However, the law has not given any preventive measures to hinder copyright violation, especially in the scope of music covers. The Author suggests that even though copyright does not adopt the first to file system, creators of copyright works should still be obliged to register their work to the Directorate General of Intellectual Property (“DGIP”) so that there is record of ownership that is able to strengthen the legal protection of the work whenever disputes occur. Next, it is also important to stipulated a clause within the Indonesian

Copyright Law that require the creator to make certain agreement regarding the transfer of rights, the utilization of the creation by other parties, and form of acts that could endanger the economic and moral rights of the creator with a rigid and specific format so that there won't be any legal holes that can be exploited by other parties (e.g. cover artists). With a more specific and rigid substance within the Indonesian Copyright Law, there will be a stronger legal certainty in which it could help in bringing equality, justice, and fairness towards all of the related parties.

### **B. 1. Youtube Protection Policies regarding The Copyright of The Original Work of Music**

As referred to in the introduction above, in Youtube, "Creators may only upload their own videos or those of others they have permission to use. That means they may not upload videos they don't own, or use other people's copyrighted content, such as music tracks, copyrighted program snippets, or videos created by other users, in their videos without obtaining the necessary permissions".<sup>19</sup> However, YouTube allows a conditioned relaxation for this rule called fair use. Fair use is a legal statement where a non-copyright owner can reuse copyrighted material under certain circumstances without obtaining permission from the copyright owner. Several factors must be taken into account in order to classify a usage of someone else's work as a fair use such as firstly, the purpose and characteristics of use. A video posted for educational purposes may be categorized as fair use unlike a copy of an original work for commercial use. Secondly, the nature of the copyrighted work. Using fictional work

---

<sup>19</sup> Youtube, op.cit.

created by someone may not be classified as fair use compared to factual work. Thirdly, the portion of the work being used. The more material being used, the more likely it would not constitute fair use. Lastly, if the content harms the potential market value of the original copyrighted work, it would not be treated as a fair use. Thus, before an applicant would file a claim of copyright infringement, YouTube would ask the applicants to recheck if their work is being fairly used.<sup>20</sup>

Accordingly, YouTube provides two ways to make a claim when the owner's copyrighted work is being illegally published without their permission, namely copyright claim and content ID claim. First, A copyright claim allows copyright owners to request to Youtube for the takedown of their work in other channels if they find their work was posted without their permission. This is known as a copyright claim. After YouTube reviews the official notification from copyright owners, Youtube will take down the work in compliance with Copyright law.<sup>21</sup> On the other hand, content ID claims will automatically appear if the uploaded video matches another video or a segment of another video in YouTube's Content ID system. Depending on the copyright owner's Content ID settings, Content ID claims can block videos from being viewable, monetize videos by running ads on them, which sometimes the copyright owner may share revenue with the uploader in question, and track video views

---

<sup>20</sup> "Fair Use on YouTube," Google, accessed December 16, 2022, <https://support.google.com/youtube/answer/9783148#zippy=%2Csifat-karya-berhak-cipta%2Cjumlah-dan-banyaknya-porsi-yang-digunakan-terkait-dengan-karya-berhak-cipta-secara-keseluruhan%2Cpengaruh-penggunaan-t-erhadap-potensi-pasar-atau-nilai-karya-berhak-cipta%2Ctujuan-dan-karakteristik-penggunaan-termasuk-apakah-penggunaan-semacam-itu-memiliki-sifat-komersial-atau-untuk-tujuan-pendidikan-nonprofit>.

<sup>21</sup> "Dasar Dasar Teguran Hak Cipta," Google, accessed December 16, 2022, [https://support.google.com/youtube/answer/2814000?hl=id&ref\\_topic=9282678](https://support.google.com/youtube/answer/2814000?hl=id&ref_topic=9282678).



statistics.<sup>22</sup>

YouTube compliance with Copyright law is only limited to the taking down of the content upon a valid copyright removal request and the person whom the content was taken down may provide counter notification. However, further effort by the parties such as resolving the issue in the court remains the free choice of the parties. Accordingly, looking at YouTube regulations explained above, it can be concluded that YouTube has adhered to the protection of original work of copyright holders. However, this requires the active participation of the copyright holder to make sure that their works are not being illegally used for the economic benefit of the cover artist.

The Author would propose two methods to tackle this issue. First, the original copyright holder of the song could publish their songs in YouTube and obtain Content ID. The YouTube system will take down any similar published content to the original work. To track who is the original creator of the song, YouTube and the creator could utilize the data from the DGIP as the Author has also suggested above that it should be obliged to register the copyright work towards the DGIP as a proof of ownership. Thus, the work of the original copyright holder will be protected if the cover artist did not ask for permission. Second, in a context where the cover artist asked for permission, the copyright holder must create an agreement with the cover artist regarding the share of economic rights from the compensation the cover artist receives from YouTube. Thus, this will ensure the full protection of economic and moral rights of the copyright holder of music and songs.

---

<sup>22</sup> "Mempelajari Claim Content ID," Google, accessed on December 16, 2022, [https://support.google.com/youtube/answer/6013276?hl=id&ref\\_topic=9282678](https://support.google.com/youtube/answer/6013276?hl=id&ref_topic=9282678).

### **C. Conclusion**

Intellectual Property Right is acknowledged as a basic human right that should be protected at all cost by the state. In Indonesia, this is ensured within the 1945 Constitution, where it falls under the right for self-development. However, the inability of the government to create an effective and thorough legal protection within the scope of copyright works could endanger the fulfillment of the citizens for their right of self-development. Such issues can be seen within the lens of the original work of music and cover music that is posted on YouTube. There are still many cover artists that enjoyed the economic rights of their cover music without the consent or permission from the original creator. This is worsened by YouTube's policy that only limits video takedown from the valid request of the creator, which would mean that YouTube is unable to takedown videos arbitrarily (even knowing that the video is a copyright violation). Thus, the solution that is needed to create a thorough protection and legal certainty is by obligating the creator to register his/her copyright work to the DGIP as well as requiring the creator to establish a written contract with other parties in regards to the utilization of his/her economic rights.

### **REFERENCES**

#### **Laws and Regulations**

*Indonesian 1945 Constitution*  
*Law Number 28 Year 2014 concerning Copyright.*

#### **Books**

- Djumhana, Juabaedilla, et al., *Hak Milik Intelektual Sejarah, Teori, dan Praktiknya di Indonesia*. Bandung: PT Citra Abadi Bakti, 2014.
- Fisher. W, *Theories of Intellectual Property. Dalam Munzer, New Essays in the Legal and Political Theory of Property*. Cambridge: Cambridge University Press, 1987.
- Gautama. S, *Segi-segi Hukum Hak Milik Intelektual*. Bandung: PT Eresco, 1990.
- Hughes. J, *The Philosophy of Intellectual Property*. Georgetown: Law Journal, 1988.
- Isanaini. Y, *Hak Cipta dan Tantangannya di Era Cyber Space*. Bogor: Ghalia Indonesia, 2009.
- Locke, J. *The Second Treatise of Government*. USA: Barnes & Noble Publishing, 2004.
- SchorNSTein, S. *Criminal Enforcement of Intellectual Property Rights US Perspective*. San Fransisco: LexisNexis, 2013.
- Widyopramono, *Tindak Pidana Hak Cipta, Analisis dan Penyelesaiannya*. Jakarta: Sinar Grafika, 1992

### **Journal Articles**

- Ramadhanty, C, et al. "Aspek Hukum Dalam Penggunaan Hak Cipta Lagu Oleh Pelaku Pertunjukan pada Kanal YouTube." *Jurnal Krisna Law* 3, no.3, (2021).
- Moho, H. "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan." *Jurnal Warta* 59 (2019).
- Sattar, A. "Intellectual Property Rights and Economic Growth: Evidence from High, Middle, and Low Income Countries." *Pakistan Economic and Social Review* 49, no. 2 (2011).
- Simatupang, T. "Hak Asasi Manusia dan Perlindungan Kekayaan Intelektual dalam Perspektif Negara Hukum." *Jurnal Ham* 12, no. 1 (2011).
- Haryono. "Prinsip Perlindungan Hak Cipta Sebagai Hak Kekayaan Intelektual Dalam KajianFilosofi dan Teori." *Seminar Nasional Keindonesiaan VI* (2022).

### **Website Contents**

- Banik, Pritam, and Pritam Banik. "What Happens If You Get Caught Downloading Movies Illegally?" *StrictlyLegal*, December 21, 2021. <https://strictlylegal.in/what-happens-if-you-get-caught-downloading-movies-illegally>.
- Brown, Dalvin. "Is Streaming Video from Sketchy Websites Illegal?" *USA Today*. Gannett Satellite Information Network, December

- 17, 2019.  
<https://www.usatoday.com/story/tech/2019/12/16/can-get-arrested-streaming-illicit-movies-its-complicated/2662072001/>.
- Kenton, Will. "Understanding the Welfare State and Its History." Investopedia. Investopedia, November 22, 2022.  
<https://www.investopedia.com/terms/w/welfare-state.asp>.
- Martoredjo, Nikodemus Thomas. "Indonesia Sebagai Negara Hukum." Character Building, December 17, 2020.  
<https://binus.ac.id/character-building/2020/12/indonesia-sebagai-negara-hukum>.
- Murdaningsih, Dwi. "Industri Film Rugi RP 5 Triliun Gara-Gara Pembajakan." Republika Online. Republika Online, November 10, 2020. <https://republika.co.id/berita/gjzkl368/industri-film-rugi-rp-5-triliun-garagara-pembajakan>.
- Nistanto, Reska K. "Di Balik Layar: Bagaimana Pembajakan Digital Melukai Industri Film Indonesia Halaman All." KOMPAS.com. Kompas.com, March 9, 2022.  
<https://tekno.kompas.com/read/2022/03/09/10020057/di-balik-layar-bagaimana-pembajakan-digital-melukai-industri-film-indonesia?page=all>.
- Tristiawati, Pramita. "Pembajakan Hak Intelektual Di Indonesia Masuk 4 Besar Dunia." liputan6.com. Liputan6, June 10, 2016.  
<https://www.liputan6.com/news/read/2527345/pembajakan-hak-intelektual-di-indonesia-masuk-4-besar-dunia>.
- "What Is Intellectual Property (IP)?" WIPO. Accessed December 14, 2022. <https://www.wipo.int/about-ip/en/>