

COPYRIGHT PROTECTION OF CINEMATOGRAPHIC WORKS USED IN SONG LYRICS VIDEOS WITHOUT THE CRITER'S PERMISSION

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ABSTRACT

The use of film works without the author's permission to make a lyric video that aims to promote songs by musicians is a phenomenon that often occurs in the music industry today. This study discusses the extent to which Law Number 28 of 2014 concerning Copyright provides protection in the use of cinematographic works and what legal actions are taken if there is use of cinematographic works without permission. behavior that is appropriate for humans is used as a material for review. The data used is secondary data in the form of an assessment of the literature and laws and regulations related to copyright. The results showed, protection of cinematographic works in Indonesia protects the moral and economic rights of the creator or copyright holder. resolution if there is unauthorized use can be reached through out-of-court dispute resolution, namely alternative dispute resolution and complaints to the Minister for copyrights that are in the digital realm. Settlement of disputes in court in the form of civil lawsuits and criminal charges. The provisions in UUHC regarding this use are still unable to balance the interests of the creator with the community because there is no comprehensive fair use provision. Dispute resolution if there is unauthorized use can be reached through out-of-court dispute resolution, namely alternative dispute resolution and complaints to the Minister for copyrights that are in the digital realm. Settlement of disputes in court in the form of civil lawsuits and criminal charges. The provisions in UUHC regarding this use are still unable to balance the interests of the creator with the community because there is no comprehensive fair use provision. Dispute resolution if there is unauthorized use can be reached through out-of-court dispute resolution, namely alternative dispute resolution and complaints to the Minister for copyrights that are in the digital realm. Settlement of disputes in court in the form of civil lawsuits and criminal charges.

Keywords: *Copyright, Cinematography, Film, Lyric Video*

Introduction

The entertainment industry with all its products has become a commodity that is loved today. One of the creative works enjoyed by all circles is the art of music. Songs have always been fun entertainment for both young and old alike. A song to be heard by many people needs promotion in order to spread the songwriting work more widely. The promotions for songs have developed progressively from time to time,

supported by technology which also always has new things in it. In the past, song promotion was done through print media and live performances. However, along with the times, promotion of a song has also penetrated the visuals of the song. One of the visual products to promote the song is a music video.

A music video is a relationship between music and images that support each other.¹In the past, the making of this music video required a large amount of funds because of the traditional equipment such as the use of analog cameras which were still in the form of film tapes which had to be reprocessed using expensive technology. Along with the times, these difficult things have become affordable due to technological developments such as the emergence of digital cameras, cellphones with cameras and image processing devices that are already affordable because of the internet.

The ease of promoting a song gave birth to a new variety of music videos, namely lyric videos. Lyric video is a visualization that focuses on song lyrics where the form does not require as many elements as music videos. Enough with a photo of the musician and overwritten with song lyrics that go along with the music, then it becomes lyric video content to promote a song. In practice, today's lyric video creators take other people's works into their lyric videos, such as foreign films that are transformed into lyric videos. An example of a case is a lyric video belonging to a famous Jakarta musician named Pamungkas, he created lyric video content for his album entitled Walk the Talk.² This transformation is coupled with actions that change the integrity of the film due to the conversion into a new format, namely lyric video.

These problems make researchers interested in researching:

1. How is the legal protection of cinematographic works used for making lyric videos by other parties without the permission of the creator as seen from Law Number 28 of 2014 concerning Copyright?
2. What legal action can the creator take regarding the use of cinematographic works by other parties without the permission of the creator?

¹Carol Vernallis, *Unruly Media: Youtube, Music Video, and the New Digital Cinema*, New York: Oxford University Press, 2013, p. 208.

² Ultimate – Sweet Memories, <https://www.youtube.com/watch?v=0PmHpgFhy8E>, accessed on 20 August 2021.

Underlying the use of a work as fair use in essence can balance the interests of the creator and society, according to Arthur and Michael the use that sees the fair interests of the creator himself must consider the following factors:³

- 1) Purpose and characteristics of use including commercialization problems
- 2) The nature of the original work
- 3) Proportion of number of works used
- 4) The economic impact of using the work

In Indonesia itself, fair use is not explained explicitly and in detail, only the substance is mentioned in the chapter on copyright restrictions. The above factors are also related to copyright protection in Indonesia, numbers 1 and 4 are contained in UUHC Articles 43 to 51. In essence, fair use or fair use is to balance the interests of various parties in order to enjoy the creation. .⁴

This research itself uses a normative juridical research method where this method refers to written norms in legislation. the perspective of legislation (statute approach) or law which is conceptualized as a necessity for human behavior which is considered appropriate to be an approach in analyzing existing legal phenomena.⁵The type of data in this study is secondary data which is a library document. These data consist of primary, secondary and tertiary legal materials. The Convention, namely the Berne Convention and also in the form of legislation, namely Law Number 28 of 2014 concerning Copyright and its derivative regulations are the primary legal materials of this research. Furthermore, there are secondary legal materials that concern and explain in more detail the primary legal materials and finally tertiary legal materials which contain instructions to re-explain secondary legal materials, for example magazines, newspapers, legal dictionaries and others.

Protection of Cinematographic Copyrights Used by Third Parties as Song lyric Videos Without the Author's Permission

1. Protection of Moral Rights

³Arthur R. Miller and Michael H. Davis, *Intellectual Property*, Minnesota: West Publishing Company, 1984, p. 343

⁴BPHN, "Report of the Academic Manuscript Team on the Draft Law on Copyright (Amendment to Law No. 19 of 2002)", Op. Cit., p. 20.

⁵ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*, Jakarta: PT Raja Grafindo Persada, 2006, p. 118.

Moral rights consist of two things, namely the first is the right of integrity (right of integrity) and second is the right of attribution (right of paternity). The right of integrity is a right that gives the creator rights related to the integrity of his creation and also concerning his dignity and reputation, while the right of attribution is the right for the creator to include his identity in his creation.⁶

Based on the complex problems of various acts of copyright infringement, UUHC provides a means to resolve disputes if there is an infringement, of course this aims to protect the creator or copyright holder if they feel that a right has been violated by another party. There are two ways that UUHC provides, namely litigation and non-litigation dispute resolution.

1. Out of Court Dispute Resolution

Alternative dispute resolution is a way of resolving disputes outside the court. This method is in the form of negotiation, mediation, conciliation and arbitration. The explanation regarding alternative dispute resolution is stated in Article 95 paragraph (1) UUHC.

In addition to alternative dispute resolution regulated by Article 95 paragraph (1) UUHC, derivative regulations mandated by Article 56 paragraph (2) UUHC which regulates the closure of content that violates copyright and/or related rights in electronic systems gave birth to a Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia and the Minister of Communication and Informatics Number 14 of 2015 and Number 26 of 2015. The Minister of Law and Human Rights Number 14 of 2015 provides a procedure for submitting a report on copyright infringement as stated in Article 2, which is submitted to the Minister of Law in the form of a report electronic or non-electronic. After verification and it is proven that there is copyright infringement, according to Article 13 of the Minister of Law and Human Rights No. 14 of 2015,

This alternative dispute resolution is an effort that in general must be taken first referring to Article 95 paragraph (4) of the Copyright Law. Mediation should be pursued as long as copyright infringement does not constitute piracy or illegal copying on a large scale.

⁶I Gusti Putu Andre Pratista and Ida Ayu Sukihana, "Violations of Moral Rights in Song/Music and Sound Recordings in the Practice of Using Copyright", Kertha Semaya, Vol 2, No.1, 2014, p. 73

2. Dispute Resolution in Court

Settlement through a court institution in order to obtain compensation can be taken by parties who feel that the copyright of their work has been violated. This is stated in Article 96 of the UUHC which paragraph (1) explains that parties who experience losses due to copyright infringement are entitled to compensation. The claim for compensation contained in Article 96 of the Copyright Law means making payments of a sum of money by perpetrators of economic rights violations to copyright subjects based on court decisions with permanent legal force in civil or criminal cases. A lawsuit can be submitted to the Commercial Court in accordance with Article 100 of the Copyright Law

In addition to the compensation mechanism, if seen in Article 113 paragraph (3) of the Copyright Law, violators of economic rights who publish, reproduce, distribute, and announce a work may be sentenced to four years in prison and/or a maximum fine of Rp. 1,000,000,000 (one billion rupiah)

Judging from the qualifications of a copyright crime which is a complaint offense which is confirmed in Article 120 of the Copyright Law, it can be seen that the legislators intend to place the criminal provisions as an ultimum remidium or last resort. This last resort means that if other efforts have been taken but no solution has been found, then an attempt is made through criminal means. Article 110 states that reporting acts of copyright infringement can be made to the investigators of the Indonesian National Police (POLRI) and/or Civil Servant Investigators at the Ministry of Law and Human Rights who have been given special authority as investigators.

Conclusion

The legal protection of cinematographic works in UUHC includes economic rights and moral rights. The protection of the moral rights of cinematographic works is stated in Article 5 UUHC which includes the right of attribution and the right of integrity. The right of attribution is the right of the creator to include his name on the work and the right of integrity, namely the right to defend his work from all actions that disturb the integrity of the work or are deemed to be morally harmful. In addition to moral rights, economic rights are also the basis for the protection of cinematographic works, which emphasizes that only the creator or copyright holder

can enjoy the benefits of a cinematographic work. Legal action that can be taken by the creator if there is a use of a cinematographic work by another party without permission according to UUHC is an out-of-court settlement as stated in Article 95 paragraph (1) of the UUHC which consists of mediation, negotiation, conciliation and arbitration. In addition, there are derivative regulations to resolve copyright infringement disputes in the electronic system, namely the Joint Regulations of the Minister of Law and Human Rights and the Minister of Communication and Information Number 14 of 2015 and Number 26 of 2015 which are based on complaints from creators, copyright holders or related rights that will be issued. followed up with the removal of the content that violates the copyright by the Minister. Referring to Article 95 paragraph (4) UUHC,

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