



COPYRIGHT INFRINGEMENT IN YOUTUBE UNDER INDONESIAN AND MALAYSIAN LAWS: THE CASES OF AISYAH ISTRI RASULULLAH AND KARNA SU SAYANG SONGS

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Abstrak

This study describe the prescription problems in the case of Aisyah Istri Rasulullah song constitute infringement under Indonesian Copyright Law No. 28 of 2014 on Copyright; Karna Su Sayang song constitute infringement under Malaysian Copyright Law Act 332 1987 and the implementation of the law regarding the dispute settlement of the Aisyah Istri Rasulullah song and Karna Su Sayang song. The normative legal research method was used in this research. The results of this study shows that the Aisyah Istri Rasulullah song infringes Article 5 and 9 Indonesian Copyright Law stipulate that is prohibited to take the advantage of the copyright work without the owner permission and use it for commercial and Karna Su Sayang song infringes Section 13 and 36 Malaysian Copyright law; There are many similarities between the infringing copy and original work, there is a causal relationship between the infringing work and original works, and the infringing is an essential part of the original work. The recommendation for Indonesia's and Malaysia's lawmakers is to revise the Copyright law, so that the copyright infringement on YouTube related the use of fair use and pirates from uploading content will get the strengthen sanction. And create more comprehensive policy regarding the protection of song and Music in YouTube to made the enforcement of the policy to become more effective.

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I. INTRODUCTION

Intellectual property rights called IPR, also called immaterial rights,¹ are the right to obtain something from brain work and proportional work. Work in the form of intangible objects such as the work of song/music. In essence, IPR is the right to enjoy the result of intellectual creativity economically.² Works that emerge or are born of human intelligence are objects in the IPR.

Several international conventions support the global protection of copyrights as regulate more detail in the Berne Convention, the TRIPS Agreement, the Rome Convention and the WIPO Convention. In Indonesia, Copyright Law No.28 of 2014 on Copyright.³ While Malaysia, Act 332 of

¹ Indirani Wauran, "Hak Kekayaan Intelektual sebagai Benda: Penelusuran Dasar Perlindungan HKI di Indonesia" <https://www.researchgate.net/publication/318595923> (2015).

² Rahmi Jened, "Copyright's Law", Bandung: PT Citra Aditya Bakti, 2014, p. 9.

³ DJKI, "The History of Intellectual Property Protection Development", <http://en.dgip.go.id/index.php?option=com_content&view=article&id=141> [accessed December 30,2019]

1987 provided for the Copyright Law, which was later changed to the Malaysian Copyright (Amendment) Act 1612 of 2020.

One of the copyright objects and protected by copyright is a song (Law No. 28 of 2014 on Copyright, Article 58 (d)). Nowadays, songs are used on various occasions in daily life, such as entertainment or economic gain. In globalization, the Internet is one of the fastest media for listening, displaying, or distributing songs and music. Everyone is free to upload any video (including videos created by others) to YouTube. This freedom is causing a lot of copyright infringement. If someone finds copyright infringement, YouTube will track the video that violates the new copyright. When no one sends a notice to the YouTube site, the video that infringes the copyright will still be seen by other YouTube users.

Nowadays, many people use song videos with lyrics or cover versions of songs uploaded by YouTube users for commercial purposes without commercial songwriter permission. One of the multinational copyright infringement cases is the *Aisyah Istri Rasulullah* song, which one of the Indonesian musicians recovered, namely Syakir Daulay. And also *Karna Su Sayang* song that snatched by someone named Ismail Abinting without sufficient evidence. The usage fee for the song will automatically move.

Therefore, this research is aimed to describe the prescription problems in the case of *Aisyah Istri Rasulullah* song constitute infringement under Article 5 and 9 Indonesian Copyright Law; the *Karna Su Sayang* song constitute infringement under section Section 13 and 36 Malaysian Copyright Law; the dispute settlement mechanism of *Aisyah istri Rasulullah* song which was claimed by an Indonesian; and the dispute settlement mechanism of *Karna Su Sayang* song which was claimed by a Malaysian.

II. RESEARCH METHODS

The normative legal research method was used in this research by comparing the Indonesia Copyright Law No. 28 of 2014 on copyright and Malaysia Copyright Law Act 332 1987. The normative legal analysis method is a scientific research technique for evaluating the facts based on the normative side's legal scholarly reasoning.⁴ Normative legal research methods by studying library materials, laws and cases.⁵ Based on the nature of this research, primary data, secondary data, and tertiary data.

⁴ Ilyas, *Panduan Penulisan Tugas Akhir Program Sarjana (S1) Revisi 2018*, Banda Aceh: Fakultas Hukum Universitas Syiah Kuala, 2018, p. 16.

⁵ Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, Serta Disertasi*, Bandung: Alfabeta, 2017, p. 66.

III. RESEARCH AND DISCUSSION RESULTS

3.1. The Copyright Infringement in the Case of *Aisyah Istri Rasulullah* Song under Indonesian Law

The basic principles of Copyright protection contained in article 1 paragraph 1 of Law Number 28 of 2014 on Copyright are the exclusive rights, no one may publish or reproduce the work without the author's permission.

Hence, international standards set for copyright protection even though implementation happens left up to the Berne Convention's signatory countries. Even if a person is in another country/region, as long as that country/region becomes a signatory of the Berne Convention, the Berne Convention's provisions will still apply in that country/region.⁶ Although in practice, there are still many who do not understand well. The copyright settings in the Trade-related Intellectual Property Agreements (TRIPs) set in Section 1 "Copyright and Related Rights." In Article 9 of the TRIPs Agreement:

“Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto...”

It means, copyright protection refers to member states' obligations to comply with the Berne Convention. *Aisyah Istri Rasulullah* is a song by the Malaysian musician Angah Razif, a member of the Projector Band. The song was first released in February 2017, and the publisher Media Asia Production (MAP) released a song titled *Aisyah*. A few weeks later, the song was re-adapted by a Malaysian musician named Hasbi Haji Muh, commonly known as Mr. Bie under Universal Music Publishing Group (UMPG) music house. The lyrics of Mr. Bie are widely covered by Indonesian musicians with the title *Aisyah istri Rasulullah*.

The basic lyrics of this song, which was popularized by Projector Band, tell the story of a young man's love for a woman named *Aisyah*, while after the lyrics of this song were re-adapted by Mr. Bie, the lyrics changed to the household life of *Rasulullah SAW* and *Aisyah RA*.

The dispute regarding the copyright of *Aisyah Istri Rasulullah* song started when one of the musicians from Indonesia named Syakir Daulay changed the cover video to Official Music Video, which means that Syakir Daulay officially owns the *Aisyah Istri Rasulullah* song. This made netizens, especially in Malaysia, furious with this Syakir action, many negative comments from Malaysian netizens on Syakir Daulay's Instagram account.

Indonesia's copyright protection is divided into two parts: moral rights⁷ and economic rights protection.⁸ Moral rights are inherent rights of creators, so if someone uploading the cover version

⁶ Article 2 point 2 Berne Convention.

⁷ Article 8 Law No.28 of 2014

⁸ Article 5 point 1 Law No.28 of 2014

does not include the author's name of the original song/music work, it can be said to have violated moral rights. If economic rights, when used for commercial purposes and do not include the creator's name, then it can be said to violate economic rights.

Act which is not considered a violation of Copyright is one of the provisions of Article 43(d) Indonesian copyright law, manufacture and distribution of media content Copyright information and communication technology that is not commercial and / or advantageous to the Creator or related parties, or the Creator expressed no objection to the creation and dissemination. So, if the act is done commercially,⁹ and the creator of objections, it is an act of copyright infringement.

Based on Law Number 28 of 2014 concerning the right of mind in Article 50 regarding copyright restrictions, anyone who makes, distributes, or communicates work that is contrary to public order, security, faith, morality, or national safety, and values is prohibited.

In Indonesia Copyright Law No.28 of 2014 on copyright in article 1 paragraph 20 and in paragraph 82 paragraph 3, the license agreement cannot be used to revoke or take over any of the Creator's rights to his work. And in article 83 paragraph 3, there is no legal impact of the license agreement on third parties. unless it is registered in the public. This case uses absolute liability, that is, the principle of no-fault liability without exception. It is necessary to take responsibility for the mistakes he committed because was took the advantage of the *Aisyah Istri Rasulullah* song.

3.2. The Copyright Infringement in the Case of *Karna Su Sayang* Song under Malaysian Law

As we know, music is one of the subjects of copyright protection. Obtaining permission from the product owner is strict to prevent any possible infringement or removal of the video unless its use is subject to the specified exceptions. About music regulates under the Malaysian Copyright Act 1987 (CA) as a sound recording or a musical work. Assume that the sound recording is for commercial purposes.¹⁰ This issue includes covering songs and then posting or posting original music online, where there is some form of commercial value derived from their activities related to the work's use.

In the case of *Karna Su Sayang* song, Ismail Abinting, a Malaysian, has licensed Near's Indonesian song to the YouTube platform without the permission and knowledge of the original owner of the song.¹¹ The majority of the online platform has its own rules that deal with music on their websites.¹² In case, YouTube has a Content ID system that can identify and manage content on YouTube. Near as *Karna Su Sayang* songs' owner has the right to decide whether to block the video or post an advertisement and monetize the video. Also, Near's can choose to send a complete and

⁹ Article 43 Law No.28 of 2014

¹⁰ Part III, Section 16B Copyright Act 2012.

¹¹ TribunJabar.id, 2018, <<https://jabar.tribunnews.com/2018/11/12/heboh-lagu-karna-su-sayang-kabarnya-dicuri-oleh-orang-malaysia-ini-yang-sebenarnya-terjadi?page=2>>[accessed 7 Nov, 2020]

¹² Wilding, D., Fray, P., Molitorisz S. & McKewon, E, "The Impact of Digital Platforms on News and Journalistic Content", University of Technology, Sydney, p.15, 2018.

adequate legal request to YouTube and request YouTube to delete the video. Hence, if a user intends to use someone else's work on YouTube, they must obtain a license or approval from the creator.¹³

Based on Section 36 Malaysia Copyright Law, a party who conducts or allows any other person to do without the copyright owner's permission, an act regulated by copyright under the copyright law as copyright infringement. According to the application of Article 36 paragraph 1, and Article 13 paragraph 1 of the Copyright Law, the determination of direct infringement is: ¹⁴ There are many similarities between the infringing copy and the original work; There is a causal relationship between infringing works and original works; The infringing is an essential part of the original works.

As with Indonesia, in the Law of Malaysia itself, this is strictly prohibited, as stated in the Laws of Malaysia Act 332 on the copyright of Part I Section 3 infringing copy, in the case of any article imported into Malaysia without the permission of the owner of the copyright, implies any duplication of any work liable for copyright under this Act, the making of which constitutes an infringement of the copyright in the work or, in the case of any article imported into Malaysia without the consent of the owner of the copyright, the making of which was carried out without the consent of the owner of the copyright.

3.3. The Dispute Settlement Mechanism chosen for the Case of *Aisyah Istri Rasulullah* Song

Aisyah Istri Rasulullah song which was popular, turned out to be a polemic. In addition to the controversial lyrics, the Malaysian musician Angah Razif who wrote the song, feels like he is playing a creation song. The song was very popular on YouTube in Indonesia and was reported by many people.¹⁵ This song became popular because of the lyrics adopted by Mr. Bie. The title became *Aisyah Istri Rasulullah*, especially related to the song's legality, which later had the license purchased by another party, namely Syakir Daulay. It is not clear yet by Angah Razif as the composer of this song. Angah said that he did not get any information from the publisher contacted by Syakir Daulay, so he regretted that there were several trending videos in Indonesia and Malaysia without including a cover, but the official music video as if the song was the original song.

Mr Bie through his YouTube channel "vitaminbie" has often changed the song lyrics of several other musicians to a religious version. For example, a song with the title "*Sudah Ku Tahu*" which was also performed by Projector Band had its lyrics changed to a religious version. There is also a song "*Kemarin*" performed by the Indonesian music group, Seventeen, whose lyrics have been changed to the Rasulullah version.

¹³ YouTube, <https://www.youtube.com/howyoutubeworks/policies/copyright/>, accessed by November 5, 2020.

¹⁴ The High Court of Malaya Civil Suit No.WA-22IP-30-05/2016.

¹⁵ Umar, H, Lagu Aisyah Istri Rasulullah Ciptaan Musisi Malaysia Trending di Indonesia< laman <https://fajar.co.id/2020/04/06/lagu-aisyah-istri-rasulullah-ciptaan-musisi-malaysia-trending-di-indonesia/>>[accessed 30, November 2020].

As for copyright protection that is born automatically based on the declarative principle, it has become a provision that is recognized nationally and internationally. So, this provision also applies even if someone in different country, as long as that country is a signatory to the Berne Convention. For any reason, other parties may not use someone else's work without rights if that party realizes that using the work will get commercial benefits.¹⁶ Mr Bie, which adopted the song, said that he had contacted Angah through his Instagram band. Angah emphasized that he did not have any information about the official music video agreement, and some musicians recorded official music videos about his songs. This problem is caused by a communication error involving two countries. Because there is a dispute, Syakir finally admitted to having bought the song's license from a Malaysian singer who held the license so that it was the same as the songwriter from Malaysia.

According to the provisions of the Republic of Indonesia Law No. 28 of 2014 on Copyright, disputes caused by copyright infringement can be resolved through alternative dispute resolution, and court. The court in charge of copyright cases is the commercial court. Except for the commercial courts, no other court has the power to handle copyright disputes. Procedure for dispute resolution in commercial courts, procedures for lawsuits, legal remedies and temporary court rulings. Creators, copyright holders and/or related rights holders who have suffered economic losses are entitled to compensation.

When the Project Band asked for responsibility for the violations that occurred, Syakir Daulay apologized and immediately purchased a license from the Project Band. However, Syakir Daulay had to restore his good name, and convey to the media that the *Aisyah Istri Rasulullah* song did not belong to him but had bought the license.

Copyright disputes can occur if the parties act as regulated in the Law of the Republic of Indonesia Number 28 of 2014 on Copyright, Article 112 to Article 120. Every person who without rights commits the act as referred to in Article 7 paragraph (3) and/or Article 52 for Commercial Use, shall be sentenced to imprisonment of 2 (two) years and/or a maximum fine of Rp.300,000,000.00 (three hundred million rupiahs).

3.4. The Dispute Settlement Mechanism Chosen for the Case of *Karna Su Sayang Song*

In the case of Karna Su Sayang song, no other party may use someone else's work without rights if that party consciously uses someone else's work. Also, get commercial profits from work. Someone who will use the media or platform to distribute someone's work still has to ask permission from the work owner.

¹⁶ Amrikasari, R. 2019. Penyelesaian Pelanggaran Hak Cipta dalam Platform Digital Lintas Negara<<https://www.hukumonline.com/klinik/detail/ulasan/lt5c32dc6def6d2/penyelesaian-pelanggaran-hak-cipta-dalam-platform-digital-lintas-negara/>>[accessed November 30, 2020].

Related to this, Malaysian citizen Ismail Abinting owns the copyright *Karna Su Sayang* song, and he apologizes for the song he uploaded on YouTube. He explained several reasons, claiming that he did not steal the song but used it reasonably. He explained that if someone uploads a licensed work, the owner of the work still owns the copyright. In digital distribution terms, the uploading activity promotes fair use, which is stated in the copyright.

However, the problem is that the owner of *Karna Su Sayang* song does not have a license to publish, so this is called stealing the work. However, Ismail also admitted an error because the *Karna Su Sayang* video was claimed to be his. Ismail Abinting has apologized and argued that he only used fair use. We know that fair use refers to science, writing, conveying information, criticism, suggestions, and education. Although he already had good faith to apologize, Immanuel Andra wanted this case to be resolved legally.

Based on article 54 of Law No.28 of 2014 on copyright, the government has the authority to supervise copyright infringement committed by Ismail Abinting, because Article 64(b) has explained cooperation and coordination with various parties, both domestic and foreign. In this case, the government was obliged to take action because Ismail abinting also took advantage of the offense he committed and has to bear legal responsibility.

Based on the above description, due to the law on the claim of *Karna Su Sayang* song by Ismail Abinting to Immanuel Andra, related to the license, Article 1 paragraph (20) and Article 82 paragraph (3) of law number 28 of 2014 on copyright, the license agreement is prohibited as a means to remove or takes over the entire copyright of its creation. In Article 83, paragraph (3), if the license agreement is not recorded in the public register by paragraph (1), the license agreement has no legal effect on the third party.

Ismail Abinting applied for a license that *Karna Su Sayang* song was his, but on the other hand, Immanuel Andra did not accept this. When Immanuel Andra asked for responsibility for the violations that occurred, Ismail Abinting only apologized, so that was where Ismail Abinting's goodwill emerged. This does not mean that by apologizing for Ismail Abinting the violation is over, Ismail Abinting must do compensation, restore Immanuel Andra's good name, and convey to media that *Karna Su Sayang* songs are not his creation but belong to Immanuel Andra.

In addition to online copyright infringement, according to Article 43H, Malaysian copyright holders can also involve service providers as third parties to resolve the dispute of infringe copyright, one of which is an Internet Service Provider (ISP).¹⁷

¹⁷ Article 18.81:(a) & 18.82:2(a) of TPP Agreement defines ISP as: "a provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, undertaking the functions of transmitting, routing or providing connections for material without modification of its content or the intermediate and transient storage of that material done automatically in the course of such a technical process.

Frequent copyright disputes cause economic losses to copyright holders. Dispute resolution can be carried out in two ways: litigation and non-litigation, also called alternative dispute resolution, such as negotiation, mediation, conciliation, and arbitration. It is best to resolve the dispute through non-litigation methods before the copyright owner takes steps to resolve the dispute in court.

IV. CONCLUSION

The research has found that under Indonesian Copyright Law No. 28 of 2014 there has copyright infringement on case *Aisyah Istri Rasulullah* song. Article 5 and 9 stipulate that is prohibited to take the advantage of the copyright work without the owner permission and use it for commercial. *Karna Su Sayang* song infringed Economic and Moral Right also Section 13 and 36 Malaysian Copyright law Act 332 1987. There are many similarities between the infringing copy and the original work; there is a causal relationship between the original works and infringing work; and the infringing is an essential part of the original work. For the Dispute Settlement under *Aisyah Istri Rasulullah* song case can be resolve through Alternative Dispute Resolution, Arbitration and Court (Art 95 Indonesia Copyright Law). And Syakir Daulay do apologized and purchased a license for *Aisyah Istri Rasulullah's* song from the label of Media Asia Production (MAP) Malaysia. For the dispute settlement of *Karna Su Sayang* song, Ismail Abinting as the party who claimed the *Karna Su Sayang* song used negotiations and apologized to Immanuel Andra, make a public confession clarified that his actions were deliberate and detrimental Immanuel Andra. Then, revoke the Official Music Video from his YouTube account. Under Malaysian Copyright law can resolve through Litigation proceeding, Arbitration, and Alternative Disputes Resolution.

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