

## **The Role of LMKN (National Collective Management Board) in Fulfilling the Economic Rights of Music and Song Job Creation According to PP No. 57/2021 (A Studi in Medan)**

**Abdul Hadi Abdillah**

Email: [abdulhadi@gmail.com](mailto:abdulhadi@gmail.com)

*Program Studi Magister Hukum, Universitas Sumatera Utara*

### **ABSTRACT**

*Copyright protection, especially for music or song creations, is a serious problem, because Indonesia is categorized as one of the countries where the level of copyright piracy is quite high. Even though there has been a law and a Collective Management Organization that has been formed specifically to deal with royalties for music and song creators, until now the level of royalty payments, especially in the city of Medan, is still low. Signs of improvement for the future of those who choose their livelihood as creators, musicians, singers are yet to be seen.*

**Keywords:** *Economic Rights, Copyright, Medan City*

### **INTRODUCTION**

Copyright protection, especially for music or song creations, is a serious problem, because Indonesia is categorized as one of the countries where the level of copyright piracy is quite high. As it is known that copyright which is an exclusive right for the creator to reproduce his work as well as to obtain economic rights from the results of his creation. The Copyright Act functions to protect intellectual works in the fields of science, art, literature which are expressed in tangible forms. Based on Article 4 of Law no. 28 of 2014 concerning Copyright, a creator has the exclusive right to reproduce and distribute his work to other parties.

To obtain these economic rights, copyright holders and related rights owners can grant permission to other parties by transferring rights or by granting licenses as stated in Article 81 of Law No. 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law). The granting of the license must be carried out with a written agreement as stated in Article 80 paragraph (1) of the Copyright Law. Regarding the written agreement regarding the transfer of responsibility to the licensee to pay royalties to the copyright holder or owner of related rights during the license period,

For this reason, good regulations are needed so that the rights of the creators of a work of music and songs are not violated. For this reason, we already have various laws and regulations that regulate this, such as Law Number 28 of 2014 concerning Copyright. Even so, there are still some obstacles in terms of enforcement. For example, as stated by the Secretary General of the Indonesian Hotel and Restaurant Association (PHRI) that there are problems regarding the collection of royalties for the use of songs and music. This problem stems from the duties and functions of the Collective Management Institute (LMK) and the National Collective Management Institute (LMKN). Due to the lack of coordination between LMK and LMKN, the implication is that there are cases where the hotel is burdened with bills for two bills at once.

Awareness of the protection of intellectual property rights as something that is needed. Legal protection of copyright is needed in order to provide incentives for creators to produce their copyrighted works. In addition to legal protection of copyright, appreciation must also be given to creators. One form of appreciation is by giving royalties. Article 1 paragraph (21) of Law Number 28 of 2014 concerning Copyright contains the definition of royalties as follows "Royalties are compensation for the utilization of the economic rights of a work or product of related rights received by the creator or owner of related rights."

The rise of copyright infringement through digital platforms, Law Number 19 of 2002 concerning Copyright has not been able to overcome it, because in addition to the law not specifically regulating the functions and structure of LMK at that time and institutionally, LMK at that time it also has not received the mandate to deal with the issue of creator royalties so that LMK cannot carry out its functions optimally. Even so, during the enactment of the law, many LMKs were established with positions that were not yet strong, clearly and firmly regulated. The justification for the existence of LMK is the granting of power of attorney from creators, copyright holders and related rights. Therefore, the existence of LMK is still doubted by the community. Law Number 28 of 2014 concerning Copyright in lieu of Law Number 19 of 2002 concerning Copyright provides special arrangements for the position of LMK. There is a regulation in Law no. 28 of 2014 is a new history for the birth of LMK in Indonesia.

To be able to carry out its functions and role as an institution that assists creators to license users and at the same time collect royalties, of course the LMK must first obtain power of attorney from the creator. As for in Law no. 28 of 2014 regarding the minimum provisions of the power needed for an LMK to carry out its functions, namely the need for power from as many as 200 creators. When a creator joins or enters a LMK, administratively a creator will submit a letter in the form of a transfer, a mandate or a license to administer the management of their rights. Armed with this letter which also represents the repertoire of LMKs in other countries,

Even though there have been laws and institutions that have been formed specifically to deal with royalties for music and song creators, until now there has been no the level of royalty payments, especially in the city of Medan, is still low. BThere is no encouraging news yet for musicians, music and song creators and related rights holders. Signs of improvement for the future of those who choose their livelihood as creators, musicians, singers are yet to be seen. What caused this to happen, why is the problem of protecting the rights of creators, musicians, singers to this day not yet resolved. This is the background, why this research needs to be done.

## **METHODS**

The type of research chosen in this research is juridical research (normative) and sociological/empirical research. Therefore this research is a combination of two legal research concepts which are often referred to as juridical-sociological research. Juridical-sociological research is emphasizing research that aims to gain knowledge about legal norms and then be measured at the level of implementation empirically by going directly to the object. Based on the above understanding, this study examines the collection of royalties on the copyrights of music and songs in terms of PP No. 56 of 2021 concerning Management of Song and/or Music

Copyright Royalties and empirical observations in the field by choosing Medan City as the object of study.

## **RESULTS AND DISCUSSION**

### **Factors Causing the Unavailability of Protection of the Rights of Music and Song Creators and Other Related Rights Holders**

The issuance of PP 56/2021 indicates progress in the legal system for protecting IPR in Indonesia, considering that IPR protection is one of the supporting factors for the advancement of creativity and innovation as well as the competitiveness of the creative economy in Indonesia. On the other hand, PP 56/2021 also provides legal certainty, because it has been regulated in detail regarding which types of businesses are required to pay royalties for playing songs and/or music.

Without protection of this copyright, the impact of copyright infringement is that people will feel reluctant to produce a new work, because their work can be easily imitated by others and has the potential to harm people who buy works that have been pirated or counterfeit because they receive goods of poor quality. Copyright infringement also harms people whose work is pirated because that person has spent a lot of time and effort, but other people can easily pirate their work, besides that copyright infringement will also be bad for the Indonesian economy. Investors will be reluctant to come because pirated or illegal CDs sell for much less than the originals. Even this is also bad for the original manufacturer.

Types of copyright infringement include piracy, copying, reproducing other people's work, distributing and selling the results of copyright infringement and listening/announcement without the permission of the owner. To minimize violations in terms of listening/announcement without the permission of the owner in Indonesia, apart from being carried out by government and law enforcement agencies it is also carried out by Karya Cipta Indonesia (KCI). KCI is an institution yesng carries out the collection of royalties to users with a license agreement in accordance with applicable laws.

From interviews with KCI, information was obtained that the problem currently being faced by KCI in Medan City was the lack of understanding by the public or potential users. In this case the prospective user (user) does not know about the collection of royalties. They often question the legal basis for collecting royalties, especially LMKNs and why there are very few LMKNs and their representatives willing to open in areas that are still unfamiliar with the LMKNs themselves. For now, users are only companies, karaoke, restaurants, banks, hotels, cafes that have big names and cover local MSMEs and local companies. KCI is still in the socialization stage because for socialization it still uses the approach method (face to face) and education, so that people can understand about the song owner's copyrighted works.

Besides that, the problem faced by LMKN (KCI) Medan City in collecting royalties is the unavailability of human resources and technology that is qualified and has good capacity to carry out the collection of royalties from users throughout Sumatra. For this reason, human resources are needed who understand the collection of these royalties as well as qualified technology so that the collection of royalties from users can be carried out so that creators can receive compensation from their creations which in turn can encourage creators to continue to create their work.

Another problem that is also faced in the field, Creators are also reluctant to enter an LMK for fear that it will be taken advantage of by only one party in LMK. There is an assumption among composers who do not understand royalty, that there will only be one person who will receive all royalties from all composers and/or music. There are also Creators who do not understand the concept and existence of the LMK.

Music industry players, especially musicians and songwriters, should immediately register with the Collective Management Institute (LMK) so that Government Regulation (PP) Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties can be maximally implemented. So far, the data available at LMK is still around 6,500 to 7,000 members. This number includes creators, producers and performing artists. There are still many of them who have not registered with LMK. So there are still many creators who have not registered with LMK. As in Government Regulation Number 56 of 2021 regarding royalties, centraline data must be based on data registered at the LMKN. Currently the LMKN is also conducting outreach regarding this matter assisted by other parties such as the Regional Offices of the Ministry of Law and Human Rights (Kemenkumham) throughout Indonesia,

The royalties are distributed by LMK like YKCI every year to composers and/or music members who are members of YKCI. However, due to the Covid-19 pandemic that hit the world including Indonesia, the distribution of Royalties to Creators has decreased. He said that his Royalty receipts in 2022 would be half of the usual income received in previous years.

The royalty amount set in Indonesia is considered to be very insufficient. So it cannot support the welfare of song and/or music creators. Even though the rates set are low, there are still many users who do not carry out their obligations to pay royalties. It can also be seen that even though they have many works, there are still many composers of songs and/or music, most of them live from the word far from prosperity. Coupled with increasingly advanced technological developments that require everyone to be able to adapt to this technology, so Creators who are unable to master it will be out of date making it difficult for them to develop.

### **The Role of LMK In Fulfillment of Economic Rights of Music and Song Copyrights**

This LMKN has the authority to collect (collect) song or music royalties from Commercial Users. In PP No. 56 of 2021 states that management of royalties is carried out by LMKN based on integrated data in the song and/or music data center. "Everyone can make commercial use of songs and/or music in the form of commercial public services by submitting a license application to the copyright holder or owner of related rights through LMKN,"

Further mentioned in PP No. 56 of 2021, royalty withdrawals are made by LMKNs for creators, copyright holders, and related rights owners who have become members or are not yet members of an LMK where this LMK is an institution authorized by creators, copyright holders, and/or owners related rights to manage their economic rights in the form of collecting and distributing royalties. This LMK is in the form of a non-profit legal entity.

In collecting royalties, LMKN coordinates and determines the amount of royalty that is the right of each LMK in accordance with the prevalence in practice based on justice. As for Article 14 PP No. 56 of 2021 states, the royalties that have been collected are used for three things, namely, distribution to creators, copyright holders, and owners of related rights who are already members of LMK; operational funds; and reserve funds.

The royalties are distributed to creators, copyright holders and related rights owners through LMK. Royalties for creators, copyright holders and related rights owners who are unknown and/or not yet a member of an LMK are stored and announced by LMKN for two years to be known to the creators, copyright holders and related rights owners as stated in the provisions of Article 15 paragraph (1) PP No. 56 of 2021. If within that time period the creator, copyright holder, and owner of related rights are known and/or have become members of an LMK, the royalties will be distributed. However, if you are not known and/or are not a member, royalties can be used as a reserve fund.

In the event of a dispute related to the discrepancy in the distribution of royalty amounts, the creator, copyright holder and owner of the related rights can submit it to the Director General for a mediation settlement. At the end of PP No. 56 of 2021 states, in carrying out royalty management, LMKNs are required to carry out financial audits and performance audits which are carried out by public accountants at least once a year and the results are announced to the public.

At the time of Government Regulation No. 56 of 2021 comes into force, the minister builds a song and/or music data center and LMKN builds SILM, no later than two years since this Government Regulation was promulgated. The issuance of this PP is intended to provide protection and legal certainty for creators, copyright holders and owners of related rights to economic rights to songs and/or music as well as anyone who makes commercial use of songs and/or music. Apart from that, it is also to optimize the function of managing copyright royalties for the use of creations and related rights products in the field of songs and/or music.

Everyone can make commercial use of songs and/or music in the form of commercial public services by paying royalties to creators, copyright holders, and/or owners of related rights through LMKN [National Collective Management Institute]," as stated in Article 3 paragraph (1) PP No. 56 of 2021. The song and/or music data center contains all songs and/or music that have been recorded in the public list of creations. This data center contains at least information about creators, copyright holders, related rights owners, copyrights, and related rights, which can be derived from e-copyrights.

The data center managed by the Directorate General (Dirjen) is updated regularly every three months or at any time if necessary. The song and/or music data center referred to can be accessed by LMKN as a basis for royalty management; and creators, copyright holders, related rights owners and/or their proxies, as well as people who make commercial use of it to obtain information on recorded songs and/or music, as stated in Article 6 paragraph (2) PP No. 56 Year 2021.

Furthermore, in PP No. 56 of 2021 it is also stated that the minister records songs and/or music based on applications submitted electronically by creators, copyright holders, related rights owners, or proxies. Submission of requests for recording of songs and/or music by the attorney as intended can be made by the LMKN based on the power of attorney from the creator, copyright holder, or owner of related rights, in accordance with the provisions of Article 4 paragraph (3) PP No. 56 of 2021. The song and/or music is recorded in the general register of works, the conditions and procedures for recording are carried out in accordance with the provisions of the laws and regulations.

Forms of commercial public services that must pay royalties include commercial



seminars and conferences; restaurants, cafes, pubs, bars, bistros, nightclubs and discotheques; music concert; airplanes, buses, trains, and ships; as well as fairs and bazaars.

So, the protection of the Author's economic rights is closely related to how when a song and/or musical work is exploited it will generate economic benefits for the Author and Related Rights Owner. If a work of song and/or music has been circulating in the community, there will be various forms of exploitation of the work of song and/or music. There are many Users who will take advantage of the use of works for commercial purposes in the form of public services.

In enjoying Royalties for the commercial use of songs and/or music, it is impossible for the Creator or Related Rights Holder to directly ask each User for compensation for the utilization of the economic rights of the Author or Related Rights Holder. It is impossible for the Creator or Related Rights Holder to directly reach every User who takes advantage of their economic rights for commercial purposes due to the limitations of the Author or Related Rights Holder. Authors or Related Rights Holders do not have sufficient capacity to create money from all the works they own.

So that the economic rights of the Creator or Related Rights Holder are not neglected and the Creator or Related Rights Holder gets justice and proper economic rewards, an institution is needed that can accommodate the aspirations of the Author or Related Rights Holder, especially in the management of Royalties. The Collective Management Institute (LMK) was born for the purposesupportin protecting the economic rights of Authors or Related Rights Holders especially in Royalties. The institution has the authority to withdraw, collect and distribute royalties from commercial users.

The National Collective Management Institute (LMKN) was born in 2015 as a mandate from Law Number 28 of 2014 concerning Copyright. The law mandates the National Collective Management Institute (LMKN) to handle the collection of royalties for the use of copyrighted songs and/or music in Indonesia. The National Collective Management Institute (LMKN) collects Royalties at a rate stipulated and ratified in the Decree of the Minister of Law and Human Rights of the Republic of Indonesia and distributes them to Authors, Copyright Holders and Related Rights Owners through the Collective Management Institution (LMK). In the concept of Government Regulation No. 56 of 2021, LMKNs are not LMKs which legally represent rights owners. LMKNs do not get power from the right owner, but get authority directly from the Minister.

In realizing the economic rights of Authors or Related Rights Owners to be implemented effectively, Authors and LMKs must work together. The role of LMK is to collect a portion of the user's income, in this case business people who use work for commercial purposes in the form of public services. LMK will collect and distribute these funds in this case as compensation for the Author or Related Rights Owner which will later be given to the owner of the song and/or music work.

LMK is here to represent Creators or Copyright Holders and Related Rights Owners so that Users or the public can enjoy copyrighted works in accordance with applicable regulations and in an orderly manner. LMK as the representative of the Creator or Related Rights Owner in collecting fees or Royalties and distributing the Royalties to members after deducting a fee agreed by the parties.

LMK is an institution in the form of a non-profit legal entity that is authorized by the

Creator, Copyright Holder, and/or Related Rights Owner to manage its economic rights in the form of collecting and distributing Royalties. LMK must ask the Minister of Law and Human Rights for an operational permit. The operational permit must meet the following requirements:

1. In the form of a non-profit Indonesian legal entity;
2. Obtaining power of attorney from the Author, Copyright Holder, or Related Rights Owner to withdraw, collect, and distribute Royalties;
3. Have authorizers as members of at least 200 (two hundred) Authors for Collective Management Institutions in the field of songs and/or music representing the interests of Authors and at least 50 (fifty) people for Collective Management Institutions representing Related Rights Owners and/or objects Other Copyrights;
4. Aims to collect, collect, and distribute Royalties; And
5. Able to collect, collect and distribute royalties to creators, copyright holders or related rights owners.

Until now there are 10 LMK institutions that are members of LMKN in Indonesia. LMK consists of two, namely LMK for Authors and LMK for Related Rights Owners. LMK Creators include Indonesian Cipta Karya (KCI), Indonesian Music Forum (WAMI), Indonesian Royalty Anugrah Association (RAI), East Indonesian Professional Recording Singers (PROINTIM), and Nusantara Recording Industry Songwriters. (NUSANTARA RUNNER).

While in the LMK section for Related Rights Owners there are the Indonesian Music Licensing Center (SELMI), the Indonesian Dangdut Royalty Award (ARDI), the Protection of the Rights of Indonesian Recording Singers and Musicians (PAPPRI), the Indonesian Music Royalty Award (ARMINDO), and Star Music Indonesia (SMI). .

In determining the amount of Royalty, the Collective Management Institution must be in accordance with the prevalence in practice based on fairness. There are basic elements for calculating the amount of Royalty, for example the number of seats, the number of rooms, the area of the room, the number of copies copied, according to the customs/practices that are commonly practiced. Collective Management Institutions can only use operational funds of up to 20% (twenty percent) of the total Royalties collected annually. At the beginning of 5 (five) years since the establishment of the LMK, a maximum of 30% (thirty percent) of the total Royalties collected annually can be used for operational funds.

Royalties that have been collected by the LMKN basically have a clear purpose and are to be distributed to creators, copyright holders and related rights owners who are already members of the LMK. Royalty funds are also used as operational funds and reserve funds. Reserve funds here are royalties from songs and/or music whose usage is not recorded, there is still a dispute between who the copyright owner is, or the Creator, Copyright Holder, and/or Related Rights owner who has not been registered as a member of LMK. If in the future there are problems or disputes regarding the discrepancy in the distribution of the amount of royalties received, the creator, copyright holder and owner of related rights can submit their objections to the Directorate General for a mediation settlement.

The existence of a Collective Management Institution in the world of copyright is very important, because this agency is an extension of the Author or Related Rights Owner. Thus, a Collective Management Institution must be able to represent the interests of the Author or Related Rights Owner. The Collective Management Institute was born to fulfill a sense of

justice for Authors or Related Rights Owners in enjoying their economic rights.

### **Legal Protection for Copyright Holders for the Acquisition of Royalties for Songs and/or Music in the City of Medan**

LMKN as an authorized institution based on the law that represents the interests of Authors and Related Rights Owners to collect, collect, and distribute Royalties from people who make Commercial Use. Comprehensive royalty management needs to be supported by information technology facilities, namely song and/or music data centers managed by the Directorate General and SILM managed by LMKN. The song and/or music data center as a data set of songs and/or music forms the basis for LMKN in Royalty Management, 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.

The lack of understanding of public law, especially from users who use other people's work for commercial purposes regarding copyright protection, makes society ignorant of the existence of creator rights. Of the Users, there are those who do not understand how Royalties are charged, there are those who refuse to pay Royalties and there are also those who accept to pay Royalties after being given insight into the concept of imposing Royalties for copyrighted songs and/or music. Not a few business actors who make use of the song and/or music consider that the payment of these royalties is a burden and is detrimental to their business.

In addition to the low level of public understanding regarding the protection of intellectual property rights, especially copyrights, there are also song and/or music composers who are not aware of the importance of protecting their economic rights.

He is of the opinion that protecting the moral rights and economic rights of creators is very important in upholding copyright law. Moral rights as stated in Article 5 and economic rights in Article 9 of Law Number 28 of 2014. Obtaining permission from the Creator or Copyright Holder or Related Rights Owner is the most important part in the commercial use of a song and/or music copyrighted work.

In order to be able to enjoy the benefits of utilizing the economic rights of the Copyright Holder or Related Rights Owner for the use of copyrighted works by other people for commercial purposes, Royalties are a means of payment. Royalties are very important to Authors or Related Rights Owners. Royalties as a result of the utilization of economic rights for the hard work of the Author or Related Rights Owner in creating a work that requires a lot of ideas and creativity, effort and a lot of time. Royalty contributes to the welfare of the creators or related rights owners, especially song and/or music creators.

If properly enforced, copyright protection can contribute to the welfare of the Copyright Holder as the heirs of the Author because protection for copyrighted works applies for the life of the Author and continues for 70 (seventy) years after the Author dies, starting from January 1 of the following year. . So that the heirs of the Creator also receive Royalty for the utilization of the Creator's work.

According to him, by obtaining permission from the copyright holder, it means that people who want to use their work really appreciate the creator's work. His hope is that all users who want to use it for the purpose of exploiting copyrighted works, especially in songs and/or



music, must first ask permission from the creator of the song and/or music. However, what he found, it turned out that there were many people who did not get permission from the creators to use the songs and/or music he had created.

The existence of LMK is very important for composers of songs and/or music, because it is impossible for composers to collect royalties one by one from all users in Indonesia. each user, such as in hotels, karaoke places, and others. LMK has carried out its duties to the best of its ability, but there are definitely challenges experienced in upholding the protection of the creators' rights.

With the advent of the internet, it has become easier for many people to access or be able to download songs and/or music that are available illegally on various song-sharing websites or video-sharing websites such as YouTube. When Users make use of the song and/or music for commercial purposes, while the User does not ask for permission such as a license from the creator of the song and/or music itself. In fact, it is not uncommon for the composer of the song and/or music to not know that his work is being used illegally. The party that will benefit is the User himself while the creator of the work gets nothing.

In Article 9 of Government Regulation Number 56 of 2021 Concerning Management of Song and/or Music Copyright Royalties, it is stated that everyone can make Commercial Use of Songs and/or Music in the form of commercial public services but must apply for a License to the Copyright Holder or Related Rights owner through LMKN. The implementation of the license is also accompanied by an obligation to provide a report on the use of songs and/or music used to LMKN through KCI.

Please note that the imposition of royalties on songs and/or music is solely not to reduce the income of users, in this case it can be business actors, but to form a relationship of mutual respect or respect between creators and users. Royalty is a form that the Creator's work is appreciated for his hard work to create that work. Royalties are a form of appreciation in the utilization of the Creator's economic rights.

The facts that occur in society are not in accordance with the wishes set forth in the laws and regulations. Creators must obtain and enjoy the rights they should receive. Protection of the moral rights and economic rights of composers of songs and/or music must be done in the best way possible. However, this cannot be realized without the cooperation of various parties such as creators, users, law enforcers and from all aspects of society who also enjoy the song and/or music.

## CONCLUSION

The conclusions that the writer can put forward are as follows:

1. The factors that lead to the protection of the rights of the creators of musical works and songs as well as other related rights holders, have not been realized to this day, namely because:
  - a. Lack of public understanding or clater user (user).  
In this case the prospective user (user) does not know about the collection of royalties.
  - b. Not availablehuman resources and technology that are qualified and have good capacity to be able to carry out the collection of royalties from users throughout Sumatra.

- c. PCreators are also reluctant to enter an LMK for fear that only one party in LMK will take advantage of them.
2. The existence of a Collective Management Institution in the world of copyright is very important, because this agency is an extension of the Author or Related Rights Owner. Thus, a Collective Management Institution must be able to represent the interests of the Author or Related Rights Owner. The Collective Management Institute was born to fulfill a sense of justice for Authors or Related Rights Owners in enjoying their economic rights.
3. The obligation regarding payment of royalties for the use of songs and/or music for commercial purposes by LMK of North Sumatra Province has not been realized properly in Medan City, this can be seen from royalty collection by LMK in Medan City is still very minimal and there are even users who question the legal basis for collecting royalties, especially LMK and do not understand the copyrighted works of music and song owners.

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