

SONG COPYRIGHT AS VIDEO BACKGROUND SOUND ON YOUTUBE PLATFORM: LEGAL PROTECTION?

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Abstrak

Fenomena sosial yang menjadi masalah dalam penelitian ini yaitu banyaknya kasus pelanggaran hak cipta terkait penggunaan lagu sebagai latar video konten YouTube yang kemudian akan dikaji dengan UU Hak Cipta. Diketahui lagu merupakan bagian dari hak cipta. Hak cipta adalah kekayaan intelektual yang terbagi menjadi hak moral dan hak ekonomi. Tujuan dari adanya penelitian ini untuk membahas tentang perlindungan hukum yang digunakan pada lagu yang ada di latar konten youtube. Penelitian ini menggunakan metode penelitian normatif yang mana sumber datanya adalah sekunder yaitu penelitian terdahulu, buku, undang undang dan sumber lainnya. Penelitian ini menunjukkan bahwa penyebab dari pelanggaran ini adalah pemerintah kurang tegas dalam menerapkan UU Hak Cipta, sulitnya menghubungi pemilik lagu untuk melakukan perijinan penggunaan hak cipta, keengganan untuk membayar royalti dan sanksi dari youtube yang dinilai tidak menimbulkan efek jera karena sanksi yang diberikan hanya penghapusan dan pemblokiran pada video terkait. Perlindungan terhadap penggunaan lagu sebagai suara latar video di platform YouTube berupa sanksi yaitu sanksi berupa ganti rugi atas kerugian yang telah ditimbulkan serta sanksi pidana berupa pidana penjara dan/atau pidana denda.

Kata kunci: Hak Cipta, YouTube, Lagu

Abstract

The social phenomenon that is a problem in this research is the number of cases of copyright infringement related to using songs as a background for YouTube content videos which the writer will then study under the Copyright Law. We know that the song is part of the copyright. A copyright is an intellectual property divided into moral and economic rights. This research aims to discuss the legal protection used for songs in the background of YouTube content. This study uses a normative research method where the data source is secondary, namely previous research, books, laws, and other sources. This study shows that the cause of this violation is that the government is not firm in implementing the Copyright Law, the difficulty of contacting the owner of the song to permit the use of copyright. The reluctance to pay royalties and sanctions from YouTube are deemed not to have a deterrent effect because the sanctions given are only deletion and blocking of related videos. Protection against using songs as background sound for videos on the YouTube platform is in the form of sanctions, namely sanctions in the form of compensation for losses that incur as well as criminal sanctions in the form of imprisonment and fines.

Keywords: Copyright, YouTube, Song

INTRODUCTION

Today, YouTube is widely used as an information medium containing entertainment, knowledge, games, and other content. Even many celebrities are starting to switch and manage YouTube accounts to increase their income. Moreover, the advantage of having a job with YouTube is that it can be done at home and does not have a deadline (Dewi & Mirah, 2017). Unless the account owner sets a deadline for himself. In showing the YouTube content to make the atmosphere and feelings can be conveyed to the audience, usually, a background song will be added. If the atmosphere in the content is sad, then songs with sad nuances will be added; the same goes for other conditions. Problems may arise whether the content creator who uses the song as the background for the YouTube video already has permission from the songwriter. Moreover, sometimes videos that use the background of the song go viral, which gains the benefits of the original video clip of the song many times. If there is no permission, only the content creator will acquire the income, and there is no distribution of royalties to the song owner. According to music observer Purwacaraka, several types of copyright infringement occur in Indonesia: piracy, stage performances that do not prioritize quality, music workers' salaries that are not commensurate with their workload and results, and music workers are not appreciated (Swari & Subawa, 2018).

There have been many copyright cases regarding using this song without permission. Besides the case of using a song as a YouTube video background, there are many cases of covering or changing the arrangement of the original song. Moreover worse, the cover song is even more famous than the original song, and the YouTube audience is also bigger. The role of citizens in overcoming copyright infringement is also significant, where citizens act as reminders of the perpetrators of the infringement and also help not to support the perpetrators of the infringement. However, the citizen's role is

felt lacking, as shown by the number of people who watch the song cover content rather than the original music video. In dealing with this problem, the government has issued a Problem Identification with the answer to the problem, namely the establishment of Law Number 28 of 2014 concerning Copyright (Copyright Law). In the law, the treatment of rights is on the parties who contribute to the show, producers, and broadcasting institutions. The right of ownership stipulation is due to the ease with which information and works of art are spread widely (Putra, 2019). However, copyright violations on YouTube often cannot be completed using existing laws. The issuance of regulations governing copyright still cannot prevent copyright infringement. An example is the many YouTube song covers that do not ask the song owner's permission, and some are even worse that do not include the original singer (Maharani & Parwata, 2019). This often happens to songs from Marauke's youth, whose songs are lately often covered because they have lyrics and melodies that are pleasant to hear. However, the cover does not include the original owner of the Marauke's song; another singer will cover it from one cover. The song's original owner has not been recognized with successive events and many changes to the arrangement (Yosman, 2021).

Copyright protection is not only limited to the protection of the creator and the work (Disemadi, 2022). However, also the protection of economic rights and moral rights, which have been explained in economic rights (Febriani & Tantimin, 2022). The owner of the song suffers a loss because the use of the song without permission gets a more significant profit, while the owner of the song does not get any royalties because no license is granted (Rahmanda & Benuf, 2021). Meanwhile, moral rights are more about politeness in using other people's property with permission. Moreover, the effect of not having this permit will result in losses. Creating a song is not easy; we have to think about the meaning of the lyrics. The

melody is also created to match the song's intent to be performed. Especially when making a video clip, we have to think about the concept that will be displayed to fit and match the song being sung. So if someone uses a song without permission, it feels unethical and very disrespectful to those who have worked hard in the process of making the song until it can be published. From the background that has been described, the social phenomenon that becomes a problem in this research is the number of cases of copyright infringement related to the use of songs as a background for YouTube content videos which will then be reviewed with the Copyright Law.

This research is expected to raise awareness for art connoisseurs. If we want to use it, publishing art must always show the source, namely the owner of the work. Be appreciative of the hard work that other people have put into creating the work. We certainly do not want our works to be used arbitrarily and published without including our names. In acting, we must always think about what aspects will be felt, especially if this can happen to ourselves, so that we are better able to understand the feelings of others. In addition, this research can contribute to knowledge in the fields of education, law, and norms in using social media and disseminating information and thinking about other factors before using social media. Moreover, always be careful in using social media because, at first glance, social media does not look dangerous. However, the digital footprint is always there and may become a boomerang in the future.

RESEARCH METHODS

This research is normative legal research that is qualitative. This study will explain social phenomena according to the conditions in the field (Tan, 2021). This writing is no research carried out in the field, but this study results from a literature review of previous studies that discuss similar topics. Furthermore, the results of these previous studies will be discussed and reviewed in this study. So this study uses secondary data. Secondary data is

obtained second-hand; the data sources are previous research journals and other relevant sources. The writer expects this research to contribute to knowledge and readers' awareness that we must first obtain a permit or license from the work owner to use work art.

RESULTS AND DISCUSSION

Copyright Review on YouTube Platform

Many celebrities have started venturing into the world of YouTube and becoming YouTubers. They usually display the content of daily life activities, make-up tutorials, cooking tutorials, and even podcasts. Podcasts are very mushrooming, and many target news sources are currently viral (Rahma, 2021). Celebrities are like competing to present content that attracts viewers to become trending or at least many people watch. The proliferation of this podcast causes boredom for YouTube content that feels monotonous. If there is viral news, the source of information will flow from one podcast to another, and the essence of what they discuss is the same. Besides podcast content, there is also song cover content (Rahmanda & Benuf, 2021). The content of song cover creators comes from all walks of life, both artists and ordinary people. The question is whether the content created by ordinary people first asks the song owner's permission to use the song. Moreover, this licensing is considered difficult because the initial process in the licensing process, namely contacting the owner of the song, is already difficult. Plus, there must be a distribution of royalties if the content creator who uses it does not have AdSense on YouTube yet. With what they will pay the royalty fee. These factors are often the reason why many do not carry out the licensing process. Plus, it is scarce for singers to demand content creators to use their songs, so this is a supporting factor. The original owner of the song will only sue the creator's content that exceeds the original content of the song used. YouTube is a social media that provide much content with various concepts. There are types of horror

content, discussing or reviewing films, song covers, daily life, and much more. Videos on YouTube can be accessed for free by subscribers, and customers only need to watch the advertisements that pass in the middle of the video. However, customers can pay for YouTube Premium Access if they want no ads to appear in the middle of watching (Asmanto, 2018).

They can access YouTube from anywhere and anytime. YouTube can also make money; for this reason, many are trying in various ways to be famous on youtube and become YouTubers. Because YouTube is part of Google, the payment provided by YouTube is through Google AdSense, which content creators can register for it if they have reached the specified conditions. That is having 1000 subscribers with 4000 watch hours in 12 months. Payments received are in dollars which can be withdrawn to a bank account and turned into rupiah currency. So that work is not included in copyright infringement or plagiarism, the work must be creative and new. Not only that, but YouTube also provides an opportunity for YouTube users to collaborate with YouTube personally through the creation of content material that can be uploaded directly to YouTube's database. The advantage of this collaboration is that YouTube users can mark their content using several licenses. The first is Full Copyright, then the second is Creative Commons, and the third license is Public Domain.

Besides legal protection, YouTube also protects several works on YouTube. It has proven that the AdSense registrant must also meet the requirements of never being involved in a plagiarism case. Moreover, YouTube can block some plagiarized videos. This protection also applies to audio visuals, television programs, recordings, musical compositions, written works such as scientific papers, theses, articles, musical dramas, expert opinions, and many others (Savitri, 2018).

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The copyright in question is the result of intellectual property produced by the nation's work. Published works are prone to copyright infringement. Copyright infringement is not only limited to art but also science and literature, such as scientific works or poetry, where theories or opinions are often quoted without acknowledging the author. Art is often photographed, arranged, and traded without acknowledging the creator. Art can also be in the form of films made mainly by television institutions. Copying and distributing pirated websites can also be considered copyright infringement.

Piracy that often occurs in songs is using songs to be re-sung or covered, changing the arrangement of the songs without the permission of the song owner to make money (Gunawan, Adi & Priyanto, nd). There are two types of copyright infringement: plagiarism or taking part of someone else's property and being included or mixed into one's work and then recognized as one's work. Many songs have almost the same melodic composition, lyrics, and almost the same video clip. However, not all similarities are plagiarism; particular characteristics indicate that the work is plagiarism. The slight resemblance would be considered a coincidence. However, if the similarities are too much, it is a violation. The sanction is not limited to the original owner's suspicion, but there will be an investigation first, and if plagiarism is proven, the appropriate sanction will be given (Geriya, 2021). The second is to take all the works, duplicate them, and trade them as the example described earlier; copying films on pirated websites. An example of a very detrimental copy of a film is the Marvel Black Widow film, where after a week, the film aired on Disney+, the film was

immediately downloaded by irresponsible people and uploaded to pirated websites, which are accessed by many people who like and support the piracy practice. In this case, actress Scarlett Johansson had to sue Disney, who was accused of having harmed the Black Widow film, which many people watched but did not pay, reducing the targeted income.

Song copyright infringement can harm the song owner, for example, a song that is sung again with a changed arrangement. Many do not know the original singer of the song (Kusno, 2016). The application that often changes the tone of the song is the TikTok application, which, if examined, some TikTok users do not know the song they use to create content. Suppose we search on YouTube for the extended version of the video. It does not even include the song's original singer. So the original singer is often forgotten, especially if the case is related to a new singer or a regional singer who is not very well known and does not have a big name. They tend to refuse to sue related to copyright due to ignorance of the law and lack of funds. Many celebrity singers have gained popularity from singing these arranged songs. Copyright infringement is not just a song used as a YouTube video background. Even in infotainment news, many take YouTube videos or forums to be their news sources but do not include the source.

Copyright Protection Against Using Songs as Video Background Sounds on the YouTube Platform

In the Copyright Law, there is an article that contains matters relating to copyright protection and the sanctions that will be obtained if we commit copyright infringement (Sudirman, Guswandi & Disemadi, 2021). According to the law chapter 2, it is intended for works produced by Indonesian citizens, or if not, as long as the first announcement is in Indonesian territory. It also applies to all works originating from any country. Along that country has bilateral and multilateral agreements with Indonesia related to copyright protection. Based on Copyright Law, chapter 5 also contains the moral

rights that the owner obtains, namely by including the original name, pseudonym, or alias of the work owner. It is not allowed to change a creation that includes the content, title, or subtitle to retain its rights to prevent the distortion of Works, mutilation of Works, modification of Works, or things detrimental to their honor or reputation. Moral rights also stipulate that ownership of a work cannot be transferred when the creator is still alive. When the author dies, the work can be transferred if there is a will related to it, and the recipient of the ownership has the right to refuse if he does not want to accept it. Moreover, according to Copyright Law, chapters 8 and 9 about the economic rights: the owner of the work has the right to obtain economic rights to publish, copy, translate, adapt, arrange, distribute, perform, announce, communicate and rent the work. Anyone who does not have a license is prohibited from doing this.

Copyright applies to individuals, institutions, and organizations. It does not matter who uses a work without prior permission. The sanctions imposed also vary depending on the type of violation committed. Copyright infringement can also occur in pirated films that widely circulate on the internet (Giantari & Putrawan, 2019). Even though the government has blocked this website, piracy actors can always find a way to provide pirated movies to internet users consistently. Plus, pirated movies tend not to spend money only need a quota to download them. It is different if we subscribe to Netflix or Disney, which must be subscribed monthly or yearly. Moreover, sometimes the nominal subscription is still considered too expensive.

Music is a beautiful work, and its creation must be protected. Because the creation of music requires a lot of struggle and effort is spent. Legal protection is preventive, namely by formulating the exclusive rights of Music Creators into chapters 5 and 9 of the Copyright Law and repressively, sanctions for infringement of music copyrights as background sound for videos on Youtube, namely sanctions in the form of compensation for losses that

have been caused as regulated in chapter 99 of the Copyright Law. Criminal sanctions are regulated in chapter 113, paragraph (4) of the Copyright Law in the form of a maximum imprisonment of 10 years and/or a maximum fine of Rp. 4,000,000,000.00.

Indonesia has indeed issued a legal basis to protect the owner of the work, but in its implementation in the field, it is not carried out correctly. It may be due to the government's lack of firmness in eradicating plagiarism practices that often occur on YouTube. In addition, many work owners are lazy to report many plagiarism incidents because they are considered too many. Moreover, for a song that is good and liked a lot, many people will automatically use the song as the background for the video. Plus, maybe the work owner thinks that using his work as a YouTube video background will make people watch the original video.

It proved accurate; in the YouTube comments, many viewers are wrongly focused on the background of the song used, and many ask about the background song and the singer. Those who like it will go to the original singer's account and continue to listen to it, and this has happened a lot not only on YouTube but also on Instagram. It is often considered a promotional medium. Indeed, using songs as a background for YouTube videos is detrimental but not as bad as when used as a cover song. If the cover is better than the original version according to the audience, then the audience will switch to prefer the cover result and leave the original song. It is also evident on many TikTok accounts where TikTok users are more familiar with the cover version or arrangement of the song than the original version. Because of this incident, many cover singers have gained popularity by violating copyright.

Many violators also do not apply for a license due to their ignorance. There are still many less-educated Indonesians on ethics in social media where when using other people's work, at least they must include the work's original owner. The citizens' role is also lacking by allowing this to happen or even participating in

committing violations (Pramana, Wiryawan & Mudana, 2020). For example, if the song they listen to is good, they will record it and upload it on other social media without including the name of the owner of the song. They assume that everyone knows the song's title, so there is no need to include it again. Plus, it is considered normal because many people do it even though the purpose of including the owner's name of the song is not for promotional media or anything like that. Unless they are already working with the song owner, it is to appreciate the party who has created the song. At least if we cannot afford to pay royalties, include the name of the owner of the song.

Second, the reason for a large number of violators is because of the difficulty of access to contact the song owner. With so many requests, sometimes the admin of the singer is not responsive to the many chats that appear regarding licensing permits, especially if the contact is a person who is less well known, the response given tends to be long because they have to queue with those who have more significant potential. Giving royalties is also a cause of copyright infringement. Sometimes content creators who use the song have not registered their account with Google AdSense, meaning their YouTube videos do not make money. If not making money, how will he pay royalties to the owner of the work? For that, he has no permission from the owner of the song instead of having to pay royalties. Moreover, for violations committed on youtube, the sanctions given are only limited to the deletion of related videos so that it does not cause a deterrent effect on the perpetrators.

CONCLUSION

From the discussion that has been carried out, the conclusion is that copyright is one part of intellectual property with a broad scope. There are two copyright classifications, namely moral rights and economic rights. While YouTube is one of the social media with websites that provide various kinds of videos ranging from video clips to movies, as well as videos made by

YouTube users. The basis of copyright law is Law number 28 of 2014 concerning Copyright. Protection against the use of songs as background sound for videos on the YouTube platform is in the form of sanctions, namely sanctions in the form of compensation for losses that have been incurred as regulated in chapter 99 of Law number 28 of 2014 concerning Copyright. Criminal sanctions are regulated in chapter 113 paragraph (4) of Law number 28 of 2014 concerning Copyright in the form of a maximum imprisonment of 10 years and/or a maximum fine of Rp. 4,000,000,000.00. However, there are still many who do not violate copyright. It is because a content creator understands licensing and royalty payments if the creator is under the care of a foundation that understands legal issues. If content creators manage themselves, they tend not to do permission first. The cause of the violation is because the government is not firm in implementing the Copyright Act, the difficulty of contacting the owner of the song to permit the use of copyright, the reluctance to pay royalties, and sanctions from YouTube, which are considered not to have a deterrent effect. After all, the sanctions are only deletion and blocking of related videos.

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