



# Royalty Payment Mechanism on Music Works According to Law No. 28 of 2014 Concerning Copyright

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**Abstract.** The copyright influence is increasingly significant due to its greater role in both industrial and international trade aspects. Indonesia has ratified the World Trade Organization Establishing Agreement via Law No. 7 of 1994 so that Indonesia legally binds with the rules issued by the WTO, including the TRIPs agreement (Trade Related Aspect of Intellectual Property Rights). Law No. 28 of 2014 concerning Copyright also regulates works that are protected by copyright, such as cinematographic works. The problem of this study is how the payment mechanism and the composition of royalty payments are based on the Law and how the legal remedy for the creator in the use of music in cinematographic works in Indonesia. Based on the provisions of Article 89 section (1) of the Law concerning Copyright, it can be seen that LMKN represents the representativeness of the interests of both the creator and the related right owner. The royalties collected by LMKN from the users are based on the use/playing//utilization of music and/or songs for commercial public services. In the popular world, it is called royalties for performing rights. The study employed a normative research type or literature review. This research, then, emphasized the use of secondary data or written and non-written positive legal norms that were applied in its practice.

**Keywords:** Copyright, Royalty, LMKN

## 1 Introduction

Copyright, a part of Intellectual Property Rights in Indonesia, was initially regulated in Law No. 6 of 1982, which was renewed with Law No. 7 of 1987 onwards. In line with the participation of Indonesia as a member of the WTO and based on a ratification of international agreements in the Uruguay Round as stipulated in Law No. 7 of 1994, Indonesia confirmed its approval against TRIPs in the context of Intellectual Property Rights protection. As a result, the Indonesian government made several adjustments to regulations governing Copyright. In doing so, in terms of making adjustments to the existing regulations managing Copyright, Law No. 7 of 1987 was renewed by Law No. 12 of 1997 and amended by Law No. 19 of 2002. Lastly, it was amended by Law No. 28 of 2014.

[1] A part of Intellectual Property Rights, copyright is a highly personal right or exclusive for creators or copyright holders to publish or reproduce his/her works without prejudice to limitation according to the applicable laws and regulations as

stipulated in Article 1 Section (1) of the Law of Copyright. [2] The occurrence of copyright is automatic. It starts after a work is created or after the manifestation of an idea into real form without requiring a particular formality. The manifestation of an idea into the real form is a creation of the creator's works, which contains authenticity and is under the domain of science, art, and literature.

One of the works that are protected by copyright under Article 40 of the Law of Copyright is music/song works (point d). The rapid development of the music aspect is an integral part of the role of the media in the case of electronic media, which often broadcasts or publishes both domestic and foreign music. With the broadcast or publication of music through music programs on television and radio, the music quickly becomes famous so it can increase the level of popularity of the artist, who performs the music. Broadcasting or publishing of the music is also via cinematography media. Cinematography comes from English, which was adopted from Latin. It is the science that studies and discusses the technique of capturing images. Then, the captured images are combined into a series of images that has a storyline according to the idea of the creator. Conceptually, the object of cinematography is similar to photography, which captures the reflection of light on an object. The difference is that photography only captures single images, but cinematography captures multiple images that are combined into several images that have a storyline.

Based on legal disciplines that have a broad scope, the writer employed a normative research type or literature review in this research. In practice, the research applied to the use of secondary data or written and non-written positive legal norms. This normative research was based on basic principles of copyright management, particularly the basic principle of copyright of music management according to Law No. 28 of 2014 concerning Copyright and the Civil Code, associated with the main problem of this study.

Following the problems of the study, the writer used a descriptive analysis, which aimed to describe the existing reality followed by reality analysis based on the existing legal theories or the existing applicable positive laws. The normative research was conducted by searching and collecting secondary data, such as data that was obtained by the writer from the library.

## **1.1 Problem Formulation**

1. How is the management of the royalty payment mechanism according to Law No. 28 of 2014 concerning Copyright?
2. What is the legal remedy for music creators in cinematographic works in Indonesia?

## **2 Authority of the National Collective Management Agency (LMKN) in Royalty Management According to Law No. 28 of 2014**

Creating music or song works sacrifices an enormous energy, time, thought, and costs so that the creator or composer is given the exclusive right for a certain period in exploiting his/her works. Exclusive rights owned by the creator is a fundamental right to obtain compensation equal to its contribution value since the creators participate to enrich the users through his/her works. Compensation of the creators for their contributions to the community is commonly known as a royalty.

Royalty must be paid because music is a human intellectual work that provides a legal remedy. The royalty payment is a consequence of using others' services or works, which according to the law is an exclusive right. Also, it is a manifestation of economic rights contained in copyright, such as the right to obtain economic benefits from his/her works. The rationale is that the creator has enriched society with his/her creation, and the creator has the right to achieve a reward equal to the value of his/her contribution.

In the context of copyright exploitation, a creator may not be able maximally to conduct themselves individually without any assistance from a professional organization as a collecting society that deals specifically with this issue, particularly for music or song works. The creators or copyright holders are impossible to come to each music event organizer individually, such as concerts, television stations, radio, hotels, karaoke, nightclubs, and others to collect their economic rights. In Indonesia, this task is performed by YKCI as a collecting society that performs the collecting administration of the copyright use of songs and/or music creators, both Indonesian and foreign works.

The authority of YKCI is based on a power of attorney and/or cooperation agreement from and between creators in domestic and reciprocal agreements with similar foreign institutions as the holder of foreign songs and/or music copyright. Music creators in cinematographic works include in the song and/or music writer category, which has the right composition of royalty as a creator. For example, if a film (cinematographic works) is played in a cinema, the cinema must pay royalty as a user.

Article 89 section (1) of Law No. 28 of 2014 concerning Copyright states that the management of copyright royalty in the song and/or music aspects is by establishing 2 (two) National Collective Management Agencies (LMKN), which respectively represent the interests of both the creator and the related right owner.

Based on Article 16 Section (1) of Regulation of the Ministry of Law and Human Rights No. 36 of 2018, LMKN has the authority to withdraw, collect and distribute royalty in the song and/or music aspects from commercial users. Then, in section (2), LMKN must coordinate and determine the amount of royalty that is the right of each LMK according to a reasonable value in practice and based on fairness.

According to the provisions of Article 17, LMKN can delegate its authority to similar LMK. The authority delegation of LMKN includes the authority to withdraw, collect, and distribute royalty in the song and/or music aspects from users. Further,

the mechanism of authority delegation is determined by the head of the LMKN commissioners.

It is necessary to explain that the royalty collected by LMKN from users is based on usage/playing/utilization of music and/or songs for commercial public services. In the popular world, it is called royalty for performing rights. In short, performing right is the right to use music that is heard in the public domain, such as restaurants, cafés, malls, cinemas, karaoke, pubs, bars, public transportation, radio, concerts, and so forth. Regarding the withdrawn/collected royalty from users with the category of music and/or song use for commercial public services, the LMKN conducts the distribution.

### **3 Legal Remedy of Music and Cinematography Creators in Indonesia**

According to natural law theory, creators have moral and economic rights to enjoy their works, including the profits generated by his/her intellectuality. Moreover, because the creators have enriched society through his/her works, the creators have the right to obtain compensation equal to the value of his/her contribution, so copyright provides exclusive property rights to a creator's works. It means maintaining the natural law of the individual to supervise his/her work and obtain fair compensation for his/her contributions to society [3].

John Locke, a prominent English philosopher of the 18th century, said that the law of copyright provides exclusive property right to the copyrighted works of a creator. Natural law requires individuals to oversee his/her work and earn compensation for his/her contributions to the public. Furthermore, Alan B. Morrison argued that producing music works sacrifices an enormous time, effort, thought, and cost, so the creator is granted an exclusive right for a certain period to exploit the work he/she created. Thus, all energies and costs expended for such works can be recovered.

Based on the theory of the rule of law (*rechstaats*), the application of legal remedy of copyright to music must always comply with applicable laws and regulations. However, the formation of positive law must start from the rights possessed by each individual, particularly the creators' economic rights of the works. In case individual rights are an integral part of a country, the state must be able to accommodate these rights into positive law and can be enforced equally effectively in the country. It can be said that the law must be seen as an institution that functions to satisfy social needs and can be executed and applied in society. Thus, the law is not only "law in a book" but also "law in action". Therefore, the implementation should be applied for every material advantage or royalty taken by the user in using the works. It is as compensation to creators who have invested in their works.

Copyright as part of Intellectual Property Rights, consists of copyrights and neighboring rights. In the concept of the Civil Law System, copyright is a natural right justification, which views copyright as a basic right given to the creator without considering the wider economic and political consequences. The purpose of copyright is to provide a reward (appreciation) to the creator and this is a moral argument, which

is an author's rights system that is emphasizing the creator's personality protection through his/her works rather than the remedy of the copyrighted works.

In Indonesia, which inherits the Civil Law, copyright is defined as "a special right for the creator or recipient of the right to announce or reproduce his/her works or provide permission for it." [4] This copyright regulation is an area of civil law, which includes property law. Specifically regarding property law, there are provisions regarding property rights. The property right consists of immaterial and material property rights. The immaterial property right is intellectual property rights, which consist of copyright and industrial property right.

According to Satjipto Raharjo, legal remedy protects human rights that are harmed by others [5]. The remedy is given to the community to enjoy all the rights granted by law. The point is that legal remedy is related to the act of the state to do something (imposing state law exclusively) to provide guarantees of the rights certainty of both personal and a group of people.

[6] Law No. 28 of 2014 concerning copyright states that copyright is the exclusive right of the creator arising automatically based on the declarative principle after a work is manifested in real form without reducing the restrictions following the provisions of the regulation. Based on the issue referred to in this Article, the works, since its initial creation, that have been manifested in the real form and heard/published/declared are protected by the Law of Copyright. The works of song and/or music that have copyright can be recorded by applying for the works registration, which is stipulated in Law No. 28 of 2014 concerning copyright.

The creators can obtain their economic rights of royalty according to Article 87 of Law No. 28 of 2014 concerning copyright. Regarding the economic rights, every creator, copyright holder, and related right owners must become a member of the Collective Management Agency so that the agency can collect reasonable remuneration from the users, who utilize copyright and related rights in commercially public services.

## 4 Conclusion

1. Law No. 28 of 2014 concerning Copyright mandates LMKN (National Collective Management Agency) to manage the collection of royalties for the use of songs and music works in Indonesia. The management of copyright royalty in the song and/or music aspects is by establishing 2 (two) LMKNs, which represent the interests of both the creator and the related right owner, respectively. LMKN has the authority to withdraw, collect and distribute royalty of the song and/or music aspects from commercial users, and the obligation to coordinate and determine the amount of the royalty that becomes the right of each LMK following reasonable value in practice and based on justice.
2. According to Article 87 of Law No. 28 of 2014 concerning copyright, the creators, copyright holders, and the related right owners must become members of the Collective Management Agency that assigns to withdraw reasonable compensation from users who utilize the copyright and related rights in commer-

cially public services. Law No. 28 of 2014 concerning copyright states that regarding the copyrighted works that have been in the real form and heard/published/declared, the works have been protected by the Law of Copyright since the works are created. The recording of song and/or music works can also be conducted by applying for works registration as regulated in Law of Copyright No. 28 of 2014.

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