



## Problematics Intellectual Property Rights of Music Industrialization Indonesia After The Easy Trying of Creating Work

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### Abstract

#### **Abstract**

*In 2020, the Indonesian government, under President Joko Widodo, enacted job creation regulations aimed at stimulating the national economy. However, these regulations faced significant opposition due to concerns about their potential negative impact on Intellectual Property Rights (IPR). While the Copyright Act provides some protection for intellectual property, it is not comprehensive. This gap has led to notable issues in the music industry, particularly with copyright infringements by cover singers on YouTube. This research employs a normative approach, utilizing both statutory and conceptual analyses. The findings reveal that the existing Government Regulations, designed to facilitate business operations, have been insufficient in addressing the challenges posed by YouTube users who infringe on copyrights of songs produced by national music industry entities. To address this issue, it is recommended that the government revise Government Regulation Number 56 of 2021 concerning Song and Music Royalties to enhance legal protection for Indonesian songwriters against piracy of their works by cover singers on YouTube.*

### A. Introduction

The recent policy of enhancing the ease of doing business in Indonesia represents a significant development in improving the nation's business environment at local, national, multinational, and international levels. The issue of fostering a competitive business ecosystem has been a persistent challenge across various political regimes in Indonesia, from the New



Order era to the Reform era. Economic considerations have consistently been incorporated into both the National Medium-Term Development Plan (*RPJMN*) and the National Medium-Long Term Development Plan (*RPJMPM*). With the enactment of Law Number 11 of 2020 on Job Creation, the Indonesian government, under President Joko Widodo's leadership, has demonstrated a serious commitment to addressing critical aspects of the national economy that require ongoing development.

The Job Creation Act, established through a government initiative, seeks to address economic challenges faced by business entities, including issues related to bureaucratic inefficiencies in business licensing, overlapping central and regional regulations, and inadequate legal protection for small and medium enterprises (MSMEs). This legislation was formulated using the "Omnibus Law" approach, a method that integrates various laws and regulations into a single legal framework. This legislative model is prevalent in "Common Law" jurisdictions such as the United States, the United Kingdom, and Canada. In contrast, countries with a "Civil Law" system, such as Germany, France, and the Netherlands, typically utilize a codification approach, which consolidates similar laws and regulations into a single code.<sup>1</sup>

Despite the innovative nature of the Omnibus Law approach, which is not traditionally aligned with the Civil Law system, the Indonesian government is attempting to achieve legal breakthroughs to ensure legal certainty, enhance business protection, and accelerate Indonesia's global business competitiveness through Law Number 11 of 2020 on Job Creation. However, the implementation of this legislation has not been without issues. The policies aimed at facilitating business operations have inadvertently led to new challenges, including unfair business competition. Notably, there has been a significant issue with violations of Intellectual Property Rights, particularly in the music industry. The widespread use of music covers on social media platforms, such as YouTube, has resulted in financial harm to music industry stakeholders, including prominent entities such as Musica Studios, Trinity Optima Production, and Republik Cinta Management.

Social media platforms, particularly YouTube, has significantly transformed the global business landscape, positioning YouTube as a major industry player. YouTube International has implemented a monetization system whereby users with substantial subscriber counts, likes, and views on their content can earn royalties. For instance, as of April 2021, the "Felix Official" channel had amassed 4.21 billion subscribers and published 486 videos, primarily consisting of cover songs from both national and international artists. YouTube's monetization details reveal that video royalties are distributed based on viewership and content volume, with Google paying 68% of AdSense revenue to content creators. Consequently, for every \$100 paid by advertisers, Google allocates \$68 to YouTubers. Advertiser payments vary, typically ranging from \$0.10 to \$0.30 per view, with an average of \$0.18 per view. An average YouTube channel can earn approximately \$18 per 1,000 ad views, equating to \$3 to \$5 per 1,000 video views. Therefore, if a channel with 1,000,000 subscribers generates two new videos per week, the potential weekly revenue from AdSense could amount to \$36,000. For a channel like "Felix

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<sup>1</sup> Muhtadi Muhtadi, "Penerapan Teori Hans Kelsen Dalam Tertib Hukum Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 5, no. 3 (2014): 293–302, <https://doi.org/10.25041/fiatjustisia.v5no3.75>.

Official," publishing four videos per week could generate an estimated income of IDR 120,000,000.00 (one hundred and twenty million rupiah) per week.<sup>2</sup>

This monetization model has created a competitive imbalance between Indonesian music industry entities, such as Musica Studios, Sony Music Entertainment, Trinity Studios, Republik Cinta Management, and other producers, and individual content creators or cover singers. The core issue lies in the disparity of competition between established music industry companies and individual cover singers. Many cover singers frequently infringe on copyright laws, focusing more on profit generation through YouTube rather than respecting the intellectual property of original creators. As a result, traditional music industry stakeholders face increased competition from individuals on YouTube, where the platform has become the primary arena for global music industry competition.

In the past, music industry stakeholders did not face significant competition issues, as the primary market for music was through physical copies sold in public venues such as supermarkets, minimarkets, and music stores. The emergence of YouTube as a major platform for music distribution has disrupted this traditional model, introducing new competitive dynamics. This shift has highlighted a regulatory gap, particularly concerning intellectual property rights and the impact of the Employment Copyright Act. Although Law Number 28 of 2014 on Copyrights addresses intellectual property rights, it has not adequately adapted to the rapidly evolving global and national music industry landscape. The Job Creation Act was intended to address these regulatory shortcomings, but it has not fully achieved this objective.

This research will address two primary issues: first, the challenges faced by Indonesian music industry stakeholders regarding intellectual property rights in the wake of the Job Creation Act; and second, the extent to which the Job Creation Act regulates intellectual property rights within the context of easing business operations for the music industry in Indonesia. The research employs a normative approach, utilizing both statutory and conceptual methodologies. A key innovation of this research is the focus on the necessity of regulating intellectual property rights protection for music industry stakeholders through song publication permits, which are crucial for safeguarding copyright as a fundamental human right. While Government Regulation Number 56 of 2021 concerning the Management of Song or Music Royalties has been introduced, it does not address the specific challenges posed by the use of YouTube content within the industrialization context.

## **B. Discussion**

### **1. The Problem of Intellectual Property Rights of Music Industry Business Actors in Indonesia Post-Regulation of the Job Creation Act.**

Intellectual Property Rights (IPR) represent an individual's legal entitlement to the commercial exploitation of their creative works. Contextually, IPR is recognized as a component of global human rights frameworks. Copyright, a subset of IPR, is considered an economic right that ensures creators receive economic benefits from their works, which must not be infringed upon by others. Indonesia has ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) through Law Number 7 of 1994, which aligns with its commitment to the World Trade Organization (WTO). Additionally, international copyright

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<sup>2</sup> "KAJIAN YURIDIS TERHADAP HAK KEKAYAAN INTELEKTUAL HUBUNGANNYA DENGAN INVESTASI," *LEX PRIVATUM* 7, no. 5 (2020).

protections are enshrined in the Universal Copyright Convention of Geneva (1952). The 1945 Constitution of the Republic of Indonesia also safeguards intellectual property rights; Article 28 E, paragraph (3) ensures the right to express one's creativity, while Article 28 H, paragraph (4) guarantees protection of personal rights against arbitrary infringement.

The Indonesian Constitution does impose limitations on human rights regulations, mandating that such rights be delineated in specific laws and regulations. Consequently, Law Number 28 of 2014 concerning Copyright was enacted to safeguard intellectual property across various domains, including science, art, literature, and computer programs. This legislation represents the government's commitment to fulfilling human rights related to intellectual property. However, the advancement of global industrial technology has led to numerous violations of intellectual property rights, driven by commercial interests.<sup>3</sup>

In the contemporary global music industry, social media platforms such as YouTube have become significant commercial tools for maximizing profit. Prominent Indonesian artists like Chrisye, Ahmad Dhani, Anang Hermansyah, Iwan Fals, Ahmad Albar, Dewa Budjana, Agnes Monica, and Anggun C. Sasmita have established themselves internationally through their original musical creations, thereby contributing to Indonesia's global music presence. These artists have historically adhered to copyright laws and have benefited from royalties generated by their own works.

Recently, however, cover singers have emerged as significant players in the YouTube ecosystem, generating substantial income through their content. For example, as noted earlier, one cover singer has reportedly earned up to IDR 120,000,000.00 (one hundred and twenty million rupiah) per week. This income disparity highlights a regulatory gap; while the government emphasizes easing business operations to enhance global competitiveness, it appears to overlook human rights concerns, particularly those related to intellectual property violations. The failure to address these issues within the framework of business regulation may undermine the protection of creative works and disrupt fair competition in the music industry.

Law Number 11 of 2020 on Job Creation, enacted by the Government of the Republic of Indonesia, addresses the facilitation of business operations, including the streamlining of intellectual property rights registration. However, the law lacks specificity regarding the categories of business entities required to register and obtain intellectual property rights permits. This lack of detailed regulation has significant legal implications, contributing to competitive imbalances within the national music industry.

Prior to the rise of YouTube as a major platform for global economic activity, music industry stakeholders primarily competed by producing and distributing physical copies of albums through public business services such as supermarkets, minimarkets, music stores, and broadcasting via radio and television. In this traditional model, competition was centered on the quality and substance of the musical works rather than on copyright issues. Consequently, the success of music industry players was directly linked to the volume of album production and distribution, which in turn influenced their profitability.

The landscape of competition has evolved with the advent of YouTube, introducing new dynamics where independent (indie) artists, such as Iwan Fals, who initially operated outside the bounds of major music companies during the New Order era, now find themselves

<sup>3</sup> Soerjono Soekanto, "Ilmu Politik Dan Hukum," *Jurnal Hukum & Pembangunan* 18, no. 3 (2017): 230, <https://doi.org/10.21143/jhp.vol18.no3.1258>.

competing in a more complex environment. Iwan Fals, known for his critical and satirical songs about the Suharto government, chose an independent path due to the stringent government controls over the music industry at the time. Music companies that opposed government policies faced severe consequences, including the revocation of business rights and potential criminal penalties.

Since the onset of the Reform era, and particularly from 2001 onwards, Iwan Fals transitioned to Musica Studio Production, benefiting from the greater freedom and reduced governmental control available to music companies post-reformation. This shift allowed Iwan Fals to achieve significant success and gain substantial benefits from his association with Musica Studio Production, demonstrating how changes in regulatory environments and industry dynamics impact the opportunities and success of individual artists and music companies alike.

The current state of competition in the music industry has been significantly disrupted by the rise of YouTube and the proliferation of cover singers who engage in unauthorized use of copyrighted material. Indonesian music companies such as Musica Studio, Trinity Production, Sony Music, and Republik Cinta Management face substantial challenges due to widespread plagiarism of their songs by cover artists on YouTube. These cover singers often benefit financially from copyrighted works without proper authorization, exploiting the platform's extensive reach and monetization opportunities.

YouTube's role as a major business medium has transformed the advertising landscape, attracting international, multinational, national, and local companies that use it for promotional purposes. This shift has made YouTube a dominant platform for information and entertainment, impacting traditional media outlets such as radio and television, which now also use YouTube to reach audiences and compete for visibility.

The platform's vast revenue potential has led many users, including content creators, to prioritize financial gain over the creation of original work. This focus on profit maximization has resulted in numerous copyright violations, as individuals and entities capitalize on YouTube's commercial opportunities without regard for intellectual property rights. Consequently, the emphasis on financial gain has shifted away from the value of original artistic creation.

This competitive imbalance is evident as established music companies with substantial resources and infrastructure now contend with individual cover artists who copy their work. The traditional distinctions between large, established music companies and independent creators have blurred, with both parties vying for prominence on the same platform. As a result, national music companies must not only navigate the challenges posed by copyright infringement but also adapt to the demands of publishing and promoting their work on YouTube.

The following Table illustrates the concept of competitive inequality in the national music industry, highlighting the disparities between traditional music companies and individual cover artists in the context of the evolving digital landscape.

**Table 1. Business competition inequality in the Indonesian music industry**

No	Music Industry Companies	Subscribers	Releases	Cover Singer	Subscribers	Releases
1	Musica Studio'S	3.21 Billions	10 Videos/ week	Felix Official	4.21 Billions	3 Videos/ week
2	Trinity Optima Productions	4.98 Billions	8-9 Videos/ week	Hanin Dhiya	3.89 Billions	4 Videos/ week
3.	Republik Cinta Management	61.9 Trillions	13 Videos/ week	Michella Thea	8.3 Billions	6-8 Videos/ week

The table above exemplifies the disparity in competition within the national music industry as it relates to the YouTube platform. It highlights a significant imbalance between national music companies and cover singers. For instance, national music companies must publish more than five videos to achieve over 1 billion subscribers. These companies invest heavily in songwriters, performers (both solo and band), and staff, and they face considerable challenges in deriving profit from their own musical content. Additionally, they are obligated to pay royalties to songwriters and their heirs, reflecting a commitment to honoring the creators of their music.

On the other side, cover singers—who typically publish fewer than five videos per week—can amass a subscriber count comparable to that of major music companies. Many of these cover videos involve unauthorized reproductions of songs from various artists and labels, including both national and international sources. This situation underscores a competitive inequality stemming from inadequate regulation of copyright royalties. The unregulated nature of this aspect of copyright law exacerbates the issue, as cover singers exploit copyrighted material without compensating the original creators or music companies.

## **2. The Scope of the Employment Copyright Law on Industrial Intellectual Property Rights Indonesian music.**

The issue of copyright piracy has been a longstanding concern in Indonesian society, deeply intertwined with socio-economic conditions. Piracy is prevalent across various commercial settings, including malls, supermarkets, traditional markets, and street vendors, resulting in significant economic losses for creators. Copyright, which grants creators exclusive rights to their works, entitles them to receive economic benefits, commonly known as royalties. However, the rise of piracy undermines these economic rights, depriving creators of their due compensation.

Copyright is a legal framework that protects the rights of creators over their artistic and literary works. It recognizes the personal expression and creative effort of individuals, acknowledging that the creation of a work involves not only skill and expertise but also

significant investment of time, effort, and resources. The state is responsible for upholding these rights, ensuring that creators are appropriately rewarded for their contributions.<sup>4</sup>

Historically, copyright in Indonesia traces back to the Dutch colonial period, with the introduction of the *auteurswet* in 1912 (Stb. No. 600). This initial copyright legislation was followed by Indonesia's first national copyright law, Law No. 6 of 1982, which was later revised and expanded. The revisions include Law No. 7 of 1987, Law No. 12 of 1997, and Law No. 19 of 2002, reflecting ongoing efforts to align with national development goals and enhance the protection of creators' rights.

The most recent legislative development, Law Number 11 of 2020 concerning Job Creation, consolidates various regulations related to business operations, including those affecting copyright. This comprehensive law merges several legal frameworks, including the Manpower Act, Environmental Law, Investment Law, Banking Law, and Copyright Law. The primary objective of the Job Creation Act is to streamline business regulations and improve the ease of doing business, encompassing a wide range of legal provisions to address various business aspects.

The enactment of the Job Creation Act represents a significant government initiative aimed at advancing economic reform and innovation within the national economy. This legislation consolidates diverse economic and investment-related regulations, previously dispersed across various statutes, into a single, comprehensive framework employing the Omnibus Law approach. The Act addresses multiple economic sectors, including labor, land, environmental protection, coastal management, food security, social welfare, micro, small, and medium enterprises (MSMEs), and energy, among others. Despite its broad scope, the Act has sparked considerable controversy, evidenced by protests, social media criticism, and other forms of dissent following its ratification in October.

Opponents argue that the Job Creation Act deviates from established legal formation principles in civil law jurisdictions and disproportionately favors investor interests over workforce protections. The ongoing trend of globalization necessitates an adaptation of legal frameworks to accommodate international standards and integrate diverse legal and cultural traditions. Legal globalization extends beyond international treaties, requiring an understanding of both Western and Eastern legal practices to foster cross-border integration and enhance national competitiveness.<sup>5</sup>

In the context of economic activities, law plays a crucial role in managing the balance between limited economic resources and boundless demands. Effective legal systems must ensure stability, predictability, and justice to facilitate economic development. Stability involves the law's capacity to balance competing interests, while predictability is essential for individuals entering new economic realms. Justice, characterized by equitable treatment and consistent governmental conduct, is vital for sustaining market mechanisms and minimizing bureaucratic inefficiencies.

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<sup>4</sup> Pavel Rassudov, Ekaterina Abashina, and Sarkis Darbinian, "The 'Antipiracy' Law: Application, Trends, and Systemic Problems (August 2013–June 2017)," *Statutes & Decisions* 52, no. 1 (2018), <https://doi.org/10.1080/10610014.2018.1436707>.

<sup>5</sup> Sudati Nur Sarfiah, Hanung Eka Atmaja, and Dian Marlina Verawati, "UMKM Sebagai Pilar Membangun Ekonomi Bangsa," *Riset Ekonomi Pembangunan*, 2019.

Legal infrastructure is crucial for providing investors with security, certainty, and predictability, thereby creating a favorable investment climate. Robust legal protections enhance the attractiveness of a country for investment by ensuring that investor interests are safeguarded. Government intervention through legislation is necessary to address market failures and ensure efficient economic outcomes. For businesses, legal certainty is paramount in making informed economic decisions, underscoring the importance of a stable and predictable legal environment.<sup>6</sup>

To examine and analyze violations of competition law, several theoretical approaches are employed to evaluate actions under Anti-Monopoly Law. The two primary theoretical frameworks in Business Competition Law are the Per Se Illegal theory and the Rule of Reason theory.

The Illegal approach categorically prohibits certain agreements or business activities due to their clear and predictable effects on reducing or eliminating competition. Under this approach, a business reporting a violation is not required to demonstrate the specific adverse impact of the agreement. Instead, it is sufficient to show that the agreement or activity in question occurred.

In contrast, the Rule of Reason approach, derived from the interpretation of the Sherman Antitrust Act by the United States Supreme Court, assesses the legality of business practices based on their overall impact. Unlike the Per Se Illegal approach, the Rule of Reason considers whether there are justifiable reasons for the conduct in question, even if it technically meets the criteria for a violation. The focus here is on the consequences of the action and whether it has led to monopolistic practices or unfair competition, emphasizing the substantive effects of the behavior.

The regulation of business competition in Indonesia is governed by Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This law aims to foster fair competition, ensuring a conducive business environment that supports the growth of competitive industries and enhances public welfare.

In addition, the Copyright Act's scope should address intellectual property rights within the Indonesian music industry. Following the enactment of the Job Creation Act, various government regulations have been introduced to facilitate business operations. Notably, Government Regulation Number 56 of 2021, concerning Song or Music Royalties, outlines the distribution of royalties to creators and musicians by establishments such as restaurants, cafes, hotels, and other public venues through the National Collective Management Institute (*LMKN*). However, this regulation does not address copyright protections for songwriters and musicians concerning song covers produced by cover artists on platforms like YouTube. Given the growing role of YouTube as a prominent business and entertainment platform, it is crucial for the government to address these copyright issues comprehensively.

The government should leverage the Job Creation Act to ensure that platforms like YouTube, as significant players in the business industry, are subject to application production taxes. This regulatory approach would necessitate that YouTube enforces content guidelines in alignment with national laws. Specifically, YouTube should implement measures to ensure that

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<sup>6</sup> Nurul Natasha Daud, Hendon Redzuan, and Rubayah Yakob, "Hibah Dalam Perancangan Harta Dan Takaful," *Journal of Islamic, Social, Economics and Development*, 2017.



content published on its platform adheres to established standards, including intellectual property rights (IPR).

Currently, YouTube's content policies prohibit material related to pornography, religion, ethnicity, and race. However, there is a lack of specific regulation regarding intellectual property rights for content published on the platform. The Government Regulation Number 56 of 2021 on Indonesian Music Royalties provides a framework for royalty distribution but does not directly address the content licensing requirements for platforms like YouTube.

To address this gap, the government could mandate that cover singers obtain a license through the National Collective Management Institute (*LMKN*) before their video content can be published on YouTube. Once a license is issued, the cover singer would be authorized to submit their content for publication. If this regulatory innovation is adopted, YouTube would be required to enforce these licensing requirements. Content without the proper *LMKN* license would be automatically rejected by the platform. This policy would ensure that YouTube aligns with national intellectual property regulations. If YouTube fails to comply with such policies, the Indonesian government has the authority to revoke its business license.

### **C. Conclusion**

Intellectual property rights are recognized as economic rights within the framework of human rights, and are enshrined in the Indonesian Constitution to safeguard the interests of its citizens. The emergence of new business dynamics, particularly within the music industry and facilitated by platforms such as YouTube, presents unique challenges for the regulation of intellectual property rights.

YouTube allows for a broad range of content publication with minimal restrictions, which includes cover versions of copyrighted songs. This situation has highlighted a gap in the enforcement of copyright protection, particularly for national music industry stakeholders. Although Law No. 11 of 2020 concerning Job Creation aims to simplify business processes across various industries, it does not adequately address the competitive aspects of the music industry or the nuances of intellectual property rights protection as outlined in Law No. 28 of 2014 concerning Copyright.

Currently, YouTube business operators (Youtubers) are not subject to penalties for using copyrighted music without authorization, leading to competitive imbalances between national music industry players and cover singers. While Government Regulation Number 56 of 2021 concerning Song or Music Royalties establishes a framework for royalty distribution, it does not extend to cover songs, leaving a gap in the protection of songwriters' rights.

To address this issue, it is suggested that the Government of the Republic of Indonesia revise Government Regulation Number 56 of 2021 to include provisions for royalty payments for cover songs to the National Collective Management Institute (*LMKN*). Such a revision would compel YouTube to enforce policies requiring Youtubers to present valid licenses issued by *LMKN* before publishing music content. Compliance with this revised regulation would be crucial for YouTube to avoid penalties, including the potential revocation of its business license, which would categorize it as an illegal media platform within Indonesia.

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