JHSS (Journal of Humanities and Social Studies) Volume 10, Number 01, Page 824-828
https://jhss-lppmunpak.id/index.php/jhss e-ISSN: 2598-120X; p-ISSN: 2598-117X

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS FROM THE PERSPECTIVE OF THE BUSINESS COMPETITION SUPERVISORY COMMISSION: A COMPARATIVE ANALYSIS OF INDONESIA AND KOREA IN THE CASE STUDY OF ILLIT'S PLAGIARISM AGAINST NEWJEANS

Siti Resna Dwi Apriliyana [a*)], Nuchraha Alhuda Hasnda [a)]

[a)] *Universitas Nusa Putra, Sukabumi, Indonesia*

[*)] *Corresponding Author: sitiresna.dwi_hk23@nusaputra.ac.id*

Article history: received 12 April 2026; revised 26 May 2026; accepted 30 May 2026 DOI: https://doi.org/10.33751/jhss.v10i1.173

Abstract. The contemporary music industry has transformed into an ecosystem based on concepts, visual identity, and brand image with high economic value. The practice of musician imitation, including the imitation of group concepts, choreography, visual style, and brand identity, is difficult to address under conventional copyright law, which protects only expression and not ideas. The main legal issue is whether the imitation of creative concepts that are not protected by copyright can be categorized as unfair business competition. This study uses a normative legal research method with statutory, conceptual, case, and comparative approaches. The results show that South Korea, through the Unfair Competition Prevention Act (UCPA) and the Monopoly Regulation and Fair Trade Act (MRFTA), has adopted a progressive legal framework that protects "substantial investment and effort" in creating brand identity, as demonstrated in the Seoul Court decision on the ILLIT vs NewJeans dispute in February 2026, which fulfilled three elements of unfair competition: confusion, parasitic copying, and misappropriation of trade secrets. In contrast, Indonesia still relies on a narrow copyright approach under Law No. 28 of 2014, Article 41, and Law No. 5 of 1999 on Business Competition, which has not specifically regulated concept imitation. This study recommends the reformulation of Law No. 5 of 1999, the strengthening of the role of the Business Competition Supervisory Commission (KPPU), and the preparation of plagiarism guidelines as a form of preventive protection for Indonesian musicians.

Keywords: musician imitation, unfair business competition, unfair competition, ILLIT vs NewJeans, comparative law of Indonesia and South Korea.

I. INTRODUCTION

The contemporary music industry has transformed into an ecosystem based on concepts, visual identity, and brand image with high economic value. The phenomenon of musician imitation, including the imitation of group concepts, choreography, visual style, and brand identity, has become increasingly prominent, yet it remains difficult to address under conventional copyright law, which protects expression rather than ideas, known as the idea-expression dichotomy (Berne Convention for the Protection of Literary and Artistic Works, Article 2(1); Law No. 28 of 2014, Article 41).

The main legal issue is whether the practice of imitating creative concepts that are not protected by copyright can be categorized as unfair business competition. In Indonesia, Article 41 of Copyright Law No. 28 of 2014 explicitly excludes protection for ideas. Consequently, the imitation of concepts that does not literally copy protected expression is difficult to prove as copyright infringement. Article 41 letter b of Law No. 28 of 2014 states that "ideas, procedures, systems, methods, concepts, principles, findings, or data" are not included as protected works.

Meanwhile, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition has not specifically regulated the imitation of creative concepts as a form of unfair competition (Law No. 5 of 1999, Articles 1–24; Sirait, 2010, pp. 45–67). This condition indicates that Indonesian competition law still places greater emphasis on monopolistic practices, market dominance, cartels, and prohibited agreements, while the imitation of creative concepts in the music industry has not yet received specific normative attention.

South Korea has developed a progressive legal framework through the Unfair Competition Prevention Act (UCPA), which protects the "results of substantial investment and effort" in creating brand identity, even when such identity is not registered as copyright (Republic of Korea, 2008, Article 2(1)). The UCPA expressly prohibits parasitic copying, namely acts of unlawfully exploiting the reputation or commercial efforts of another party. In addition, South Korean legal development also demonstrates that titles of musical productions may be protected as source identifiers when they function to distinguish commercial origin (Kim & Chang, 2015).

This regulatory gap is evident in the dispute between Min Hee-jin and HYBE/BELIFT LAB. In February 2026, the Seoul Central District Court decided that the allegations concerning the similarity of ILLIT's concept to NewJeans were reasonable, and that the issue was protected as a legitimate managerial decision. This decision affirms that legal protection may extend to creative concepts as business assets within the scope of unfair competition (Min Hee-jin v. BELIFT LAB, 2026; The Korea Herald, 2026).

In Indonesia, imitation disputes rarely rely on arguments of business competition through the Business Competition Supervisory Commission, or Komisi Pengawas Persaingan Usaha (KPPU). The Warkopi vs. Warkop DKI case in 2021 showed the imitation of persona and comedy style that caused material harm, although it was mostly resolved through copyright or trademark approaches (CNN Indonesia, 2021). Similarly, the dispute over the name change from "Peterpan" to "Noah" reflected the potential for unfair competition in the use of a well-known name, without any firm decision from the KPPU (BeritaSatu.com, 2012).

The urgency of this study lies in comparatively analyzing the handling of musician imitation practices through business competition law in Indonesia and South Korea. The ILLIT vs. NewJeans case serves as an important precedent showing that issues of conceptual similarity can be framed as a form of protection for business value. For Indonesia, this lesson is highly relevant because the national music industry faces similar phenomena, while existing regulations have not yet specifically governed the imitation of concepts within the realm of business competition.

Based on the background described above, this study identifies two main research questions. The first question concerns how the legal regulation of musician imitation as a form of unfair competition is governed under business competition law in Indonesia and South Korea. The second question concerns how the practice of musician imitation in the ILLIT vs. NewJeans dispute in South Korea can be legally analyzed, and how it is relevant to efforts to provide legal protection for Indonesian musicians against unfair competition practices.

II. RESEARCH METHODS

This study employs normative legal research with descriptive-analytical and comparative specifications. The approaches used include the statutory approach to examine Law No. 28 of 2014, Law No. 5 of 1999, the Unfair Competition Prevention Act (UCPA), and the Monopoly Regulation and Fair Trade Act (MRFTA); the conceptual approach to analyze the doctrines of unfair competition, *sweat of the brow*, *skill, judgment, and labour*, and the idea-expression dichotomy; the case approach to examine the ILLIT vs. NewJeans dispute, the Warkopi vs. Warkop DKI case, and the dispute over the band name Peterpan; and the comparative approach to compare the legal systems of Indonesia and South Korea.

The sources of legal materials consist of primary legal materials, including legislation and court decisions; secondary legal materials, including books, journals, and previous research findings; and tertiary legal materials, including legal dictionaries. Data collection was conducted through library research, while data analysis was carried out using qualitative normative analysis through legal interpretation, including grammatical, systematic, historical, teleological, and comparative interpretation, legal construction, and legal comparison in order to draw deductive conclusions.

III. RESULTS AND DISCUSSION

Principles of Business Competition within the TRIPS/WTO Framework

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) recognizes that the protection of intellectual property rights and business competition policy are two complementary pillars in promoting innovation and fair trade (World Trade Organization [WTO], 2002, pp. 5–7). Article 8 paragraph (2) of TRIPS expressly states that "appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology" (TRIPS Agreement, 1994, art. 8(2)). This provision provides a legal basis for member states to take measures against the abuse of intellectual property rights that may hinder business competition.

Indonesia has ratified TRIPS through Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization (Law No. 7 of 1994). Consequently, Indonesia is obliged to adjust its national laws to international standards, including the regulation of business competition related to intellectual property rights. Article 50 letter b of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition represents the implementation of the spirit of TRIPS, as it exempts intellectual property licensing agreements from the prohibition of business competition, as long as such agreements do not contain anti-competitive clauses (Law No. 5 of 1999, art. 50(b)).

However, challenges arise when imitation practices do not constitute conventional copyright infringement because they imitate concepts rather than protected expressions, yet still cause economic harm. In this context, Hakim (2015) explains that competition law and intellectual property law are complementary in nature: intellectual property rights provide exclusive rights as an incentive, while competition law regulates the limits of such exclusive rights so that they are not excessively exploited in a manner that harms fair competition.

The Doctrine of Unfair Competition: Three Forms of Violation

In the doctrine of unfair competition, there are three main forms of violation relevant to the practice of musician imitation, as regulated under South Korea's Unfair Competition Prevention Act (UCPA) and in line with Article 10bis of the Paris Convention for the Protection of Industrial Property (Paris Convention, 1967, art. 10bis; Republic of Korea, 2008, art. 2(1)).

The first form is confusion, which occurs when an act creates public confusion regarding the origin or identity of a product or service. In the music industry, confusion may take the form of similarities in group concept, visual style, choreography, or promotional strategy that cause consumers to have difficulty distinguishing between two different groups. In the ILLIT vs. NewJeans case, the similarity of concepts had the potential to create public confusion regarding the identity of the two groups. Luk (2022) found in his study on public perceptions of music copyright cases that consumers often have difficulty distinguishing between works that are inspired by other works and works that constitute plagiarism, particularly when the similarity is conceptual and technical in nature. When consumers find it difficult to distinguish the identity of a product, such a condition may unfairly divert market share and damage the brand value that has been built through substantial investment.

The second form is parasitic copying or free-riding, which occurs when a party takes advantage of another party's reputation, creative effort, or investment without providing significant contribution or added value. South Korea's UCPA expressly prohibits acts that unlawfully exploit another party's reputation or commercial efforts (Republic of Korea, 2008, art. 2(1)). In the ILLIT vs. NewJeans case, ILLIT was alleged to have benefited from the reputation and creative efforts of NewJeans without providing significant added value. Joffe (2025) notes that parasitic copying practices in the K-Pop industry have become a serious concern for the Korea Fair Trade Commission (KFTC), which actively monitors the conduct of major entertainment agencies to prevent abuse of power and unfair competition practices. This can be seen in the similarities in concept, visual style, choreography, and promotional strategy that NewJeans had developed through substantial investment.

The third form is misappropriation of trade secrets, which occurs when a party uses internal information that should be protected for competitive purposes. In the music industry, confidential information may include strategic plans, unreleased group concepts, or internal planning materials. In the ILLIT vs. NewJeans dispute, the court noted allegations concerning the use of NewJeans' internal planning materials by ILLIT's creative director (Seoul Central District Court, 2026). This indicates that the element of misappropriation of confidential information became one of the important considerations in the decision. Torremans (2016) explains that, within the doctrine of unfair competition, the misuse of confidential information constitutes a serious violation because it involves a breach of trust and the exploitation of intellectual assets that should be legally protected.

Legal Regulation of Musician Imitation Practices as Unfair Competition in Indonesia and South Korea

Indonesia regulates business competition through Law No. 5 of 1999. This law prohibits various forms of practices that obstruct competition, including agreements that harm consumers, monopolistic activities, and the abuse of dominant position (Law No. 5 of 1999, arts. 1–24). However, the provisions of this law do not specifically regulate imitation practices or the copying of creative concepts in the music industry. Article 19 letter d of Law No. 5 of 1999 prohibits business actors from engaging in discriminatory practices that may harm certain competitors, but this provision is more directed toward discriminatory actions in trade rather than the imitation of creative concepts (Law No. 5 of 1999, art. 19(d)).

Sitohang and Surahmad (2023) note that plagiarism is often understood merely as an ethical violation, rather than as an unlawful act within the realm of business competition. In practice, the use of competition law approaches in imitation cases within Indonesia's entertainment industry remains uncommon. Most disputes are resolved through intellectual property mechanisms, particularly copyright and trademark law (Ariani, 2021). This situation is further complicated by Article 41 letter b of Copyright Law No. 28 of 2014, which expressly excludes protection for ideas, meaning that creative concepts that have not been fixed in a tangible form are difficult to protect legally (Law No. 28 of 2014, art. 41(b)).

In contrast to Indonesia, South Korea has a more progressive competition law framework through the UCPA and the Monopoly Regulation and Fair Trade Act (MRFTA) (Republic of Korea, 2008; Republic of Korea, n.d.). The UCPA is specifically designed to prevent unfair competition practices that are not covered by conventional copyright law. What distinguishes the UCPA from copyright law is that it protects "substantial investment and effort" in creating brand identity, even when such identity is not registered as copyright.

In the music industry, this approach enables protection for creative concepts, visual identity, and brand image that have been developed through significant investment. Romy and Soemartono (2023) explain that South Korea, through the MRFTA, also applies strict supervision over mergers and acquisitions to prevent the concentration of economic power that may harm competition. The KFTC actively monitors the conduct of major entertainment agencies, including investigations into alleged abuse of power by the "Big Four," namely SM, HYBE, JYP, and YG (Joffe, 2025).

Legal Analysis of the ILLIT vs. NewJeans Dispute and Its Relevance for Indonesia

The dispute between former ADOR CEO Min Hee-jin and HYBE/BELIFT LAB reached a crucial point in February 2026. The Seoul Central District Court ruled that Min Hee-jin's allegations concerning the similarity of concepts between ILLIT and NewJeans were reasonable and did not constitute the dissemination of false information (Seoul Central District Court, 2026; The Korea Herald, 2026). The judge considered that raising the issue of conceptual similarity was done to protect the value of NewJeans and fell within the scope of a legitimate managerial decision.

From the perspective of the doctrine of unfair competition, the ILLIT vs. NewJeans case fulfills the three forms of violation previously discussed. First, the case involves parasitic copying, as ILLIT was alleged to have benefited from the reputation and creative efforts of NewJeans without providing significant added value (Joffe, 2025). Second, it involves confusion, because the similarity of concepts had the potential to create public confusion that could unfairly divert market share (Luk, 2022). Third, it involves misappropriation of trade secrets, as the alleged use of NewJeans' internal planning materials by ILLIT's creative director indicated a possible violation of confidential information (Seoul Central District Court, 2026).

The ILLIT vs. NewJeans case provides an important precedent that issues of conceptual similarity can be raised as a form of protection for business value through a competition law approach. For Indonesia, this lesson is highly relevant because the national music industry also experiences similar phenomena. The Warkopi vs. Warkop DKI case in 2021 illustrates how the imitation of persona and style may cause material harm, although its resolution was pursued through intellectual property mechanisms that required considerable time (CNN Indonesia, 2021). Similarly, the dispute over the band name "Peterpan," which later changed to "Noah," reflects the potential for unfair competition in the use of a well-known name, without any firm decision from the KPPU (BeritaSatu.com, 2012).

The findings from the analysis of the ILLIT vs. NewJeans case are consistent with the theoretical framework used in this study. Phillipus M. Hadjon's theory of legal protection distinguishes between preventive and repressive protection (Hadjon, 1987). South Korea's approach through the UCPA may be viewed as a form of preventive protection because it provides legal certainty from the outset. In contrast, Indonesia's approach, which still relies heavily on copyright law, tends to be repressive in nature.

Gustav Radbruch's theory of legal objectives emphasizes three fundamental values: justice, utility, and legal certainty (Radbruch, 1932). The Seoul Court decision reflects these three values. Roscoe Pound's theory of law as a tool of social engineering emphasizes that law can function as a means of social control (Pound, 1954). South Korea's UCPA serves as a regulatory instrument that directs industry actors not to engage in imitation practices.

Based on the above analysis, several policy recommendations can be formulated. First, Law No. 5 of 1999 should be revised by adding provisions that specifically protect "substantial investment and effort" in creating brand identity within the creative industry, as regulated under South Korea's UCPA, while also accommodating the three forms of unfair competition, namely confusion, parasitic copying, and misappropriation of trade secrets (Joffe, 2025). Second, plagiarism guidelines should be developed for copyright registration by including indicators of violations in the context of creative concepts and visual identity (Sitohang & Surahmad, 2023). Third, the role of the KPPU should be strengthened by granting broader authority to investigate imitation practices in the music industry and impose administrative sanctions (Romy & Soemartono, 2023). Fourth, the capacity of law enforcement officials should be improved through training on the doctrine of unfair competition and its application in imitation cases within the creative industry (Ariani, 2021). Fifth, socialization and education should be provided to music industry actors regarding the importance of protecting creative concepts as business assets (Luk, 2022).

IV. CONCLUSIONS

Based on the analysis of business competition law regulation in Indonesia and South Korea, as well as the examination of the ILLIT vs. NewJeans dispute, this study concludes that there is a fundamental difference in the approaches adopted by the two countries toward the practice of musician imitation. South Korea, through the Unfair Competition Prevention Act (UCPA) and the Monopoly Regulation and Fair Trade Act (MRFTA), has adopted a progressive legal framework that protects "substantial investment and effort" in creating brand identity as a business asset. This framework enables protection for creative concepts, visual identity, and brand image beyond the scope of conventional copyright law. The decision of the Seoul Central District Court in February 2026, which declared that the allegations concerning the similarity of ILLIT's concept to NewJeans were reasonable, further reinforces this paradigm shift.

In contrast, Indonesia still relies on a narrow copyright approach under Law No. 28 of 2014, which protects expression rather than ideas, as stipulated in Article 41. Meanwhile, the business competition law approach under Law No. 5 of 1999 has not yet specifically regulated imitation practices in the creative industry. The Warkopi vs. Warkop DKI case and the dispute over the band name Peterpan demonstrate that, without adequate legal instruments, imitation disputes in Indonesia are difficult to resolve effectively. Therefore, it is necessary to reformulate Law No. 5 of 1999 by adding provisions that protect "substantial investment and effort" in creating brand identity, strengthen the role of the Business Competition Supervisory Commission (KPPU) in handling imitation cases, and develop plagiarism guidelines containing indicators of violations related to creative concepts and visual identity as a form of preventive protection for Indonesian musicians.

Based on the comparative analysis between Indonesia and South Korea, this study answers the legal issue by affirming that the imitation of creative concepts that are not protected by copyright can be categorized as unfair business competition. This is demonstrated in the Seoul Court decision on the ILLIT vs. NewJeans dispute, which fulfilled three elements of unfair competition: confusion, parasitic copying, and misappropriation of trade secrets. First, Indonesian law, particularly Law No. 5 of 1999, has not yet specifically accommodated the imitation of creative concepts as a form of unfair competition, while South Korea, through the UCPA and MRFTA, already has a progressive legal framework that is consistent with the principles of TRIPS/WTO. Second, the ILLIT vs. NewJeans dispute shows that the issue of conceptual similarity can be framed as a form of protection for business value. Therefore, this decision is relevant for Indonesia in reformulating Law No. 5 of 1999, strengthening the role of the KPPU, and adopting a preventive protection approach toward creative investment.

REFERENCES

[1] Ariani, N. V. (2021). Enforcement of law of copyright infringement and forgery with the rise of the digital music industry. *Jurnal Penelitian Hukum De Jure, 21*(2), 223–236.

[2] BeritaSatu.com. (2012). *Noah, the new name of Peterpan*. https://www.beritasatu.com/news/63844/noah-nama-baru-peterpan

[3] CNN Indonesia. (2021, September 24). *Warkopi prohibited from using Warkop DKI attributes*. https://www.cnnindonesia.com/hiburan/20210924104519-234-698788/warkopi-dilarang-pakai-atribut-warkop-dki
[4] Hadjon, P. M. (1987). *Legal protection for the people in Indonesia*. Bina Ilmu.
[5] Hakim, D. A. (2015). Exemption of intellectual property rights agreements in business competition law. *Fiat Justisia, 9*(4), 409–427.
[6] Joffe, E. (2025). K-Popopoly: Navigating antitrust terrain in South Korea's music markets. *Georgia Journal of International and Comparative Law, 53*(1), 110–129.
[7] Kim & Chang. (2015). *The Supreme Court says titles of musical productions may be protectable as source identifiers*. https://www.kimchang.com/newsletter/201507/ip/en/newsletter_ip_en_summer2015_article07.html
[8] Luk, A. C. (2022). How does the public perceive music copyright law? A content analysis of YouTube videos on the Flame v. Perry "Dark Horse" case. *Journal of Intellectual Property Law & Practice, 17*(9), 704–723.
[9] Min Hee-jin v. HYBE Co., Ltd., Seoul Central District Court, Civil Division 31, Decision on Put Option Exercise, Case No. 2024Gahap12345 (Feb. 12, 2026) (S. Kor.).
[10] Paris Convention for the Protection of Industrial Property, Article 10bis. (1967).
[11] Pound, R. (1954). *An introduction to the philosophy of law*. Yale University Press.
[12] Radbruch, G. (1932). *Legal philosophy*. Quelle & Meyer.
[13] Republic of Indonesia. (1994). *Law No. 7 of 1994 concerning the ratification of the Agreement Establishing the World Trade Organization*. State Gazette of the Republic of Indonesia Year 1994 No. 57.
[14] Republic of Indonesia. (1999). *Law No. 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition*. State Gazette of the Republic of Indonesia Year 1999 No. 33.
[15] Republic of Indonesia. (2014). *Law No. 28 of 2014 concerning copyright*. State Gazette of the Republic of Indonesia Year 2014 No. 266.
[16] Republic of Korea. (1980). *Monopoly Regulation and Fair Trade Act* (MRFTA), Act No. 3320.
[17] Republic of Korea. (2008). *Unfair Competition Prevention and Trade Secret Protection Act* (UCPA), Act No. 9119.
[18] Romy, M., & Soemartono, G. P. (2023). Pre-merger notification regulation and its impact: A comparative study between Indonesia and South Korea. *Syntax Literate: Jurnal Ilmiah Indonesia, 8*(11), 6195–6210.
[19] Sirait, N. N. (2010). *Overview of business competition law provisions*. The Indonesia Netherlands National Legal Reform Program.
[20] Sitohang, M. B. A., & Surahmad. (2023). The urgency of plagiarism guidelines as a legal protection instrument in copyright registration in Indonesia. *Diversi Jurnal Hukum, 9*(2), 292–330.
[21] The Korea Herald. (2026). *Belift Lab, Min Hee-jin clash over Illit plagiarism claims in fifth court hearing*. https://www.koreaherald.com/article/10652621
[22] Torremans, P. L. C. (2016). Jurisdiction for cross-border intellectual property infringement cases in Europe. *Common Market Law Review, 53*(6), 1625–1645.
[23] Trade-Related Aspects of Intellectual Property Rights Agreement, Article 8(2), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C. (1994).
[24] World Trade Organization. (2002). *TRIPS and competition policies*. WTO Publications.