

Copyright Protection Of The Song "Akad" Created By "Payung Teduh" In Case Covered By Hanin Dhiya Based On Copyright Law

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Abstract. Technology is in progress increasingly sophisticated, enables everyone to explore and showcase her work in a variety of ways, one of which is now very easy to find is to upload video footage in a private channel on the YouTube site. However, disputes arise when recording on the channel associated with copyright issues. One of them is the activity of singing songs of others. The problems discussed in this study is how the Top Tracks Copyright Protection "Akad" Created by Payung Teduh In Case Cover Version By Hanin Dhiya Seen From the Copyright Act. The research approach is Normative legislation reviewing Act No. 28 of 2014 on Copyright. The results of this study explains that the song "Akad" is the creation of Payung Teduh, and copyright is protected by the Copyright Act, in order to perform a cover of the song, so it needed permission from Payung Teduh, as a tribute to the work of someone else's copyright. If this right is violated, the creator has the right to prosecute the song cover both civil and criminal.

Keywords : Protection Law, Copyright, Cover Songs.

1. Introduction

Copyright is one part in the field of Intellectual Property Rights (IPR) is a very personal rights or exclusively for the creator or copyright holder to publish or reproduce his creation without prejudice to the restrictions under the laws in force.

Intellectual property is the wealth of all the production of intelligence intellect such as technology, science, art, literature, composition of songs, writings, caricatures and so on, while the Intellectual Property Rights (IPR) are the rights (authority / power) to do something on the intellectual property, which is set in the norms or laws applicable.⁴

Under the provisions of Article 1 (1) of Act No. 19 of 2002 on Copyright, which has been replaced by Act No. 28 of 2014 states that: "Copyright is the exclusive right of the creator that arise automatically based on the principle of declarative after a work embodied in a tangible form without reducing restrictions in accordance with the provisions of the legislation".

One creation that is protected by copyright under Article 12 paragraph d of Act No. 28 of 2014 on Copyright is a creation of the song or music. The work songs or music is the creation of a whole composed of elements of melody, poetry or lyrics and arrangements, including the notation, in that song.⁵

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⁴ Adrian Sutedi 2009 *Hak Atas Kekayaan Intelektual* Sinar Grafika Jakarta p.38.

⁵ Team of Lindsey Eddy Damian Simon Butt Tomi Suryo Utomo 2006 *Hak Kekayaan Intelektual Suatu Pengantar* PT. Alumni Bandung p. 6

Currently, there are many artists and even musicians who began his career as through the medium of Youtube. For example, Justin Bieber is now so well known in the international arena began his career by uploading videos on YouTube, even in their own country had been highlighted by the phenomenon of a song called "Akad" belonging to Payung Teduh Group Band.

The song entitled "Akad" is a song created by Payung Teduh Band, but a very surprising thing is the people of Indonesia, especially in the media Youtube music lovers do not know that song "Akad" is the property of the Payung Teduh Band Group. People are more familiar with this song since sung by an Indonesian YouTuber named Hanin Dhiya.

It is evident that the youtube channel Dhiya Hanin who was singing again (or so-called covering) when it has watched as many as 46,303,175 viewers worldwide. While the official song Video Clips performed by Payung Teduh Band until then just watched 20,322,234 viewers.⁶

As a result of differences in the very large number of spectators, both material and immaterial to both parties. Even through several social media are easy to find in protest of the Payung Teduh against the incident. One is the comment of the Payung Teduh singer in seconds quotation as follows:⁷ *"Actually I want to convey yes. Actually I tried to stop myself with my friends Payung Teduh and management to not make this kind of video. But look how brutal digital activity on the song 'Akad', thanks his welcome for the song 'Akad', for your appreciation. There were already production, is already recording, already selling on Spotify, iTunes without permission from us, and then perform on TV without permission from us, so it's nothing, but permit only. But when it further so sorry we had to act, on Youtube also has a lot of really, has earned a profit as possible. Please help appreciation for us. "*

Problems that occur based on these cases is the one who cover songs became more famous than the original singer of the song, so that there is a dispute between the original singer with the cover songs. This is because the original singer, who is usually related rights owners feel aggrieved because his work better known for other people not because of the work they create. In addition the parties do not pay a cover song royalties or profit sharing to the original owners of the songs are on the cover, it ended up being issues which affect the development of music in Indonesia.

Based on the background of the very interesting for legal review of the case by the title of Top Songs Copyright Protection "Akad" Created by Payung Teduh In Case Cover Version By Hanin Dhiya Seen from the Copyright Act.

The focus of the issues to be addressed in this study is about how the Copyright Protection Top Songs "Akad" Created by Payung Teduh In Case Cover Version By Hanin Dhiya Seen from the Copyright Act?

Research Methods

This research is a kind of doctrinal, where research seeks to inventory the positive law, the discovery of the basic principles and philosophy (dogma or doctrine) positive law

⁶ Source index number of viewers youtube channel that appears on page Hanin Dhiya and Payung Teduh for the song "Akad"

⁷<https://hot.detik.com/music/3660933/payung-teduh-ultimatum-para-musisi-yang-cover-lagu-akad/228> accessed on 24 November 2017

and legal discovery in concreto are feasible to complete a particular legal case.⁸ In accordance with the characteristics and nature of normative legal research. So in this study using two approaches, namely the approach law (statue approach) and the comparative approach (comparative approach) is used to perform a search, inventory and assessment of legislation in particular is Act No. 28 of 2014 on Copyright.

2. Discussion

2.1. Understanding Copyrights Under the Copyright Act

Copyright is a translation of the English language (literally means "the right to copy"). Copyright was created in line with the invention of the printing press. Before the invention of this machine by Gutenberg, the process for making a copy of a piece of writing requires energy and cost is almost the same as the manufacturing process of the original work⁹,

Article 1 paragraph 1 of Act No. 28 of 2014 on Copyright, read: "*Copyright is a right that arises automatically the creator based declarative principle after a work embodied in a tangible form without reducing restrictions in accordance with the provisions of the legislation*"

Basically, copyright is a kind of private ownership of an invention in the form of embodiment of a creator of ideas in the fields of art, literature and science. When you buy a book, you only purchase the right to lend and save the book to your liking. The book is owned privately in tangible form or in the form of objects such as books. Thus it can be concluded copyright has the properties as follows:

- Copyright is the exclusive right; From the definition of copyright in Act No. 28 of 2014 states that copyright is exclusive; is defined as the exclusive right of the copyright is only granted to the creator or owner / holder of the rights, and other people can not use or prohibited from using it except by permission of the creator as the owner of the rights, or the person who receives the rights of creators (rights holders). Copyright relating to the public interest
- Copyright may move or be transferred; As well as the forms of other moving objects, copyright can also be switched or transferred, either partially or in its entirety. The transfer of the copyright is known in two ways, namely: 'transfer': the transfer of copyright in the form of a waiver to the party / others, such as inheritance, grants, wills, written agreements, and other causes that are justified by legislation and 'assignment': the transfer of copyright from one party to another in the form of granting permission / approval for the use of copyright in a certain period, such as a licensing agreement.
- Copyright may be divided or specified (divisibility); Based on the practices of the implementation of copyright and Norm Principle of Specification 'under copyright, the copyright rights are limited by: Time: eg long production of a good many years, Total: for example, the amount of production of goods so units in one year, Geographic: for example, cassette cover reads "For Sale in Indonesia Only".

⁸Soerjono Soekanto 1996 *Pengantar Penelitian Hukum* Jakarta, UI Press the Third Edition p. 43

⁹Haris Munandar dan Sally Sitanggang 2008 *Mengenal Hak Kekayaan Intelektual (Hak Cipta Paten Merek dan Seluk-beluknya)* Jakarta: Penerbit Erlangga p. 21.

2.2. Doubling Copyright Songs "Akad"

According to Article 40 of Act No. 28 of 2014 on Copyrights has provided some of the criteria concerning the creation given protection by copyright as follows:

- In this Act protected creation is a creation in the fields of science, art and literature, which includes: books, pamphlets, typographical arrangement of a published work, and all other written works; Speeches, lectures, speeches, and other similar creatures with it; Props made for the purposes of education and science; Songs and / or music with or without text; Drama, musicals, dance, choreography, puppetry and pantomime; Works of art in all forms such as paintings, drawings, engravings, calligraphy, sculpture, sculpture, collage; Works of applied art; Architectural works; Map; Art batik artwork or other motives; Photographic works; Portrait; Cinematographic works; Translations, interpretations, adaptations, anthologies, databases, arrangement, modification and other works from the transformation; Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions; Creation or data compilation, either in a format that can be read by the computer program or other media; Compilation of traditional cultural expressions during the compilation of an original work; Video games; and computer program.
- Works as referred to in paragraph 1 are protected as the creation of its own without prejudice Copyright on the original.
- Protection as referred to in paragraph 1 and paragraph 2, including the protection of creation is not as yet been made but the announcement has been realized in tangible form that allows Doubling the work concerned.

To find out whether the song "Akad" legal protection of copyright under Article 40 Such need to be elaborated explanation of the song "Akad" as described in the media column Indonesian Art.¹⁰

'Akad' is one single Payung Teduh indie band, which is quite managed to break the Indonesian music market. Hanin Dhiya eg Video cover song 'Akad' version, uploaded on Youtube, has garnered 46,303,175, outnumbered the original music video audience that as many as 20,322,234.

Responding to widespread screening and marketing of a cover song 'Akad' in Indonesia, particularly around digital activity, on September 26, 2017, the Created by Payung Teduh singer Mohammad Istiqamah Djamad, open sound. Through his personal Instagram account, Is to ask the actors cover of the song 'Akad' to be more wise again. Comments Is that also represent Payung Teduh is both positive and negative responses. Created by Payung Teduh does not prohibit fans to do a cover of the song 'Akad', even appreciate the positive response from the public. But against the perpetrators of the cover which has gained an economic advantage by expanding sales cover song 'Akad', Payung Teduh stressed that they have not received permission from the principals demand cover. As a copyright holder song 'Akad', the position of Payung Teduh can not be ruled out.

What is the definition of the cover? A cover song is a new performance or recording of a previously recorded, commercially released song by someone other than the original

¹⁰ <http://koalisiseni.or.id/kolom-hukum-dan-seni-lagu-akad-halalkah-cover-saya/> accessed on 25 November 2017.

artist or composer.¹¹ Cover is a gig or a new recording made by a person to track performer or composer who created the original for commercial purposes. The key to a person's cover is originality in performing a song, whether the song is a creation or not? Do not stop there, what about its composition? and so on. When someone sings back a song that was created and / or popularized by singers and / or creator of the original song, and then record it to be uploaded to Youtube, Spotify, SoundCloud to iTunes, it can be referred to as the perpetrator cover.

Is the question arises cover unlawful conduct? According to the agreement of Putri Aliya basically not something that violates the law, within certain limits. As the entry into force of legal fiction, that the principles that assume everyone knows the law (*presumptio iures de iure*) without any exceptions, then one's ignorance of the law can not make it in spite of the legal consequences arising.¹²

In the meantime Article 9 of the Copyright Act provides that the creator or copyright holder also has economic rights to do: Publishing Creation, Multiplication creation, translation creation, adaptation Creation, Distribution of Creation, Show Creation, Special Creation, Communication creation, and creation Hire.

The definition of economic rights under Article 8 of the Act of Copyright is an exclusive right of the creator or copyright holder to obtain the economic benefits of Creation. Furthermore, in Article 9 paragraph (2) of the Copyright Act states that any person who performs economic rights shall obtain the permission of the creator or copyright holder. If these obligations are not implemented, in accordance with Article 9 paragraph (3) that without the permission of the creator and / or copyright holder, any person prohibited from doing multiplication and / or commercial use of Creation. If the ban is ignored, the Creator of the Copyright Holder or related rights owner is entitled to file a lawsuit for compensation to the Commercial Court for breach of copyright or related rights products as regulated in Article 99 Paragraph (1) of the Copyright Act.

Created by Payung Teduh as the owner of the copyright of the song "Akad" legally discount rights as described above. But until now the management Payung Teduh yet to take legal actions in resolving this problem, simply appealed to the general public especially the actors cover of Akad, to be more wise in using the song by asking permission first, and does not alter the arbitrary notation even made parody which is basically not a form of positive appreciation of the composer but copyright infringement.

Youtube basically been giving special regulations in terms of the cover of this song. It can be seen in the decree, "Be careful with your cover. Some people assume that creating a cover song does not require a license. If you play a cover song, make sure there is permission from the copyright owner (the songwriter or music publisher). You may need an additional license to reproduce the original sound recordings, including the song in the video, or display lyrics of the song"¹³,

¹¹ Stem.is *Everything you need to know about releasing a cover song* <https://stem.is/releasing-cover-song/amp/> Retrieved on 25 November 2017.

¹² Jurnalis pada Kolom Seni Indonesia kutipan pendapat di akses dari tulisannya berjudul [Kolom Hukum dan Seni] Lagu 'Akad' Halalkah Cover Saya? <http://koalisiseni.or.id/kolom-hukum-dan-seni-lagu-akad-halalkah-cover-saya/> accessed on 25 November 2017.

¹³ <https://creatoracademy.youtube.com/page/lesson/copyright-usage?hl=id#strategies-zippy-link-1> accessed on 25 November 2017.

And from here the question arises: how the legal position of those who sing the songs belong to other musicians? In the Copyright Act actually is no answer to this question. For every person who wanted to sing again (cover) songs for other musicians would not be enough to simply include the name of the original singer on the cover work.

The next step can be taken so as not to infringe on the copyrights of other musicians is to obtain a permit or license from the concerned musicians. The license is an important point for those who want to sing the songs of other musicians for commercial purposes. In 2014 UUHC mentioned that the license is "written permission granted by the copyright holder or related rights owner to another party to carry out the economic rights over the creation or product rights associated with certain conditions."

The licenses include licenses for the right mechanical that focuses on the right to copy, reproduce (including rearranging), and recorded a musical composition. Then there are licenses for the right to announce (performing rights), which focuses on the right to broadcast a song which includes also sang and played live on radio and television, the Internet, and other programmatic music services. In addition, there are also licensing the right to earn royalties when a song is used for various other forms of creation such as films, commercials, and video (synchronization rights).

2.3. Conducting Party Liability Cover Songs

Article 45 of the Copyright Act provides that:

- Copyright Holder reserves the right to grant a license to the other party by virtue of a license agreement to carry out the acts referred to in Article 2;
- Unless otherwise agreed, the scope of the license as referred to in paragraph (1) shall cover all acts referred to in Article 2 for a term of the licensing agreement and applies to the entire territory of the Republic of Indonesia;
- Unless otherwise agreed, the implementation of the actions referred to in paragraph (1) and (2) accompanied by the obligation to provide royalties to copyright holders by the licensee;
- The amount of royalties to be paid to the Holder Copyright by the licensee is based on the agreement of both parties with reference to the agreement of professional organizations.

Of the provisions of Article 45 of the Copyright Act, there are two main points relating to the transfer of copyright and related rights of the owner of the rights to another party, namely:

- License - if other people want to do something propagation and the announcement of creation and propagation activities and broadcasting of sound recordings and / or images of performances, must get a license from the creator or holder of related rights; and
- Royalty - the licensee is required to provide a royalty to the creator or related rights holders.

2.4. Sanctions For Copyright Offenders who commit Cover without Permission of Copyright Owner

Violations of the economic rights of the Creator in terms of the transformation of the copyright can be subject to criminal sanctions as provided for in Article 113 paragraph (2) UUHC 2014 states: Every person who without authority and / or without the permission of the creator or holder of copyright infringement is economics Author as

referred to in Article 9 paragraph (1) c, d, f, and / or the letter h for the use of the commercially shall be punished with imprisonment of three (3) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

As for the act of "Cover the Song", such measures include the announcements. People who sing the song again without the permission of the Copyright Holder can be exposed to criminal sanctions Article 113 paragraph (3) of the Copyright Act No. 28 of 2014 which reads: Any person who without authority and / or without the permission of the creator or holder of copyright violation economic rights Author as referred to in Article 9 paragraph (1) letter a, b, e, and / or the letter g for use of the commercially shall be punished with imprisonment for a period of 4 (four) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

3. Closing

3.1. Conclusion

Creator is a person or persons who individually or jointly produce a creation that is unique and personal. While the definition of a work is any work of authorship in science, art and literature produced by inspiration, ability, mind, imagination, dexterity, skill or expertise that is expressed in a tangible form. The song "Akad" is the copyrighted work of Payung Teduh Band therefore be given the force of law on copyright in the form of moral rights and economic rights for any activities related to the song. For those who do a cover of the song "Akad" the obligation to apply for the license and provide distribution of royalties in the form of profit if the song was uploaded to Youtube and gain economic advantage in it. For copyright violators will be basically given copyright owners the right to sue copyright infringers in the form of civil or criminal charges.

3.2. Suggestion

The phenomenon is a cover that has a positive and negative impact, on one side of the track that was created can be easily spread throughout the community as a listener because sung repeatedly by the perpetrators of the cover. But the policy is required for the cover of the perpetrators can apply for permission to the owner of the song so it does not happend things that are detrimental to their respective parties in the future.

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