

## **Protection and Management of Royalty Rights for Utilization of Works and Authors Rights in the Field of Songs and Music**

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**Abstract:** A songwriter is someone who uses his inspiration to create music based on his thinking ability, imagination, creativity and expertise in a melody. Article 1 of the Copyright Act provides an understanding of copyright as an exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with statutory regulations. The issues discussed in this study are regarding legal protection for songwriters for the results or products of their creations and the role of Collective Management Institutions in optimizing the protection of song copyrights and management of royalties for the use of works. This study uses a normative juridical research method, namely by studying and analyzing positive law in Indonesia which regulates copyright and royalties of a song. The results of this study are that the protection of songwriters cannot be fully implemented even though it has been regulated in laws and regulations. The role of the National Collective Management Institute (LMKN) is to carry out the collection, collection and distribution of royalties with a clear calculation and division through one door. Therefore, it is hoped that this innovation will be more effective in accelerating the collection of royalties for songwriters, copyright holders, and rights owners for songwriters who are not yet members of a collective management institution.

**Keywords:** Copyright, Song, Protection

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### **1. Background**

Every human being has strong thinking and intelligence so that they can produce various works of art, science and technology, where usually works of art are expected to later receive respect and appreciation from connoisseurs of these works of art. Current technological developments have more or less influenced the field of intellectual property rights. An Intellectual Property is an object that has no form and comes from the results of human intellectual activity which is expressed in copyrighted works or in the form of works that have been found (Daffa, 2021).

Indonesia has long been known as a country that has thousands of islands with a variety of arts and culture in each region. Art and culture is a national potential that is given protection by existing laws and regulations. The existence of protection for art and culture can not only have an impact on the welfare of the creators but also for the nation and state where it can enhance the development of art and culture itself (Duwi, 2017).

In line with the issuance of Law Number 28 of 2014 Concerning Copyright (hereinafter referred to as the Copyright Law), there are separate problems that arise for creators or copyright holders, especially for song creators. Protected songs and/or music are economic rights against copyright owners to do so as written in Article 9 paragraph (1) of the Copyright Law (Kezia, 2021).

Songs or music are works that are protected even though they consist of melodies, lyrics, and poetry. In everyday life, songs are used for entertainment or even for income (economic gain). Users of songs or music who often listen to someone's songs for commercial purposes, which means that the song or music is heard again by someone's creation that is profitable for themselves, for example hotels, discotheques, restaurants, radio and television, karaoke and so on are required payment of royalties to the copyright holder of the song. The royalty itself can be interpreted as compensation for the use of a creation, including copyrighted songs (Monica, 2014).

The existence of songs cannot be separated from the times, including in the Industrial Revolution 4.0 era, which apart from having a positive impact also had a negative impact not only for the music industry players but also for creators. The Industrial Revolution 4.0, which has its characteristics through the internet of things, has made songs and music circulate so quickly that it even penetrates world boundaries with the internet revolution (Cai, Z. 2020). In this 4.0 era, songwriters who sometimes also have positions as singers, even record producers can quickly distribute and upload their works based on internet media as a means of publication such as online radio, social media, including Youtube (Bosher H, 2021). Through various internet-based media, song copyrights are quickly distributed and reach the public or consumers who love songs. In the perspective of

copyright protection, those who have the right to distribute copyrighted songs are creators because creators have exclusive rights to their work (Li, Y., Wei, J., Yuan, J., Xu, Q., & He, C, 2021).

A songwriter is someone who uses his inspiration to create music based on his thinking ability, imagination, creativity and expertise in a melody. Article 1 of the Copyright Act provides an understanding of copyright as an exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with statutory regulations. In copyright, there are 2 (two) rights contained therein, namely moral rights and economic rights. One object of copyright in the field of art is song or music which is regulated in Article 58 letter d of the Copyright Law.

Musicians need sacrifice to work so that the work is valuable and useful so that it can be enjoyed by many people. If it is related to trade and industry, the work can generate money for the songwriters. Therefore, a legal instrument is needed to protect the work of songwriters and provide this guarantee so that they can enjoy the work safely because by upholding what is already in the regulations, the songwriters will be guaranteed their work. Legal protection for songwriters is given in the form of work ownership rights that are more than human intellectual abilities, for example copyright protects creations in the field of art in the form of expression. Expression is a form of writing such as song lyrics. aims to protect the work from plagiarism or piracy by others.

Currently the protection of exclusive rights is still not going well in Indonesia, the Government established a National Collective Management Agency (which will hereinafter be referred to as LMK) is a form of Government effort to provide protection for copyrighted songs and provide royalty rates agreed upon by users where the settlement of disputes can be through litigation or non-litigation. The government formed LMK because it felt that the implementation of the Copyright Law was still far from perfect, because there were still many songwriters who had not received royalties from the songs they composed, so these songwriters took many legal actions to get royalties from the songs they created. The government must continue to provide socialization to songwriters and owners of entertainment venues so that laws and regulations governing copyrights and royalties can provide a sense of justice for songwriters.

In its development, song copyrights are often distributed very easily by unauthorized parties, using internet technology facilities, and are very easily accessed via smartphones. The use of songs and music that is listened to is always accompanied by economic activity, for example buying songs on a smartphone through an application or subscribing to a music streaming platform application and watching music videos through the YouTube application. Technological developments related to the means to enjoy songs and music certainly have positive and negative impacts. The positive impact is that it's easier for people to enjoy music, it also makes it easier for creators to promote their works, while the negative impact that arises is that many people actually misuse technology for personal gain such as piracy, and the latest is getting profits in the form of money from making covers. videos or music covers that are uploaded again to the internet and social media.

In this modern era, of course, you can easily search for news, songs and videos using a smartphone that has sophisticated technology and can easily conduct business transactions, study and carry out other activities like in the real world. Apart from having a positive impact as above, it also has negative impacts, such as the deliberate use of songs for commercial purposes without obtaining permission to create a site on YouTube or known as a You Tuber, where on the site there are many covers of songs and lyrics from famous singers and not make royalty payments for the use of the copyrighted work.

Currently, the authority to collect, collect, and distribute royalties for Collective Management Institutions and National Collective Management Institutions has long tails, considering that LMKs in Indonesia alone have 8 (eight) LMKs that are recognized by the state, namely KCI, WAMI, RAI, SLEMI, PAPPRI, ARDI, ARMINDO, and SMI. So that there is a problem with the collection, collection and distribution of royalties where users of the creation suffer losses because the withdrawal of royalties does not go through one door. On March 30, 2021 President Joko Widodo issued Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties (hereinafter referred to as Presidential Regulation No 56/2021). This Presidential Regulation is an implementer of the Copyright Law which was issued to provide legal protection and legal certainty for songwriters, copyright holders, and owners of rights related to economic rights to songs and/or music and for anyone who commercial use of the song and/or music.

The enactment of the Presidential Regulation has surprised several parties by receiving quite a lot of attention from various media. In fact, the practice of withdrawing royalties from commercial song and/or music users has been around for a long time. Government Regulation Number 56 of 2021 was made with the aim of providing a "fence" for users of commercial songs and/or music to pay attention to the rules regarding their use and respect for songwriters and/or music so that the Indonesian music industry continues to thrive and the economic rights of creators and protected copyright owners.

## 2. Method

This research is a juridical-normative law research (Abdulkhadir, 2004). Data collection techniques in this study used literature and document or archive studies, namely by collecting data related to the research needs to be studied, in addition to various books and other supporting legal materials. The analysis technique used is descriptive qualitative data (Amiruddin, 2014).

## 3. Results and Discussion

Copyright protection is not only given to someone who has an idea or ideas about something or a copyrighted work. The copyrighted work must have a distinctive shape, be personal and show authenticity as a creation that is born from his own work based on ability, creativity or expertise, so that the work can be seen, read or felt by other people. Legal protection for legal subjects, in this case "songwriters" (Bernard Nainggolan, 2016). The law has a function in order to provide clarity on the relationship between copyrighted works and creators or copyright holders or people who use creations (Eddy Damian, 2009). The existence of legal clarity will provide convenience to law enforcement. Even though according to the law, copyright protection is automatic, which is obtained by the creator from the moment the work is realized in a tangible form, and does not have to go through a recording process, if it is recorded, it will be better and more profitable, because by recording, there will be formal evidence of the existence of a copyright. proven otherwise (Ermansyah Djaja, 2009). There is a recording process if there is imitation or plagiarism of a copyrighted work, it is easier for the creator to prove his rights and file a claim, because there is formal proof of registration (Gatot Supramono, 2009).

The success of a songwriter in producing a piece of music or a song in the form of a real idea, so that the song is the result of a creation. So that the creator directly gets the copyright for the creation of the song, and has rights that are protected by the government. Legal protection for creators is very important because copyright violations are still widespread, where the level of piracy is quite high. This situation shows the importance of strict legal protection related to royalties for copyrighted music and songs (Salim HS, and Erlies Septiana Nurbani, 2014).

Copyright protection is divided into two, namely protection of moral rights (Article 5 paragraph (1) of Law No. 28 of 2014 concerning Copyright) and protection of economic rights (Article 8 of Law No. 28 of 2014 concerning Copyright). Moral rights themselves are eternally attached, that is, they are attached to the creator without knowing a time limit, but with a note that they can be transferred by way of a will or for other reasons after the creator's death. The moral rights referred to in Article 4 are rights that are eternally attached to the creator to continue to include or not to include his name in accordance with the agreement between the creator and the singer, use an alias or pseudonym, change the work according to market tastes, change the title and subtitles of the work. , and defend their rights in terms of modification of works, or things that are detrimental to their self-esteem or reputation.

The simple right is the right given to the creator to take any action against his creation and also the right to defend his rights against acts that are detrimental to his honor or himself related to his creation. Meanwhile, economic rights are rights that are inherent in the creator which gives legitimacy to the creator to gain economic benefits from his creation. The forms of economic rights themselves are the publication of works, the reproduction of creations in all forms, the translation of works, the arrangement of creations, the distribution of creations, performances with these works (Hendra Tanu Atmadja, 2003).

For other parties who want to exercise or have the economic rights described above, they are obliged to obtain permission from the creator or copyright holder because, we know the consequences of calling economic rights as one of the exclusive rights that only the creator has, it is obligatory for other parties. who wish or have exercised the economic rights of a creator. Economic rights can also be transferred like moral rights in whole or in part to other people by following the provisions stipulated in the Copyright Act (Luthfi Effendi, 2004).

Some of the exclusive rights of the copyright holder are the right to make copies or reproduce works and sell these copies, import and export creations, create derivative works or derivatives of works, display or exhibit works in public, sell or transfer these exclusive rights to other people or other parties. In relation to the song/music cover, it can be said that it violates the moral rights of the creator if it does not include the name of the creator of the song/music work for which the cover version is made. It is called violating economic rights if using it for commercial purposes. Law No. 28 of 2014 concerning Copyright itself does not recognize the term cover, what is known is the term copy. In practice, covering songs is often violated by many parties who are not aware of the existence of their own rules in covering them. The emergence of song covers is clear evidence that someone's copyrighted work is often controlled and taken by others in violation of the law.

What is no less important, for someone who produces a creative work will give him inner satisfaction. Due to the existence of economic value and satisfaction in a copyrighted work, it creates a conception of the need for legal protection. The development of this concept when viewed from a business perspective is to

encourage the growth of an attitude and culture of respecting or appreciating the hard work of others which has important meaning. The Copyright Law provides a strong foundation for the Minister of Communication and Informatics in his efforts to prevent and eradicate copyright infringement through internet media. Article 54 of the Copyright Law regulates the prevention of infringement of copyright and related rights by means of information technology, as stated in Article 54 of the Copyright Act, namely; To prevent copyright and related rights infringement through information technology-based facilities, the government has the authority to supervise the creation and distribution of copyright and related rights infringing content, cooperate and coordinate with various parties, both domestic and foreign in preventing the creation and distribution of infringing content. Copyrights and related rights, and supervision of recording actions using any media on creations and related rights products at performance venues. According to the elucidation of Article 54 of the Copyright Law, what is meant by content is the content of the creation that is available in any media. Forms of content dissemination include uploading content through internet media.

With regard to copyright management of songs and/or music, on March 30, 2021 the government passed Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties (hereinafter referred to as PP No. 56 of 2021). Royalty management contained in Article 1 number 3 has the meaning of withdrawing, collecting, and distributing royalties for song and/or music copyrights. This government regulation was issued as a form of follow-up to Article 87, Article 89, and Article 90 of the Copyright Law so that there is a system related to the management of special royalties in the field of songs and/or music. Previously, the Copyright Law did not regulate clearly and in detail regarding the management of royalties in the field of songs and music. The law still regulates it in general so that the presence of this government regulation can be said to be necessary for the continuation of copyrights in the field of songs and music.

The management of these royalties is carried out by an institution called the LMKN (National Collective Management Institute), where the institution is a non-APBN government aid agency formed by the Minister based on the Copyright Law, which has the task of managing royalties for all songs and music registered in the song and/or music data center managed by the Directorate General. Furthermore, LMKN distributes royalties from music and/or songs to respective creators, related rights holders, and copyright holders.

### **3.1 Copyright Instruments in Criminal Law**

In Law Number 28 of 2014 concerning Copyright, it has been regulated what copyrights can be owned by someone, when the copyright occurs, what rights are protected in copyright, the protection that copyright holders get and the consequences for anyone who violates copyright. Where this is making cover songs without permission can be considered as violating the provisions of the Copyright Act No. 28 of 2014 in article 113 paragraphs (2) and (3), which explains that violations of the economic rights of creators in terms of copyright transformation can be subject to sanctions. the appropriate punishment is regulated in Article 113 paragraph (2) of the 2014 Copyright Law. As for the act of "singing back", this action is included as a commercial activity. People who sing songs again without the permission of the copyright holder can be subject to sanctions in accordance with Article 113 paragraph (3). Based on the description above, Article 113 Paragraphs (2) and (3) of the Copyright Law, which are criminal instruments in the case of covering other people's songs, can be imposed on anyone who commits the act of covering songs that are used commercially (Mieke Yustia Ayu Ratna Sari, 2016).

### **3.2 Copyright Instruments in Civil Law**

Civil law instruments can be imposed on people who cover songs without permission on the basis of acts against the law. Against the law is violating the subjective rights of others. Covering songs without permission can be said to violate the economic rights of copyright holders who have exclusive rights to exploit the economic rights contained in a copyright. The lawsuit was filed based on Article 1365 of the Indonesian Civil Code (KUHPer) regarding unlawful acts as Article 1365 of the Indonesian Civil Code states "Any unlawful act that causes harm to another person obliges the person who, due to the mistake of issuing the loss, compensates for the loss" ( Marmi Emmy Mustafa, 2007).

If the actions committed by the cover song are linked to elements of acts against the law, then the act of covering songs can be said to be against the law because it violates the economic rights of the creators in terms of making copies of the songs created and of course causing losses so that the songwriters can sue for compensation (Herlihy, D. , & Zhang, Y. 2016).The definition of compensation is the payment of an amount of money charged to perpetrators of violations of the economic rights of creators, copyright holders and/or owners of related rights based on court decisions in civil cases or copyright law protection against songwriters (Adermon , A., & Liang, C. Y. (2014).

Civil lawsuits on the basis of unlawful acts are aimed at demanding compensation for the songwriter's loss. A lawsuit for unlawful acts is filed by the songwriter with the Commercial Court or a mediation and arbitration body for intellectual property rights in accordance with the provisions of Article 95 Paragraphs (1) and (2) of the Copyright Law. Article 99 Paragraph (1) of the Copyright Law states that the creator has the right to file a claim for compensation to the commercial court for infringement of copyright or related product rights.

However, legal protection for copyright in Indonesia is still very minimal due to a lack of knowledge in society. Some of the obstacles encountered in the protection of copyright law are the legal factor itself, and there should be improvements in the law enforcement sector that oversees copyright due to the lack of in-depth knowledge about copyright by law enforcement officials, the lack of socialization of providing an understanding of copyright to the public, especially, as well as the level of aspiration that is not so high from law enforcement officials for copyright protection (SopharMaruHutagalung, 2012). Lack of facilities, operational costs, as well as apparatus resources. Lack of understanding of society.

### **3.3 The Role of Collective Management Institutions in Optimizing Song Copyright Protection and Royalty Management.**

In 2021 the President of the Republic of Indonesia issued Government Regulation Number 56 of 2021 Concerning Management of Song Copyright Royalties (hereinafter referred to as PP 56/2021). PP 56/2021 is a derivative regulation issued to be able to reaffirm the role of LMKNs as stipulated in Law Number 28 of 2014 Concerning Copyrights. LMKN's authority to be able to collect royalties from creators or copyright holders for the use of songs and or music works by users that are commercial in nature based on an agreement between the creators or copyright holders of songs and or music to LMKN. As a consequence, Article 1330 of the Civil Code concerning the terms of the validity of the Agreement, and the principle of freedom of contract as stipulated in Article 1338 paragraph (1) and Article 1792 of the Civil Code concerning the granting of power of attorney apply.

The Transitional Period for the implementation of Government Regulation Number 56 of 2021 concerning Management of Song Copyright Royalties has become a separate polemic for LMKNs, the initial authority of LMKNs, where each LMKN in Indonesia has not been integrated into a unit in the withdrawal, collection and distribution of royalties. Since Government Regulation Number 56 of 2021 concerning Management of Song Copyright Royalties was passed, it provides clarity regarding the institution that carries out the withdrawal, collection and distribution of royalties, namely LMKN.

Government Regulation Number 56 of 2021 Concerning Management of Song Copyright Royalties is progress from the multiple interpretations of articles in Law Number 28 of 2014 Concerning Copyrights. To guarantee protection and legal certainty for the economic rights of creators, copyright holders and related rights owners for songs and/or music, a royalty management mechanism is needed that is transparent, of good quality and on target through information technology facilities. Royalty management is also carried out by LMKN as an authorized institution based on the law which represents the representation of the interests of the Creator and the owner of Related Rights to collect, collect, and distribute Royalties from Persons who make Commercial Uses.

Song Copyright Royalty, regarding the withdrawal of Song and/or Music royalties, LMKN in Government Regulation Number 56 of 2021 Concerning Management of Song Copyright Royalties itself is a National Collective Management Institution, hereinafter abbreviated as LMKN, is a non-APBN government aid agency formed by the Minister based on the Law on Copyright which has the authority to collect, collect, and distribute royalties as well as manage the economic rights interests of Authors and Related Rights owners in the field of songs and/or music. The Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights (Kemenkum HAM) together with the National Collective Management Institute (LMKN) are working on the withdrawal and distribution of music royalty with a one-stop system. This policy is thanks to the support of eight Collective Management (LMK), such as KCI, WAMI, RAI, SLEMI, PAPPRI, ARDI, ARMINDO, and SMI when agreeing on the Bali Declaration on Friday April 26 2019.

The Bali Declaration agreed that the LMKN would be the only institution that has the authority to withdraw, collect, and distribute rewards in the form of royalties from commercial users. This policy is an effort to manage song royalty in a more fair, professional, transparent and efficient manner. Withdrawal, collection and distribution of royalties for commercial public services still refers to the Decree of the Minister of Law and Human Rights Number HKI.2.OT.03.01-02 of 2016 which is considered less effective in its implementation. Withdrawal of royalties with indicators of room area and electricity is not accurate in its implementation. In field practice it was found that the mechanism was not based on counting songs, but based on the number of seats in the cafe.

With these inaccurate calculations, of course, a solution is needed for this problem. For this reason, it is important to have a system that regulates the optimization of the collection, collection and distribution of royalties through indicators of the use of music by commercial public services. So far, entrepreneurs

(performing right users) do not properly understand their obligations in running their business that utilize someone's copyrighted work in the form of songs or music (Rahmadi Usman, 2003).

Based on this, it can be concluded that there is weak law enforcement. The mechanism and its implementation are not yet clearly regulated in the law, so that it also has an impact on field supervision regarding the obligation to pay performing rights royalties so far. The difficulty of supervision is caused by the unclear standard for payment of royalties in playing songs, so it is necessary to provide a model solution in the form of software for playing songs. calculate accurately and in detail the amount of royalties to be paid.

Apart from that, the government also needs to immediately establish implementing regulations regarding the mechanism for collecting royalties for parties who have the authority to collect and supervise, they need to be immediately established so that the implementation of this law can run well and in the end, sanctions for violations can be applied. There needs to be a policy from the Central Government and Regional Governments regarding the mechanism for implementing the obligation to pay royalties for every entertainment entrepreneur, cafe, restaurant and hotel, so that they have legal certainty (Sophar Maru Hutagalung, 2011).

For this reason, the government has mandated optimizing the royalty management function in PP 56/2021 to create a general list of creations and a data center for songs and music. Royalty distribution is carried out based on reports on the use of song or music data contained in the Song or Music Information System (hereinafter referred to as SILM). information and data systems used in the distribution of song and/or music royalty.

Comprehensive royalty management needs to be supported by information technology facilities, namely a song and/or music data center managed by the Directorate General of Intellectual Property. The Directorate General of Intellectual Property has the task of building a data center covering e-copyrights and related e-rights. SILM was created through a cooperation agreement between LMKN and PT LenteraAbadiSolutama on May 19, 2021. SILM contains all songs or music that have been recorded in the public register of works. This SILM contains at least information about the creator, copyright holder, owner of related rights, copyrights, and related rights originating from e-copyrights and related e-rights. The song and/or music data center as a collection of song and/or music data is a good basis for LMKNs in managing royalties, as well as for people who use it commercially to get information about songs and/or music that will be used commercially. While SILM is an information system used in the distribution of song and/or music royalty.

SILM is the government's effort to optimize the collection and distribution of royalties. Later, SILM can be accessed by LMKN, creators, copyright holders, related rights owners, and commercial users, so it is hoped that with SILM the process of withdrawing, collecting and distributing royalties can be carried out transparently. This data center was created to make it easier for LMKN in royalty management where this song data center will later be optimized on digital music platforms such as YouTube which is also one of the results of royalty management meetings through YouTube throughout Asia-Pacific, SILM is the spearhead of LMKN in its aspirations efficient and accountable royalty management.

Withdrawal of royalties by LMK to creators who have been registered must be balanced with the fairness of payment of royalties by commercial public services. Most commercial public services have experienced a decrease in income due to the Covid-19 Pandemic, the Policy for Imposing Restrictions on Community Activities (PPKM) has made many businesses such as music concerts, hotels, restaurants, karaoke and others experience a decline or even no income. The government has planned to operationalize SILM in 2020 but due to the Covid-19 Pandemic, taking into account that most commercial public services have experienced a decrease in income, so that SILM will begin to be implemented in 2022, seeing from Article 22 PP 56/2021 regarding the construction of SILM no later than two years since Government Regulation Number 56 of 2021 was promulgated.

By strengthening the royalty management method in a comprehensive and digital manner, it is hoped that the distribution of royalties will become clearer and more transparent. The Song and/or Music Data Center managed by the Directorate General and SILM managed by LMKN are a concrete step made by the Government. The existence of a song and/or music data center as well as SILM makes it easier for all parties, both LMKN, creators, copyright owners and related rights owners as well as song users. In line with this, more and more users will obtain performing rights licenses to support their commercial business activities.

The existence of SILM and the Song Data Center also emphasizes the importance of recording. The existence of SILM is actually to advance the Indonesian music industry so that it is even better by considering the convenience of all parties. From one side, it is seen that the existence of PP 56/2021 was held to guarantee protection and legal certainty for the economic rights of creators, copyright holders, and owners of related rights. This is of course important, so that there are no more incidents out there where creators, holders and owners cannot get the economic rights of their creations as a whole.

#### 4. Conclusion

Protection for songwriters is still not fully implemented even though it has been regulated in laws and regulations. The economic rights and moral rights of songwriters cannot be effectively protected. So that there needs to be a more active role from the Government to be more active in carrying out supervision and can provide real protection. The role of the National Collective Management Institute (LMKN) is to carry out the collection, collection and distribution of royalties with a clear calculation and distribution through one door. rights, there are still several obstacles related to creators who are not yet members of a collective management institution, which results in the distribution of royalties for these rights not being maximized.

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