

# COPYRIGHT ISSUE ON MUSIC BACK SOUND USAGE ON YOUTUBE VIDEO

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## Abstract

*The emergence of social media Youtube also raises new legal problems in the field of copyright. The use of music as a video background by a content creator is often done without the permission of the creator. Using the work without the author's permission violates the exclusive rights of the creator. This paper will describe the policies that YouTube has in protecting music creators as well as law enforcement efforts for Content Creators who use music as a background without the creator's permission in connection with copyright regulations in Indonesia. The research is normative research using a statutory approach, data collection through library research, and analysis using descriptive-analytical techniques. The results of the study show that the protection of music as a background for videos uploaded on the Youtube site is regulated in Article 5, Article 9, and Article 20 of the Copyright Law. Copyright legal protection is provided by Youtube by granting a license, through this license copyright holders can claim Content ID in the event of a violation of copyrighted material. The Indonesian government provides repressive measures that can be taken in the event of copyright infringement through litigation and non-litigation.*

**Keywords:** Legal Protection; Law Enforcement; Copyright; Music; Youtube

## 1. Introduction

Technology is a facility and infrastructure aimed at helping and facilitating the survival of mankind. In the past, the use of technology began with changing human resources into various kinds of tools. As the level of human intelligence develops, technology also expands its meaning, becoming an intangible object such as software, learning methods, business methods, and others.

Today's technology is no longer a luxury item but has become a basic human need on this earth. The changing direction of technology has resulted in the emergence of various telecommunication facilities and information technology products capable of integrating all information media.<sup>1</sup> The development of information technology cannot be separated from social media. At this time, social media has become a medium for expression and socializing with one another which can be done online through internet features without being limited by space and time. The existence of social media encourages millennials to be more active in developing themselves. One of the social media that is widely used by millennials is Youtube. Youtube is a

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<sup>1</sup> Lathifah Hanim, "Keabsahan Perjanjian Dalam Perdagangan Secara Elektronik ( E-Commerce ) Di Era Globalisasi," *Jurnal Dinamika Hukum* 11, no. 05 (2011): 60–67.

video-sharing service where users can watch, like, share, comment, and upload their own videos. It can be accessed on PCs, laptops, tablets, and mobile phones. The emergence of YouTube also raises new legal problems, one of them is the use of other people's music as a back sound by YouTube channel owners. Content creators or often referred to as YouTubers upload videos and deliberately include music in the video as background sound to strengthen the atmosphere created when watching the video and to beautify the video, which aims to attract viewers to see the video they upload.<sup>2</sup>

Youtube become a new media as a catalyst for changes in content, creativity, and culture.<sup>3</sup> In the past, every work embodied in physical products that must be produced, transported, and marketed has now been replaced by digital products that are easily distributed instantly.<sup>4</sup> Even so, the essence of every entertainment industry is still the same, which is the protection of copyright for creative works.<sup>5</sup>

In musical works, some rights are owned by the creator in the form of copyright. Copyright is a right that arises automatically based on a declarative principle after work is manifested in a tangible form without reducing restrictions by the provisions of laws and regulations. Whether or not the use of music as background sound on Youtube is allowed or not refers to two things, namely with the permission of the creator or not. If its use is carried out with the permission of the creator, then it is legally permitted and without harming the creator, provided that the use of the copyrighted song and/or music must be under the license contained in each song and/or music copyright work. But what if the use of songs and/or music as background sound on Youtube without permission from the creator of a song and/or music work, then the answer is clear that this is prohibited and is considered legally illegal.<sup>6</sup>

Using a copyrighted work without the author's permission will result in a decrease in the creator's productivity because the author's exclusive rights are not respected. Exclusive rights are only owned by the holder so that other parties do not have the right to exploit without the permission of the exclusive right holder so that the copyright holder can exercise the copyright.

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<sup>2</sup> Komang Ariadarma Suputra, Ida Ayu Putu Widiati, and Ni Made Sukaryati Karma, "Perlindungan Hukum Terhadap Pencipta Musik Sebagai Suara Latar Di Youtube," *Jurnal Interpretasi Hukum* 1, no. 1 (2020): 77–82.

<sup>3</sup> Matthew D. Thibeault, "From Compliance to Creative Rights in Music Education: Rethinking Intellectual Property in the Age of New Media," *Music Education Research* 14, no. 1 (2012): 103–17, <https://doi.org/10.1080/14613808.2012.657165>.

<sup>4</sup> Thibeault.

<sup>5</sup> Jon M. Garon, "The Heart of the Deal: Intellectual Property Aspects in the Law and Business of Entertainment," *Journal of Intellectual Property Rights* 17, no. 5 (2012): 443–53.

<sup>6</sup> Ahmad Faldi Albar; Rohaini; Diane Eka Rusmawati, "Perlindungan Hukum Penggunaan Musik Sebagai Latar Dalam Youtube Menurut undang-Undang Hak Cipta," *Pactum Law Journal* 1, no. 04 (2018): 321–35.

Exclusive rights owned by copyright holders in the form of translation, adaptation, arrangement, transferring, selling, renting, lending, importing files, arranging and showing in public, broadcasting, recording, and communicating works to the public through any means, as in Article 1 number 1 Law Number 28 of 2014 concerning copyright.

The presence of Youtube makes it easy to access someone's creation, therefore there are legal aspects that need to be considered to protect the rights owned by the creator. The challenge of the music creations in the 2000 era with the ease of downloading free music so that it becomes the most desirable place for the online music industry.<sup>7</sup>

Considering that research that has focused on copyright infringement in the field of music has been carried out previously such as that conducted by Hulman Panjaitan in 2015, this research focuses on the use of copyrighted music and songs without permission and its legal consequences.<sup>8</sup> Anak Agung Mirah Satria Dewi in 2017, this research focuses on copyright law protection for song covers on Youtube.<sup>9</sup> Research conducted by Ahmad Faldi Albar et al in 2018, this research focuses on the legal protection of the use of music as a background for Youtube videos according to the Copyright Act.<sup>10</sup>

Based on the existing articles, there are differences in the focus of the research that the author will do with previous research. Despite having the same theme about copyright infringement in the music sector, the author emphasizes the policies owned by the YouTube platform in protecting music creators as well as law enforcement efforts for Youtubers who use music as back sound without the creator's permission, in connection with existing regulations in Indonesia.

## **2. Method**

The author conducted this research using normative legal research methods. As research with a normative juridical approach, the research is carried out through library research using secondary data such as official documents, literature, and other forms of research results.<sup>11</sup> The primary legal material that will be used for this research is Law Number 28 of 2014 concerning

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<sup>7</sup> David Herlihy and Yu Zhang, "Music Industry and Copyright Protection in the United States and China," *Global Media and China* 1, no. 4 (2016): 390–400, <https://doi.org/10.1177/2059436417698061>.

<sup>8</sup> Hulman Panjaitan, "Penggunaan Karya Cipta Musik Dan Lagu Tanpa Izin Dan Akibat Hukumnya," *To-Ra* 1, no. 2 (2015): 111, <https://doi.org/10.33541/tora.v1i2.1139>.

<sup>9</sup> Anak Agung Mirah Satria Dewi, "Magister Hukum Udayana •," *E-Issn 2502-3101 P-Issn 2302-528X* 6, no. 4 (2017): 508–20.

<sup>10</sup> Rusmawati, "Perlindungan Hukum Penggunaan Musik Sebagai Latar Dalam Youtube Menurut undang-Undang Hak Cipta."

<sup>11</sup> Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2014).

Copyright and for secondary legal material that will be used by the author is literature related to Copyright. The materials that have been obtained in this paper are then systematically compiled and analyzed using legal arguments based on deductive legal logic and the results are presented in descriptive analysis. This type of descriptive legal research is descriptive and aims to obtain a complete picture of the legal situation prevailing at a certain place and time that occurs in society.

### **3. Results and Discussion**

#### **3.1. Legal Protection of Music Backsound Usage on Youtube**

The rationale for the legal protection of an individual's creation cannot be separated from the dominance of the flow of natural law which emphasizes the human factor and the use of intellect. One of the figures in the flow of Natural Law, John Locke said that humans are born in a free and equal state under natural law. The natural law forbids anyone from destroying: destroying life, freedom, and property, because all three come from the Almighty. In this case, property rights become Locke's focus, that naturally a person has the right to have all the potential inherent in himself and all the work he produces.<sup>12</sup> Humans naturally have rights over their bodies, including whatever is produced from their bodies because they have made sacrifices in finding, cultivating, and adding "personality" to something.<sup>13</sup>

The theory of natural law asserts that intellectual property belongs to the creator, so it is a necessity if the creator is given protection for every right inherent in his creation and invention. A person who has put effort into creation has a natural right to own and control what they have created.<sup>14</sup> Natural law theory considers law as a universal value that lives in every human being, that there are moral boundaries that become the guidelines for the law itself. Taking a work, either a little or a lot, without the author's permission is something that cannot be justified because it violates good moral teachings.<sup>15</sup>

An intellectual property rights expert, Arpad Bogisch said, "Human genius is the source of all works, of art and inventions. These works are the guarantee of a life worthy of men. It is the

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<sup>12</sup> Kholis Roisah, *Konsep Hukum Hak Kekayaan Intelektual Sejarah, Pengertian, Dan Filosofi Pengakuan HKI Dari Masa Ke Masa* (Setara Press, 2015).

<sup>13</sup> Basuki Antariksa, "Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia," n.d.

<sup>14</sup> Khoirur Rizal Lutfi, "Teori Hukum Alam Dan Kepatuhan Negara Terhadap Hukum Internasional," *Jurnal Yuridis* 1, no. 1 (2014): 91–106.

<sup>15</sup> Sudjana, "Hak Cipta Sebagai Jaminan Kebendaan Bergerak Dikaitkan Dengan Pengembangan Obyek Fidusia \*," *Mimbar Hukum* 24, no. 3 (2012): 405–17.

duty of the state to ensure with diligence the protection of the arts and inventions”.<sup>16</sup> The World Intellectual Property Organization or WIPO calls intellectual property rights a creation of mind where human work is born with the exertion of energy, initiative, copyright, time, and money so that work deserves to be protected and respected both morally and legally.<sup>17</sup>

Intellectual property law can be understood as a series of a legal intervention because of the incentive issues associated with potential free-riding.<sup>18</sup> The importance of intellectual property non-exclusiveness is easy to understand: tangible property can be excluded through physical means such as fences or locked drawers, but as an intangible thing, intellectual property is usually not affected by tangible restrictions, because once the intellectual property is distributed or even displayed, it can be used for reproduction.<sup>19</sup> Therefore, the law is used to do things that physical barriers cannot do.<sup>20</sup> In the final analysis, the function of intellectual property law is to make non-exclusive works exclusive.<sup>21</sup>

Copyright works as the result of human thought, and which are inherently inherent as assets receive legal protection as one of the human rights as stated in Article 27 of the Universal Declaration of Human Rights:

- 1) Every person has the right of freedom to participate in the cultural life of his community, enjoy art, and take part in scientific advancement and benefit from it.
- 2) Everyone has the right to obtain protection for moral and material interests which are the result of the creations of an author in the fields of science, literature, and art.

The awareness of the Indonesian people to protect copyrighted work is relatively new compared to developed countries such as European countries and the United States. In these developed countries, several economic studies conducted have shown a relationship between the contribution of the copyright industry and the national income. Since centuries ago, developed countries have recognized intellectual property rights and their economic benefits. In a book entitled *Audiovisual Media and Copyright in Europe* written by Herman Cohen as quoted by Eddy Damian, research conducted by Stichting Voor Economische Onderzoek (SEO) at the University of Amsterdam in 1993 shows that the copyright industry not only increases Gross Domestic

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<sup>16</sup> Eddy Damian, *Hukum Hak Cipta* (Bandung: Alumni, 2009).

<sup>17</sup> Hendri S, “Implementasi Hak Cipta Dalam Hubungannya Dengan Tujuan Hukum,” n.d., 553–71.

<sup>18</sup> Eric E. Johnson, “The Economics and Sociality of Sharing Intellectual Property Rights,” *Boston University Law Review* 94, no. 6 (2014): 1935–95.

<sup>19</sup> Johnson.

<sup>20</sup> James Grimmelmann, “Fordham Law Review Ethical Visions of Copyright Law Ethical Visions of Copyright Law” 77, no. 5 (2009).

<sup>21</sup> Johnson, “The Economics and Sociality of Sharing Intellectual Property Rights.”

Product (GDP) but also contribute to the addition of the national workforce. Other studies have shown that the added value of the copyright industry in 1989 was estimated at twenty billion guilders and the labor force accommodated by this industry was 4.6% of the total workforce.<sup>22</sup>

It is important to have legal protection for intellectual property rights holders so that they can use or utilize their property with a sense of security. This sense of security will create an atmosphere of people working to produce the next invention. The owner of the right can express his or her ideas with a sense of security because of legal guarantees, the public can enjoy, use or develop the work on the basis of permission.<sup>23</sup>

In Indonesia, provisions regarding Copyright are regulated by Law Number 19 of 2002 concerning Copyright which was later amended by Law Number 28 of 2014. Expressed by Gatot Supramono as quoted by Ayup Supran Ningsih and Balqis Hedyati Maharani, that intervention is needed the state to balance the interests of the creator, the interests of the community, and the interests of the state. On the one hand, the creator has the right to control the community in announcing or reproducing his creations, but on the other hand, the public's need to use the work cannot be avoided. The presence of the state is expected to be able to bridge the interests of creators and society by maintaining smoothness and security in the field of creation.<sup>24</sup> The existence of the Copyright Law shows the existence of law as a means of developing national law by providing legal recognition and protection to individuals who work, as well as for the community to be able to enjoy, use and even duplicate these copyright works based on permission.<sup>25</sup>

Copyright protection begins when a creator embodies his ideas in a tangible form. An idea or idea is not a creation, the idea must be realized in written form or other material forms to have a copyright.<sup>26</sup> Copyright protection as described above is called automatic protection. The concept of automatic protection is based on one of the principles in the Bern Convention, namely Automatically Protection. Based on this automatic protection concept, registration is not mandatory for the creator or copyright holder. Works, whether registered or unregistered, are still protected. Copyright registration is carried out for administrative activities. Such registration in no

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<sup>22</sup> Damian, *Hukum Hak Cipta*.

<sup>23</sup> Yoga Mahardhita and Ahmad Yakub Sukro, "Perlindungan Hukum Hak Kekayaan Intelektual Melalui Mekanisme 'Cross Border Measure,'" *Qistie* 11, no. 1 (2018): 86–106, <https://doi.org/10.31942/jqi.v11i1.2227>.

<sup>24</sup> Ayup Suran Ningsih and Universitas Negeri Semarang, "Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring," *Jurnal Meta-Yuridis* 2, no. 1 (2019): 92–106.

<sup>25</sup> Damian, *Hukum Hak Cipta*.

<sup>26</sup> Arya Utama, Titin Titawati, And Aline Febryani Loilewen, "Perlindungan Hukum Terhadap Hak Cipta Lagu Dan Musik Menurut Undang-Undang Nomor 28 Tahun 2004," *Ganec Swara* 13, no. 1 (2019): 78, <https://doi.org/10.35327/gara.v13i1.65>.

way validates the content, meaning, or guarantees the legality of the creator's relationship with his creation.<sup>27</sup> Copyright registration will make it easier to prove copyright ownership by the creator or copyright holder if one day there is a dispute regarding the results of his creation.

Copyright is an exclusive or special nature as stated in Article 4 of the Copyright Law that copyright is the exclusive right of the creator or copyright holder to announce or reproduce his work, meaning that no one else may do that except with the permission of the creator.<sup>28</sup> 2 (two) most of the exclusive rights contained in copyright consist of moral rights and economic rights. Moral rights are rights inherent in the creator and cannot be removed for any reason even though the copyright has been transferred, as stated in Article 5 of the Copyright Law. Respect for moral rights cannot be measured through material or money, but this appreciation is attached to the person of the creator for the work of human intellectuality. Moral rights consist of integrity rights and attribution rights. The right to integrity is a right that concerns all attitudes and treatments related to the integrity of the creator, in principle, a work must be intact as the original. Attribution rights require work to identify the creator with either his or her name or an alias.<sup>29</sup> If a copyrighted work is disseminated or duplicated by other parties or users, the user should ask permission from the creator or copyright holder.<sup>30</sup>

Economic rights are the rights of a creator to get economic benefits from the products he creates. Economic rights can be in the form of copyrights and publicity rights. The right to reproduce is the right obtained by the copyright holder to control the mechanical reproduction of work without prejudice to the provisions of the compulsory license as regulated in the laws and regulations, while the right to publish is the right obtained by the copyright holder to control the public performance of work. Protection of economic rights is contained in Article 9 of the Copyright Law.

Based on the economic rights it has, it gives the possibility for an author to exploit the copyrighted work in such a way as to obtain economic benefits. To obtain the economic benefits of a copyrighted work<sup>31</sup>, the creator can commercialize his creation, either by doing it himself or by granting rights to others to exercise his economic rights. If a work is not managed in an orderly

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<sup>27</sup> S, "Implementasi Hak Cipta Dalam Hubungannya Dengan Tujuan Hukum."

<sup>28</sup> Faghlaifi Naim, "Kriteria Pembatasan Hak Cipta Lagu Dalam Praktik Covering Melalui Youtube," *Jipro: Journal of Intellectual Property* 2, no. 1 (2019): 22–35.

<sup>29</sup> Ferol Mailangkay, "Kajian Hukum Tentang Hak Moral Pencipta Dan Pengguna Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Lex Privatum* V, no. 4 (2017): 138–44.

<sup>30</sup> Mailangkay.

<sup>31</sup> Sulasno, "Lisensi Hak Kekayaan Intelektual (Hki) Dalam Perspektif Hukum Perjanjian Di Indonesia," *Adil: Jurnal Hukum* 3, no. 2 (n.d.): 352–79.

manner based on a set of legal rules, it will cause a dispute between the copyright owner and the copyright holder or other parties who violate it.<sup>32</sup>

The Copyright Law also provides legal protection to the relevant rights holders stipulated in Article 20. Related rights are rights related to copyright which are the exclusive rights of performers, phonogram actors, or broadcasting institutions. The existence of related rights is motivated by the need for mass distribution because some works demand to be communicated to the public.<sup>33</sup> The parties who are disadvantaged in the phenomenon of using music as a background in the video are not only the creators but also the producers who produce the song or the singers who sing the song. Although they are not the ones who created the songs, they have a big share in distributing copyrighted works so that they can be enjoyed and used by the public.<sup>34</sup>

On Youtube, creators or copyright holders can make an agreement that regulates the rights and obligations of the parties in managing music works in videos made by content creators to be uploaded on the Youtube site. With a license, Youtube can use music safely on their site in the right way, and creators or copyright holders are compensated for using their music on the Youtube site.<sup>35</sup> The following are some of the licenses that can be carried out by Youtube users who have collaborated with Youtube:

1. Full Copyright, that is, the entire contents of the song and/or music are protected by copyright. If you want to use a song and/or music with a license, you must get direct permission from the copyright holder, in other words, the video maker cannot use this type of song and/or music in their video work to be uploaded to Youtube;
2. Creative Commons, which is a legal tool<sup>36</sup> that gives creators the freedom to choose the type of license for their work.<sup>37</sup> Applicants can apply for this license by downloading it on the site, without having to rearrange clauses. Creative Commons's license takes the form of electronic tagging of digital content so that users don't have to contact the creator to check the license status. The license given covers several aspects, namely commons deed, the

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<sup>32</sup> Naim, "Kriteria Pembatasan Hak Cipta Lagu Dalam Praktik Covering Melalui Youtube."

<sup>33</sup> Dina Widyaputri Kariodimedjo, "Perlindungan Hak Cipta, Hak Terkait, Dan Desain Industri," *Jurnal Mimbar Hukum* 22, no. 2 (2012): 265–82, <https://doi.org/10.22146/jmh.16222>.

<sup>34</sup> Monika Suhayati, "Perlindungan Hukum Terhadap Hak Ekonomi Pemilik Hak Terkait Dalam Undang - Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Negara Hukum* 5, no. 2 (2014): 207–21, [www.hukumonline.com/berita/baca/lt517fd780019e8/](http://www.hukumonline.com/berita/baca/lt517fd780019e8/).

<sup>35</sup> Suputra, Widiati, And Karma, "Perlindungan Hukum Terhadap Pencipta Musik Sebagai Suara Latar Di Youtube."

<sup>36</sup> Ignasi Labastida i Juan, "Les Llicències de Creative Commons a l'Estat Espanyol," *BiD: Textos Universitaris de Biblioteconomia i Documentació*, no. 15 (2005): 12.

<sup>37</sup> Corey Field, "Copyright , Technology , and Time : Perspectives on 'Interactive' as a Term of Art in Copyright Law," *Journal of the Copyright Society of the USA* 50 (2003): 1201–22.



- legal code, and digital code. After obtaining a license from Creative Commons, the copyright owner can make arrangements for different licenses to his work. The first part of the Creative Commons service provides an easy understanding of the license by using language that is easy to understand the license rights granted to the public. The second part contains licenses that are addressed to legal advisors and the last one is to grant types of licenses that allow the computer system to automatically determine the type of license for the uploaded work.<sup>38</sup> Various licenses are provided by Creative Commons, namely *attribution (by) choose by license*, permission to share, remix, tweak and build upon your work even though it is for commercial purposes as long as it includes the original author's statement, *attribution share-alike*, permission to modify the work is the same as attribution (by) by using open source software, the work created from similar derivative works will be used the same license by providing commercial opportunities, *attribution no derivatives*, providing options under the license that allows redistribution for both commercial and non-commercial purposes by not making changes but including the author's name, and finally *non-commercial attribution*, namely a license to new work by mentioning the original creator by giving identical terms to the new work. Non-commercial Attribution allows other people to download the work and share the work by mentioning the creator and connecting to the creator but cannot change in any way even for commercial use. One can change the work by remixing, tweaking the non-commercial work by including the original author's name, and stating that the work is a non-commercial work so no license is required as long as the derivative work is intended for non-commercial purposes.
3. Public Domain, which is the freest of all the licenses that have been discussed. Public Domain is a work that was previously protected by copyright, but because the copyright holder decided not to extend copyright protection, his work became public property. In certain cases, a Public Domain License may be granted to a work of art where the origin of the creator is not clear. This means that with this license the video maker can use songs and/or music at will while still mentioning the author's name as a manifestation of moral rights.

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<sup>38</sup> Lawrence Lessig, "Recommended Citation Lawrence Lessig, The Creative Commons, 65 Mont.," *Montana Law Review* 65, no. 1 (2004), <https://scholarship.law.umt.edu/mlr><https://scholarship.law.umt.edu/mlr/vol65/iss1/1>.

### 3.2. Law Enforcement for Infringement of Music Backsound Usage on Youtube

Soerjono Soekanto said that law enforcement is an activity to harmonize the relationship of values that are defined in a solid and embodied value convention or viewpoint and attitude as a series of defining the final stage of values to create, maintain and maintain a peaceful life.<sup>39</sup> In general, the purpose of protecting and enforcing intellectual property rights is stated in Article 7 of TRIPS, namely to encourage innovation, transfer, and dissemination of technology and to obtain mutual benefits between producers and users of technological knowledge, create social and economic welfare, and ensure a balance between rights and obligation.

Enforcement of copyright law is none other than to achieve the goal of copyright protection itself, namely to protect the economic rights by determining re-production, granting permission to display the work, disseminating the work<sup>40</sup> and also to protect moral rights of authors. More broadly, adequate protection of copyright is expected to make a real contribution to the economy and welfare of the people. If that goal is not fulfilled, then certain parties will suffer losses due to violations of copyright law.

Muhammad Djumhana as quoted by Rafik Al Hariri and Sri Maharani stated that the form of copyright infringement includes, among other things, taking, quoting, recording, announcing part or all of the work of others in any way without the permission of the creator or copyright holder and it is against the law that applies or violates the agreement.<sup>41</sup> The use of music as a back sound for YouTube content can be said to be a form of copyright infringement if it is done without the permission of the creator or copyright holder. Copyright infringement is a global threat to national, transnational, and international violations that can occur at any time. This violation not only affects the economic interests of the country, but also reduces one's income. The incentives of individuals who invest their energy and resources in creating work are weakened. This is the same as not allowing them to receive a good appreciation from the public.<sup>42</sup>

The Indonesian government provides various law enforcement efforts that can be used by creators in the event of copyright infringement, including:

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<sup>39</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2010).

<sup>40</sup> Government Employees, "Chapter 5. Copyright and Permissions 5.1," *Manual of Scientific Style*, 1000, <https://doi.org/10.1016/B978-0-12-373980-3.50009-5>.

<sup>41</sup> Ningsih and Semarang, "Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring."

<sup>42</sup> Wahyu Edy Amrulloh, "The Model of Law Enforcement to Reduce Copyright Infringement : Sociological Studies in Karaoke Business" 29, no. 8 (2020): 482–87.

1. Non-litigation

Non-litigation legal remedies mean efforts to resolve cases outside the court, including arbitration and alternative dispute resolution (mediation, negotiation, and conciliation). If the violation of copyright or related rights occurs other than in the form of piracy, mediation is one of the processes that must be taken by the disputing parties before committing a criminal charge. This is regulated in Article 95 of the Copyright Law.

2. Complaints on criminal acts

Creators who feel that their economic and moral rights have been disadvantaged can submit a report of copyright infringement to the Directorate General of Intellectual Property Rights as stated in Article 120 of the Copyright Law. Criminal acts in copyright infringement are included in the offense of complaint where the prosecution of a criminal act depends on the complaint of the injured party or the interested party.

3. Claim for compensation

A compensation claim can be submitted by the creator or copyright holder to the Commercial Court for infringement of copyright or related rights as stipulated in Article 96 of the Copyright Law. Payment of compensation claims is paid no later than 6 (six) months after the court's decision has permanent legal force.

4. Report on the closure of content or access rights

Report on the closure of content or access rights is a form of law enforcement in the administrative field. Closure of content or access rights includes 2 (two) things, namely blocking of content or content service provider sites, and in the form of blocking user access to certain sites via internet protocol addresses or the like. Article 56 of the Copyright Law mandates the formation of a joint regulation with the Minister as the basis for the implementation of closing content or user access rights that violate Copyright. This was then followed up by the issuance of the Joint Ministerial Regulation for Law and Human Rights Number 14 of 2015 and the Minister of Communication and Information Number 26 of 2015 concerning Implementation of Closure of Content and/or User Access Rights of Copyright and/or Related Rights Violations in Electronic Systems.

Since being formed in 2005, then being acquired by Google in 2006, YouTube has continued to develop into a major force in digital media. In 2017 alone, more than one billion users watched more than one billion hours of video every day. With so many views and more than three hundred hours of video uploaded every minute, it's no wonder YouTube has become a business ecosystem

of its own. Many people find wealth and fame on YouTube, and countless people find a stable career through Youtube.<sup>43</sup> The large volume of videos uploaded to the Youtube platform presents its challenges in enforcing copyright law. "Traditional" enforcement will certainly not work, so Youtube launched a system called Content ID to help creators control their copyrighted material on YouTube.

Content ID is said to be YouTube's digital fingerprint system using the Google ID algorithm developed for the YouTube platform.<sup>44</sup> Companies that hold the rights to the music, films, television, video games, or others can issue ownership claims against uploaded videos containing their material. First of all, right-holders must send a copy of their audio or video to a YouTube "reference file", to be stored in the database. When a user uploads a video file, Content ID can detect an automatic scan of the uploaded video, if a similarity is found, the system will detect content that has similarities and then notify the content uploader.

To participate in the Content ID program, an applicant must own exclusive rights to a substantial body of original material that is frequently uploaded by the YouTube user community.<sup>45</sup> If the user considers the Content ID claim made to him or her, not a violation, they can file a dispute. Previously, if a copyright holder filed a claim on a video that was monetized by a creator and the creator disputed the claim, both the plaintiff and the creator continued to earn revenue from advertising. In 2016, Youtube updated its system so that when Content ID claims were disputed, during the time of the dispute, the revenue from the video was diverted to escrow.<sup>46</sup> After a decision is made, the income that is owned is given to the entitled party.<sup>47</sup> Disputes are filed directly with the plaintiffs, who then decide whether the claim is valid. Plaintiffs can choose to waive the claim, defend it, or issue a copyright strike.<sup>48</sup>

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<sup>43</sup> Jonathan Bailey and Plagiarism Today, "How Copyright Law Works for YouTube," *Copyright and New Media Law* 21, no. 4 (2017): 5–8.

<sup>44</sup> Hanna V Kolisnykova and Oksana V Lekhkar, "Copyright Protection on Youtube and Instagram," *Scholar Journal of Applied Sciences and Research* 1, no. 6 (2018): 6–9, [http://innovationinfo.org/articles/SJASR/SJASR-4-142.pdf?fbclid=IwAR26i\\_xe5Dhz4j391wpO\\_IqFbk3JsBBRH7rOsNLRIMZtZEaiKMRmOfw\\_hhk](http://innovationinfo.org/articles/SJASR/SJASR-4-142.pdf?fbclid=IwAR26i_xe5Dhz4j391wpO_IqFbk3JsBBRH7rOsNLRIMZtZEaiKMRmOfw_hhk).

<sup>45</sup> Google, "Using Content ID," n.d., <https://support.google.com/youtube/answer/3244015?hl=en#:~:text=Content ID scans user uploads,they are published on YouTube.>

<sup>46</sup> David Rosenstein, "Improving Content ID for Creators," 2016, <https://blog.youtube/news-and-events/improving-content-id-for-creators>.

<sup>47</sup> Google, "Monetisasi Selama Sengketa Content ID," n.d., <https://support.google.com/youtube/answer/7000961?hl=id>.

<sup>48</sup> Google.

Actions that can be taken by the violator by asking permission from the copyright holder, a minor violation that occurs results in a monetization ban that results in an irreversible account blocking.<sup>49</sup> If a match is found, the copyright owner can take the following actions:<sup>50</sup>

1. Block viewing of entire videos. If the content owner blocks the video, the creator will not receive a copyright warning.
2. Monetization by placing ads on videos. In some cases, copyright owners can share results with the uploader.
3. Browse video views statistics. In this case, the copyright owner usually does not need to remove the video due to copyright infringement, but can benefit from monetized videos and advertisements.

The protection provided for the presence of Content ID technology makes Youtube easier for licensees in the event of content theft and provides an opportunity for users to hone their creativity in creating new content.

#### **4. Conclusion**

The Copyright Law protects music as a creation that is born from human intellect, including the use of music as a background in videos uploaded to Youtube. These protections include protection of moral rights listed in Article 5, protection of economic rights listed in Article 9, and protection of related rights listed in Article 20. Youtube protects the use of music as a video background through various types of licensing facilities, including full copyright license, creative commons license, and public domain license.

If the content creator uses copyrighted material without complying with the license terms from Youtube, the creator or copyright holder can submit a Content ID claim to Youtube. Through Content ID claims, copyright owners can choose to block views of entire videos, monetize by placing ads on videos or search video view statistics. The Indonesian government has also provided repressive legal remedies in the event of copyright infringement through non-litigation, criminal complaints, filing claims for compensation to the Commercial Court, and/or reports on the closure of content or access rights.

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<sup>49</sup> Kolisnykova and Lekhkar, "Copyright Protection on Youtube and Instagram."

<sup>50</sup> Google, "How Content ID Works," n.d., [https://support.google.com/youtube/answer/2797370?hl=en&ref\\_topic=4515467#zippy=%2Cwhat-options-are-available-to-copyright-owners](https://support.google.com/youtube/answer/2797370?hl=en&ref_topic=4515467#zippy=%2Cwhat-options-are-available-to-copyright-owners).

## References

- Amrulloh, Wahyu Edy. "The Model of Law Enforcement to Reduce Copyright Infringement : Sociological Studies in Karaoke Business" 29, no. 8 (2020): 482–87.
- Antariksa, Basuki. "Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia," n.d.
- Bailey, Jonathan, and Plagiarism Today. "How Copyright Law Works for YouTube." *Copyright and New Media Law* 21, no. 4 (2017): 5–8.
- Damian, Eddy. *Hukum Hak Cipta*. Bandung: Alumni, 2009.
- Dewi, Anak Agung Mirah Satria. "Magister Hukum Udayana •." *E-Issn 2502-3101 P-Issn 2302-528X* 6, no. 4 (2017): 508–20.
- Employees, Government. "Chapter 5. Copyright and Permissions 5.1." *Manual of Scientific Style*, 1000. <https://doi.org/10.1016/B978-0-12-373980-3.50009-5>.
- Field, Corey. "Copyright , Technology , and Time : Perspectives on 'Interactive' as a Term of Art in Copyright Law." *Journal of the Copyright Society of the USA* 50 (2003): 1201–22.
- Garon, Jon M. "The Heart of the Deal: Intellectual Property Aspects in the Law and Business of Entertainment." *Journal of Intellectual Property Rights* 17, no. 5 (2012): 443–53.
- Google. "How Content ID Works," n.d. [https://support.google.com/youtube/answer/2797370?hl=en&ref\\_topic=4515467#zippy=%2Cwhat-options-are-available-to-copyright-owners](https://support.google.com/youtube/answer/2797370?hl=en&ref_topic=4515467#zippy=%2Cwhat-options-are-available-to-copyright-owners).
- . "Monetisasi Selama Sengketa Content ID," n.d. <https://support.google.com/youtube/answer/7000961?hl=id>.
- . "Using Content ID," n.d. <https://support.google.com/youtube/answer/3244015?hl=en#:~:text=Content ID scans user uploads,they are published on YouTube>.
- Grimmelmann, James. "Fordham Law Review Ethical Visions of Copyright Law Ethical Visions of Copyright Law" 77, no. 5 (2009).
- Hanim, Lathifah. "Keabsahan Perjanjian Dalam Perdagangan Secara Elektronik ( E-Commerce ) Di Era Globalisasi." *Jurnal Dinamika Hukum* 11, no. 05 (2011): 60–67.
- Herlihy, David, and Yu Zhang. "Music Industry and Copyright Protection in the United States and China." *Global Media and China* 1, no. 4 (2016): 390–400. <https://doi.org/10.1177/2059436417698061>.
- Johnson, Eric E. "The Economics and Sociality of Sharing Intellectual Property Rights." *Boston*

- University Law Review* 94, no. 6 (2014): 1935–95.
- Kariodimedjo, Dina Widyaputri. “Perlindungan Hak Cipta, Hak Terkait, Dan Desain Industri.” *Jurnal Mimbar Hukum* 22, no. 2 (2012): 265–82. <https://doi.org/10.22146/jmh.16222>.
- Kolisnykova, Hanna V, and Oksana V Lekhkar. “Copyright Protection on Youtube and Instagram.” *Scholar Journal of Applied Sciences and Research* 1, no. 6 (2018): 6–9. [http://innovationinfo.org/articles/SJASR/SJASR-4-142.pdf?fbclid=IwAR26i\\_xe5Dhz4j391wpO\\_IqFbk3JsBBRH7rOsNLRIMZtZEaiKMRmO\\_fw\\_hhk](http://innovationinfo.org/articles/SJASR/SJASR-4-142.pdf?fbclid=IwAR26i_xe5Dhz4j391wpO_IqFbk3JsBBRH7rOsNLRIMZtZEaiKMRmO_fw_hhk).
- Labastida i Juan, Ignasi. “Les Llicències de Creative Commons a l’Estat Espanyol.” *BiD: Textos Universitaris de Biblioteconomia i Documentació*, no. 15 (2005): 12.
- Lessig, Lawrence. “Recommended Citation Lawrence Lessig, The Creative Commons, 65 Mont.” *Montana Law Review* 65, no. 1 (2004). <https://scholarship.law.umt.edu/mlrhttps://scholarship.law.umt.edu/mlr/vol65/iss1/1>.
- Lutfi, Khoirur Rizal. “Teori Hukum Alam Dan Kepatuhan Negara Terhadap Hukum Internasional.” *Jurnal Yuridis* 1, no. 1 (2014): 91–106.
- Mahardhita, Yoga, and Ahmad Yakub Sukro. “Perlindungan Hukum Hak Kekayaan Intelektual Melalui Mekanisme ‘Cross Border Measure.’” *Qistie* 11, no. 1 (2018): 86–106. <https://doi.org/10.31942/jqi.v1i1.2227>.
- Mailangkay, Ferol. “Kajian Hukum Tentang Hak Moral Pencipta Dan Pengguna Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.” *Lex Privatum V*, no. 4 (2017): 138–44.
- Naim, Faghlaifi. “Kriteria Pembatasan Hak Cipta Lagu Dalam Praktik Covering Melalui Youtube.” *JIPRO: Journal of Intellectual Property* 2, no. 1 (2019): 22–35.
- Ningsih, Ayup Suran, and Universitas Negeri Semarang. “Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring.” *Jurnal Meta-Yuridis* 2, no. 1 (2019): 92–106.
- Panjaitan, Hulman. “Penggunaan Karya Cipta Musik Dan Lagu Tanpa Izin Dan Akibat Hukumnya.” *To-Ra* 1, no. 2 (2015): 111. <https://doi.org/10.33541/tora.v1i2.1139>.
- Roisah, Kholis. *Konsep Hukum Hak Kekayaan Intelektual Sejarah, Pengertian, Dan Filosofi Pengakuan HKI Dari Masa Ke Masa*. Setara Press, 2015.
- Rosenstein, David. “Improving Content ID for Creators,” 2016. <https://blog.youtube/news-and-events/improving-content-id-for-creators>.
- Rusmawati, Ahmad Faldi Albar; Rohaini; Diane Eka. “Perlindungan Hukum Penggunaan Musik Sebagai Latar Dalam Youtube Menurut Undang-Undang Hak Cipta.” *Pactum Law Journal* 1,

- no. 04 (2018): 321–35.
- S, Hendri. “Implementasi Hak Cipta Dalam Hubungannya Dengan Tujuan Hukum,” n.d., 553–71.
- Soekanto, Soerjono. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, 2010.
- . *Penelitian Hukum Normatif*. Jakarta: Raja Grafindo Persada, 2014.
- Sudjana. “Hak Cipta Sebagai Jaminan Kebendaan Bergerak Dikaitkan Dengan Pengembangan Obyek Fidusia \*.” *Mimbar Hukum* 24, no. 3 (2012): 405–17.
- Suhayati, Monika. “Perlindungan Hukum Terhadap Hak Ekonomi Pemilik Hak Terkait Dalam Undang - Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.” *Negara Hukum* 5, no. 2 (2014): 207–21. [www.hukumonline.com/berita/baca/lt517fd780019e8/](http://www.hukumonline.com/berita/baca/lt517fd780019e8/).
- Sulasno. “Lisensi Hak Kekayaan Intelektual (Hki) Dalam Perspektif Hukum Perjanjian Di Indonesia.” *Adil: Jurnal Hukum* 3, no. 2 (n.d.): 352–79.
- Suputra, Komang Ariadarma, Ida Ayu Putu Widiati, and Ni Made Sukaryati Karma. “Perlindungan Hukum Terhadap Pencipta Musik Sebagai Suara Latar Di Youtube.” *Jurnal Interpretasi Hukum* 1, no. 1 (2020): 77–82.
- Thibeault, Matthew D. “From Compliance to Creative Rights in Music Education: Rethinking Intellectual Property in the Age of New Media.” *Music Education Research* 14, no. 1 (2012): 103–17. <https://doi.org/10.1080/14613808.2012.657165>.
- Utama, Arya, Titin Titawati, and Aline Febryani Loilewen. “Perlindungan Hukum Terhadap Hak Cipta Lagu Dan Musik Menurut Undang-Undang Nomor 28 Tahun 2004.” *Ganec Swara* 13, no. 1 (2019): 78. <https://doi.org/10.35327/gara.v13i1.65>.