

ANALISIS PERBANDINGAN PRINSIP *FAIR USE* KEGIATAN *COVER* LAGU DITINJAU DARI PENDEKATAN UNDANG-UNDANG HAK CIPTA DAN *US COPYRIGHT ACT 1976* UNTUK MELINDUNGI *PERFORMING RIGHT* PADA PLATFORM MUSIK DIGITAL

Muhammad Widya Hudiya Wijaya¹ dan Royhan Akbar²

INTISARI

Penelitian ini bertujuan untuk menganalisis dan membandingkan penerapan prinsip *fair use* dalam kegiatan *cover* lagu berdasarkan Undang-Undang Hak Cipta Indonesia dan *US Copyright Act*, serta implikasinya terhadap perlindungan *performing right* di platform musik digital. Penelitian ini penting karena meningkatnya popularitas platform musik digital seperti *Spotify* dan *Apple Music* yang memungkinkan distribusi luas lagu-lagu *cover*, yang pada gilirannya menimbulkan berbagai isu hukum terkait hak cipta.

Penelitian ini merupakan penelitian yuridis normatif menggunakan pendekatan kualitatif dengan metode komparasi. Studi literatur dilakukan terhadap Undang-Undang Hak Cipta Indonesia (UU No. 28 Tahun 2014) dan *US Copyright Act*, khususnya Pasal 107 (*fair use*) dan Pasal 115 (*compulsory mechanical license*). Analisis juga mencakup kasus-kasus hukum yang relevan dan kebijakan platform musik digital.

Berdasarkan hasil penelitian tersebut, pendekatan *US Copyright Act*, terutama melalui prinsip *fair use* dan *compulsory mechanical license*, menawarkan kerangka hukum yang lebih efektif untuk melindungi hak cipta serta mendukung kebebasan berekspresi seniman di platform musik digital. Sebaliknya, Undang-Undang Hak Cipta Indonesia, meskipun kuat dalam perlindungan hak cipta, memerlukan pembaruan untuk secara eksplisit mengatur *cover* lagu di platform digital. Adopsi mekanisme lisensi wajib seperti di AS dapat membantu menciptakan keseimbangan antara perlindungan hak cipta dan kebebasan berekspresi di Indonesia.

Kata Kunci: *Fair use*, *Cover Lagu*, Hak Cipta, *Copyright Act*, *Performing Right*.

¹ Mahasiswa Program Sarjana Fakultas Hukum Universitas Gadjah Mada

² Dosen Departemen Hukum Bisnis, Universitas Gadjah Mada

***COMPARATIVE ANALYSIS OF THE FAIR USE PRINCIPLE FOR COVER
SONGS BASED ON THE INDONESIAN COPYRIGHT LAW AND THE US
COPYRIGHT ACT APPROACHES TO PROTECT PERFORMING
RIGHTS ON THE DIGITAL MUSIC PLATFORMS***

Muhammad Widya Hudiya Wijaya¹ and Royhan Akbar²

ABSTRACT

This study aims to analyze and compare the application of the fair use principle in song cover activities based on the Indonesian Copyright Law and the US Copyright Act, and its implications for the protection of performing rights on digital music platforms. This research is significant due to the increasing popularity of digital music platforms such as Spotify and Apple Music, which facilitate the widespread distribution of cover songs, consequently raising various legal issues related to copyright.

The approach used in this study is qualitative with a comparative; juridical-normative method. Literature studies were conducted on the Indonesian Copyright Law (Law No. 28 of 2014) and the US Copyright Act, specifically Article 107 (fair use) and Article 115 (compulsory mechanical license). The analysis also includes relevant legal cases and the policies of digital music platforms.

Based on the research findings, the approach of the US Copyright Act, particularly through the fair use principle and compulsory mechanical license, offers a more effective legal framework for protecting copyright while supporting the freedom of expression for artists on digital music platforms. Conversely, the Indonesian Copyright Law, although strong in copyright protection, requires updates to explicitly regulate cover songs on digital platforms. Adopting a compulsory licensing mechanism similar to that of the US could help create a balance between copyright protection and freedom of expression in Indonesia.

Keywords: Fair use, Cover Songs, Copyright, US Copyright Ac, Performing rights Protection.

¹ Undergraduate Student of Faculty of Law, Universitas Gadjah Mada

² Lecturer in Business Law Department at Faculty of Law, Universitas Gadjah Mada