



# Harmonization of Regulations Concerning the Registration of Folk Songs and Music in Indonesia

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**Abstract.** Copyrights for folk songs and music need to be registered in order to obtain optimal economic benefits for the ethnic and community carriers as copyright holders. Indonesia regulates copyrights for folk songs and music not only through Law no. 14 of 2014 concerning Copyright ("Copyright Law") and its implementing regulations, but also as part of cultural arts, its recording and utilization is also regulated in Law no. 5 of 2017 concerning the Advancement of Culture ("Cultural Advancement Law") and its implementing regulations. Both the Copyright Law and the Culture Advancement Law mandate different systems of registration. Then, the Ministry of Law and Human Rights launched the application for the National Data Center for Communal Intellectual Property ("PDN KIK") which is claimed to carry out the function of registration of copyrights for folk songs and music in an integrated manner. The number of systems for registering copyrights for folk songs and music creates ambiguity and confusion as to where the copyrights for folk songs and music should be registered. This paper will use empirical juridical methods with a prescriptive approach which will provide alternative solutions to the problems encountered.

**Keywords:** Song and Music Copyright, Folk and Music Copyright, Registration System.

## 1 Introduction

Music and songs are a form of copyright protected in Indonesia, both in the form of notations with lyrics and without lyrics (instrumental). Likewise, folk songs and music that are spread all over the archipelago, which are owned, maintained, and preserved for generations by various tribes and indigenous peoples. The richness of Indonesia's diverse cultural treasures from Sabang to Merauke provides various colors in folk songs and music which are the ancestral heritage of the tribes that live and develop in Indonesia. Indonesia recognizes folk songs and music as part of the copyright protected by Indonesian laws and regulations, in this case, Law no. 28 of 2014 concerning Copyright ("Copyright Law"). Copyright protection for folk songs and music is facilitated as Traditional Cultural Expressions[1].

Copyrights of folk songs and music include copyrights and neighbouring rights. Copyrights consists of moral rights and economic rights of authors. Neighbouring

rights include rights for phonogram producers, performers, and broadcasting organizations. For his creations in the form of songs and music, the author is entitled to royalties, namely compensation for the use of economic rights on a creation or neighbouring rights product received by the author or copyrights or owner of the neighbouring rights[1].

Along with the development of digital technology, the use of copyrights for songs and music is becoming increasingly widespread and diverse. These also include the use of folk songs and music which are not just knowledge or are used domestically in that tribe or region, but their use has spread to various regions of the world. Folk songs and music are not only fixed, re-recorded or displayed, but also adapted, for example in advertisements, films, musical dramas and other uses that produce economic benefits. For fixation, for example, the distribution of folk songs and music does not only use physical media such as vinyl, cassette, CD or DVD, but also digital distribution of songs and music (DEMD/Digital Electronic Media Distribution) on digital platforms, as well as in the form of RBT (Ring Back Tone), full track download and others. The various uses of folk songs and music copyrights in various media will widen the monetization of folk song and music copyrights which should have implications for increasing the economic benefits derived from royalty income.

Folk songs and music have significant differences from songs and music in general, one of which is related to the composer of the folk songs and music. The Copyright Law regulates that authors register their creations to fulfill copyright formalities for songs and music. However, for folk songs and music, it is often not known who the actual author of the folk songs and music is. A folk song and music may have been passed down from generation to generation for so long, that it is no longer possible to know who wrote it. What may be known is which tribe or community carries out preservation of the folk songs and music as part of their cultural heritage.

Then the big question becomes, do these folk songs and music immediately become public domain because they have exceeded the protection period provided by the Copyright Law?

Of course not. Protection of copyright for folk songs and music needs to be carried out carefully and by considering local wisdom, so that it is not used and recognized as the creation or property of another party, even another country that does not have the rights to copyright of these folk songs and music. The absence of legal certainty regarding who is the author of folk songs and music can affect the recording and fulfillment of rights to folk songs and music.

The Copyright Law regulates that withdrawal, collection, and distribution of royalties for song and music copyrights can generally be carried out by the author, copyright holder or collective management organization to which they belong. However, the Copyright Law does not further regulate how to withdraw, collect and distribute royalties for folk songs and music copyrights in a comprehensive, reliable and accountable manner.

In practice, the withdrawal and collection of royalties are not carried out by the authors themselves but rather by the copyright holders, namely in this case the music publishers and the authors' collective management organizations. One of the reasons is because the ability of authors to withdraw and collect copyright royalties on their

songs and music commercially is more effective and efficient when it is carried out jointly with other authors who are members of music publishers and authors' collective management organizations[2].

Ironically, in practice most folk songs and music are considered public domain so that commercial use of them is deemed not to comply with the provisions of the Copyright Law, and therefore does not need to obtain license from the author. The absence of names of authors and/or copyright holders means that folk songs and music copyrights cannot be registered with the Authors' Collective Management Organization (Lembaga Manajemen Kolektif/LMK) and/or the National Collective Management Organization (Lembaga Manajemen Kolektif Nasional/LMKN) so that the withdrawal, collection and distribution of royalties for song and/or music copyrights cannot be executed.

Although the existence of the LMKN has caused controversy in society and the Indonesian music industry because it is deemed not to comply with the mandate of the Copyright Law, LMKN carries out the withdrawal, collection and distribution of royalties for the commercial use of songs and music in public. The LMKN itself consists of Author collective management organizations ("CMO of Author/LMK Pencipta") as well as Neighbouring rights collective management organizations ("CMO of Neighbouring rights/LMK Hak Terkait")[3].

On March 30, 2021 the Government of Indonesia issued Government Regulation No. 56 of 2021 concerning Management of Song and Music Copyright Royalties ("PP 56/2021") which is the legal basis for the construction, development and implementation of a Song and/or Music Data Center (Pusat Data Lagu dan/atau Musik/"PDLM") and Song and/or Music Information System (Sistem Informasi Lagu dan/atau Musik/"SILM") , which are expected to provide legal protection for authors, copyright holders and neighbouring rights owners, including for folk songs and music.

The Directorate General of Intellectual Property at the Ministry of Law and Human Rights itself has a Communal KI page which is claimed to be a database of Indonesian culture[4]. The site page explains that traditional cultural expressions are all forms of expression of creative works, whether in the form of objects or intangibles, or a combination of both, which shows the existence of a traditional culture that is held communally and across generations. On November 23, 2021, the Directorate General of Intellectual Property at the Ministry of Law and Human Rights stated that it would launch an application update for the National Data Center for Communal Intellectual Property (PDN KIK) as the only data center that will be the inventory of Communal Intellectual Property, including folk songs and music in Indonesia[5]. The unification of all data on the PDN KIK is referred to as the embodiment of Presidential Regulation No. 39 of 2019 concerning One Indonesian Data.

Meanwhile, Law No. 5 of 2017 concerning the Advancement of Culture, State Gazette of the Republic of Indonesia (LNRI) of 2017 No. 104, Supplement to the State Gazette (TLN) No. 6055 ("Culture Advancement Law") regulates a main Cultural data system that integrates all Cultural data from various sources as an Integrated Cultural Data Collection System (Sistem Pendataan Kebudayaan Terpadu/"SPKT")[6]. The Culture Advancement Law defines culture as everything related to creativity, taste, initiative and the results of the work of the community[6],

which makes folk songs and music meet the criteria as part of culture. The Ministry of Education and Culture has implemented the orders of the Culture Advancement Law by building a system as SPKT[7].

In relation to folk songs and music as expressions of traditional culture, it becomes ambiguous and overlapping when one folk songs and music is recorded in so many databases: whether it will be registered as a copyright in the General Register of Creations (Daftar Umum Ciptaan/"DUC") at the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights as part of Intellectual Property Rights as currently in operation, then are registered at the PDLM in accordance with the mandate of PP No. 56/2021, or registered in the application of the PDN KIK at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights or will it immediately be registered in the SILM to obtain royalties or must it also be registered in the SPKT as mandated by the Culture Advancement Law. Both authors and users will be confused if they intend to record or use folk songs and music, for commercial and non-commercial purposes. This article intends to analyze the harmonization of registration folk songs and music by taking into account the prevailing laws and regulations in Indonesia.

## **2 Findings and Discussion**

### **2.1 Harmonization of Regulations Concerning the Registration of Folk Songs and Music in Indonesia**

Indonesian National Culture is the entire process and result of interactions between cultures that live and develop in Indonesia. This development is dynamic, which is marked by the existence of inter-cultural interactions both within the country and with other cultures from outside Indonesia in the dynamic process of world change. In this context, the Indonesian nation faces various problems, challenges and opportunities in advancing Indonesian National Culture[6].

One of them is the emergence of digital disruption coupled with the COVID-19 pandemic which has accelerated shifts in people's lifestyles in using and enjoying folk songs and music. Traditional songs and music that were previously only enjoyed through conventional media such as shows, radio, television, cassette tapes, CDs or VCDs (physical distribution channels), can now be enjoyed easily on digital platforms such as YouTube, Spotify, Joox and others.

Public awareness in enjoying and preserving folk songs and music can be seen from the emergence of various versions of traditional songs and music that are covered (cover songs), some of which have even been rearranged and broadcast via digital platforms. Adjustment to modern methods like this makes traditional songs and music more easily be recognized and liked by the younger generation amidst the onslaught of various types of modern music. Its placement on various digital platforms is considered to be quite effective as socialization as well as a solutive data storage for maintaining the existence of folk songs and music in the digital era.

Folk songs and music can be classified as an object of cultural advancement, namely as art[6]. Culture is considered so important in the life of the Indonesian nation and

state that it requires certainty and legal protection in its implementation. Culture shows the background, existence and history of the development of a society, in this case the various tribes and communities who carry it in Indonesia. Promotion of culture is an effort to increase cultural resilience and contribution of Indonesian culture in the midst of world civilization through the Protection, Development, Utilization and Development of Culture[6].

Songs and music in general are copyrighted. Copyright, as the exclusive right of the author, arises automatically based on the declarative principle. The IPR regime states that declaratively copyright arises after a work is realized in a tangible form, in the case of copyrighted songs this embodiment can be done through fixation. However, there are still restrictions on copyright exclusivity in accordance with statutory provisions[1].

Economic rights are the exclusive rights of the Author or Copyright Holder to obtain economic benefits from the Creation[1]. One of the appreciation of the economic rights of authors is the obligation to pay royalties by users who make commercial use of songs and music. The essence of copyright is the right to obtain exclusive economic benefits from the exploitation of the work in question[8].

The perspective of copyright as an intellectual property right in the copyright of folk songs and music is not entirely fit, because economic benefits are not the main purpose of the existence and use of folk songs and music. There is local wisdom contained in the implementation and preservation of folk songs and music in Indonesia. However, this does not mean that copyright of folk songs and music can be ignored, either in the sense that its use does not require obtaining license from the rightful party or does not need to provide economic benefits to copyright holders of folk songs and music.

The registration of copyright is based on the declarative principle, so that at the time of announcement the copyright is deemed to exist and is recognized. Some understandings mention fixation as one of the principle requirements for declarative copyright, but in relation to copyright of folk songs and music this is irrelevant. Copyright registration, in this case song and music copyright, in the Copyright Law is regulated in Chapter X concerning the registration of works and neighbouring rights products. Article 4 PP 56/2021 states that the Minister shall organize the recording of songs and music, and this is in line with the provisions of Article 64 of the Copyright Law. Article 64 paragraph (2) of the Copyright Law states that the recording of a work is not a requirement for obtaining a copyright. This is in line with the explanation regarding the declarative principle of copyright that has been explained previously.

In the interest of obtaining royalties for commercial use, Article 5 PP No. 56/2021 states that all song and music copyrights registered in the DUC will be included in the PDLM. Article 1 number (13) PP 56/2021 defines SILM as an information and data system used in the distribution of song and music royalty. Article 1 regarding General Provisions does not mention a definition regarding the PDLM, nor does the Copyright Law mention PDLM. PDLM in PP no. 56/2021 is regulated in Article 5 and Article 6, namely that the PDLM is managed by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia and regarding

parties who can access PDLM[5]. Article 8 stipulates that management of royalties is carried out by the LMKN based on integrated data in the PDLM.

In the system regulated by the Copyright Law and its implementing regulations, there are 3 (three) systems related to song and music data in the regulations governing copyright, namely the DUC, PDLM, and SILM. All three have different functions but are (supposedly) integrated.

Apart from the system regulated in the Copyright Law, PP 56/2021 and Regulation of Minister of Law and Human Rights No. 9 of 2022 concerning Implementation Regulation of Government Regulation No. 56 of 2021 concerning Management of Song and Music Copyright Royalties (“Permenkumham 9/2022”)[9], the Directorate General of Intellectual Property has the KI Communal (Communal Intellectual Property) portal and the National Data Center for Communal Intellectual Property (PDN KIK).

Thus, it can be concluded that based on the Copyright Law, song and music copyrights are registered in the DUC, then PP 56/2021 regulates that song and music copyright data will be withdrawn as feeder song and music data in PDLM. Then the song and music copyright data in PDLM will become the basis for the SILM database which will be used by users to obtain license for commercial use of song and music copyright.

In PP 56/2021 and Permenkumham 9/2022 there is no distinction regarding the registration of copyright for folk songs and music, so it can be assumed that the copyright regime treats the registration of copyright for folk songs and music as the same as copyright for songs and music in general. This is of course a question, because even though both are copyrights for songs and music, there are several fundamental differences regarding copyrights for folk songs and music as expressions of traditional culture.

Another difference that has the potential to cause problems in practice is regarding how song and music copyrights are registered, including copyrights for folk songs and music. Article 66 paragraph (2) of the Copyright Law regulates that copyright registration is carried out electronically and/or non-electronically, but in Article 4 paragraph (2) PP 56/2021 it is stated that registration is carried out electronically only. This could give rise to the interpretation that non-electronic registration could potentially result in such registration being unaccepted or invalid. Furthermore, failure to fulfill these registration requirements may result in a copyright, in this case the copyright of folk songs and music, not being included in the PDLM and therefore not included in the SILM. This resulted in authors’ rights to royalties for the use of folk song and music copyrights not being accommodated. This is detrimental to the author or copyright holder. For legal certainty for owners and users of song and music copyright, both the Copyright Law as a regulation regarding copyright, PP 56/2021 and Permenkumham 9/2022 as its implementing regulation, synergize with each other and not give rise to different interpretations for interested parties which could harm the creators and copyright holders of songs and music.

PP 56/2021 regulates that PDLM will at least contain information about what it contains. However, regarding the configuration and details regarding SILM which will contain a report on the use of songs and music which will be the basis for LMKN

to distribute royalties, it has not yet been discussed in more detail in PP 56/2021. In fact, SILM is a crucial system for regulating the commercial use of song and music copyrights. The task of defining SILM and its further use seems to be borne by LMKN as the organization that has the right to withdraw, collect and distribute royalties of song and music copyright based on PP 56/2021. This is interesting, because in the Copyright Law, the organization that has the right to withdraw, collect and distribute copyright royalties is CMO of Author.

The Song and/or Music Information System is something new for the world of Indonesian song and music copyright. The construction and development of SILM will be carried out by LMKN in collaboration with third parties in accordance with applicable statutory provisions[3]. PP 56/2021 clearly indicates the existence of PDLM and SILM as a means of registration of songs and music, therefore folk songs and music should also be registered to obtain optimal legal protection and certainty.

Indonesia consists of various tribes with their own diverse cultures, in this case folk songs and music. In order to realize the promotion of Indonesian culture in a systemized, reliable and accountable manner, the Culture Advancement Law mandates the establishment of SPKT, namely the main cultural data system that integrates all cultural data from various sources. This system should be created, managed and implemented by the Ministry of Education, Culture, Research and Technology of Republic Indonesia. As a Traditional Cultural Expression, in this case folk songs and music are part of art which is culture, folk songs and music will be registered, documented, and the data in the SPKT will be determined and updated.

In contrast to copyrights on traditional cultural expressions which are managed by the State based on the Copyright Law, in the Culture Advancement Law, apart from being registered by the regional government and the central government, culture can also be registered and documented by people according to definition, to then go through a verification process. and validation before obtaining a determination by the Minister. On August 24 2021, the government of the Republic of Indonesia promulgated Government Regulation no. 87 of 2021 concerning Implementing Regulations of Law no. 5 of 2017 concerning the Advancement of Culture, State Gazette of the Republic of Indonesia (LNRI) of 2017 No. 104, Additional State Gazette (TLN) No. 6055 (“PP 87/2021”). PP 87/2021 in Chapter III regulates the SPKT as a system that contains Objects for the Advancement of Culture, Cultural Human Resources, Cultural Organizations, and Cultural Organizations, Cultural Facilities and Infrastructure; and other data related to culture. SPKT is a connector for various databases[10]. The database as an SPKT feeder is not explained in more detail so as to allow expansion of its definition and meaning. The name is not specifically stated either, so the database can be in any form and name, as long as it carries out its functions and purposes according to the mandate of the Culture Advancement Law and PP 87/2021.

The existence of SPKT as mandated by the Culture Advancement Law, increases the number of systems where folk songs and music must be registered. SPKT itself has been realized by the Ministry of Education, Culture, Research and Technology in the form of a web portal and can be accessed by the public.

One thing that needs to be underlined is that in Article 9 paragraph (2) PP 87/2021, it is stipulated that the SPKT is a liaison for data on culture managed by minis-

tries/agencies. Although PP 87/2021 does not define a database, from its characteristics and nature PDLM can be considered as one of the databases that will participate in forming the SPKT in this case related to copyrights for folk songs and music.

Communal intellectual property data managed by the Ministry of Education, Culture, Research and Technology will be integrated into the new PDN KIK. The emergence of the new PDN KIK certainly adds to the long list of systems that regulate copyrights for folk songs and music, instead of providing answers regarding the harmonization of regulations regarding the recording of copyrights for folk songs and music in Indonesia. If the whole system related to recording copyrights for folk songs and music is to be integrated, then data from PDLM, SPKT and PDN KIK must be combined in order to create a database system that is comprehensive, reliable and accountable.

All copyright registrations for songs and music all use an electronic system as a recording medium. Even though the Copyright Law allows for non-electronic recording, it seems that the recording of song and music copyrights using an electronic system is a reasonable choice to be able to keep up with the times and provide convenience for authors, copyright holders, owners of neighbouring rights and users of works.

SILM as a new information system not only contains legal aspects which are organized and managed as objects in the information system, but also as an information technology product that must comply with applicable laws and regulations[11]. PP No. 56/2021 does not regulate in detail the content and substance of PDLM and SILM as electronic systems. The Culture Advancement Law also does not regulate the SPKT as an electronic system in detail and comprehensively. So any kind of data system as an information system that contains electronic information must comply with the provisions of Law no. 11 of 2008 concerning Information and Electronic Transactions [12] in conjunction with Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 [13] and also Government Regulation No.71 of 2019 concerning Implementation of Electronic Systems and Transactions [14].

Perhaps no other social science has expanded as quickly as law due to the rapid progress and impact of information technology (IT)[15]. Digital disruption has changed many legal aspects that regulate both the development of information technology itself, and the economic, sociological and other aspects that accompany it. Legal regulations are open to different interpretations; therefore developments are always occurring[16]. Therefore, law always develops following changes in all fields. Even though technology is always developing, existing general legal principles can accommodate regulations related to this technology.

SPKT, DUC, PDLM, KI Komunal, PDN KIK and SILM as information system, do not only contain legal aspects of copyrights, royalties, benefit sharing, art and culture and others as objects that are regulated and managed in the information system, but also as an information technology product that requires compliance with applicable laws and regulations. The number of electronic systems related to data collection and registration of folk songs and music certainly creates ambiguity and confusion. If these various systems are not synergized and given portions that are in accordance



with their character and function, they have the potential to overlap, be ineffective and inefficient.

Folk songs and music are registered on the SPKT either directly or through databases and currently the system is running according to the mandate of the Culture Advancement Law, but reports emerged that the Directorate General of Intellectual Property at the Ministry of Law and Human Rights 'took over' the SPKT and integrated it as PDN KIK, of course it creates problems because based on the mandate of the Culture Advancement Law the form of registration should be SPKT and not PDN KIK. It must be explained again correctly why the mandate of the Culture Advancement Law regarding the implementation and development of the SPKT was not implemented and instead was changed into a new system that was not mandated by the Culture Advancement Law. In a sense, even though the ministry responsible for data collection and registration of culture, changes from the Ministry of Education, Culture, Research and Technology to the Ministry of Law and Human Rights, it shouldn't be a problem, but the essence and editorial of the Culture Advancement Law should not simply be changed. Amendments to the Culture Advancement Law and PP 87/2021 need to be carried out constitutionally, in this case through an amendment to the Law and changes to related Government Regulations. Without these amendments, any government policy that differs from the mandate of the law can be categorized as unconstitutional.

Folk songs and music as copyrights are registered in the DUC which should be carried out by the State in accordance with the mandate of the Copyright Law. Then they are also registered in the PDLM as Works to then become a data feeder for SILM to obtain royalties or benefit sharing for their commercial use.

This is where the disharmonization of regulations regarding the registration of copyright for folk songs and music in Indonesia can be seen. Recognition and protection of traditional cultural expressions, in this case folk song and music copyrights, is an important point that needs to be accommodated by the Indonesian government. With the disharmony of regulations regarding the registration of copyrights for folk songs and music, it will cause both material and immaterial losses for tribes, indigenous peoples and also for Indonesia.

## **2.2 Song and Music Copyright Registration System**

Technology develops so fast, it provides alternatives for management of song and music copyright royalties throughout the world. Technology has gone beyond the physical boundaries of countries that are traditionally used in the utilization of song and music copyrights. This is where the registration and identification of copyrights for folk songs and music becomes important. Not only does it relate to ownership of the copyright of folk songs and music, but also its use requires supervision and law enforcement regarding permits for use and benefit sharing.

Regarding the system that manages song and music copyrights, the international music world has long known DRM or Digital Rights Manager. DRMs is a technology that explains and identifies the protection of digital content through intellectual property rights, and enforces the rules as determined by the rights holder or as explained

by the laws governing the digital content itself[17]. It can also be used to protect the rights of copyright holders, be they authors or subsequent content owners[18]. Using DRM to manage song and music copyright can make it easy for parties with an interest in song and music copyright. Several world-class digital platforms have utilized rights managers like this to control the intellectual property rights and content displayed on their platforms. The digital rights manager usually contains song catalogs, song and music copyrights, music publishers and aggregators, reports on the number of uses, royalty values for use, and so on.

In registering the international use of song and music copyright, there is a code that provides identification for each song and music copyright, namely ISRC or International Standard Recording Code. ISRC is a code given to a song and music copyright that has been fixed or recorded in the form of a song and music master recording. This is where the declarative principle of copyright referred to in UUHC becomes realized. Master recordings of songs and music that are uploaded on digital platforms are a form of fixation of song and music copyrights. ISRC is commonly used to identify digital use of song and music copyrights on almost all digital platforms throughout the world.

Another code used is the ISWC or International Standard Musical Work Code, which is a unique code used to identify copyrights for songs and music uploaded on various digital platforms around the world. ISWC is part of the CIS (Common Information System) plan developed by CISAC in optimizing song and music copyright royalties in the world[19]. CISAC stands for Confédération Internationale des Sociétés d'Auteurs et Compositeurs or International Confederation of Societies of Authors and Composers. CISAC is an organization whose members are CMO/LMK which manage song and music copyrights worldwide. CICAS is based in France. Wahana Musik Indonesia is an Indonesian LMK that is incorporated in CISAC and enters into reciprocal agreements with foreign CMOs/LMKs around the world to optimize the collection, collection and distribution of royalties for song and music copyrights worldwide. This reciprocal agreement is important because song and music copyrights are territorial. Royalties can only be withdrawn, collected and distributed by the CMO/LMK which has the power and operational permits in the said country. By entering into reciprocal agreements with CMOs/LMKs of other countries, Indonesian LMKs can collect royalties for song and music copyrights in other countries around the world, and vice versa, withdraw and collect royalties for song and music copyrights belonging to authors and copyright holders of foreign songs and music used in Indonesia.

The use of technology in the form of an information system that manages and records intellectual property rights, in this case song and music copyright, is an adaptation that is inevitably made to catch up with Indonesia in the realm of song and music copyright. Several leading countries in the field of music and technology have developed a system that accommodates both the recording and use of song and music copyrights.

The international song and music copyright world recognizes many types of systems for recording and using song and music copyrights. Technological advances have been implemented to obtain optimal benefits from the use of song and music

copyrights. The following are some examples of song and music copyright recording and use systems that have been in operation in several parts of the world.

The United States Copyrights Office has an online system for registering copyrights for songs and music[20]. In our opinion, this registration portal performs a function similar to the General Register of Works (DUC) which is managed by the Directorate General of Intellectual Property, Ministry of Law and Human Rights in Indonesia. The list of works that can be registered through the United States Copyright Office includes literary works, performing arts, visual arts, motion pictures, photographs and other digital contents. The copyright of songs and music itself in the registration system portal can be categorized as performing arts.

In Japan, copyright registration is not mandatory[21]. Japan does not have a special registration system for song and music copyrights. However, the initiation of registering copyrights for songs and music came from JASRAC (Japanese Society for Rights of Authors, Composers and Publishers) which has developed and operates a system called "Fluzo"[22] which is used to identify copyrighted songs and prepare reports on their use efficiently. JASRAC is a Collective Management Organization (CMO) in Japan or can be equivalent as a Lembaga Manajemen Kolektif in Indonesia. Copyright royalties collected from music users are distributed to lyricists, composers, music publishers, foreign CMOs who have reciprocal agreements with JASRAC, and other copyright owners. The system is implemented to ensure that distribution is carried out fairly as a form of JASRAC's obligations to those who entrust the management of song and music copyrights to JASRAC, including JASRAC's obligations to song and music users who pay royalties.

Another system that is widely used not only by CMOs, but also by music publishers, record labels and other organizations in the digital music ecosystem is Vericast which was developed by BMAT[23]. BMAT is a company that claims to be an innovator in music, with a mission to record all data on the use and ownership of songs and music throughout the world. CISAC is collaborating with BMAT to carry out digital identification of song copyrights digitally uploaded on the internet, so that it will help optimize the withdrawal, collection and distribution of song and music copyright royalties throughout the world[19].

In the realm of music publishing, the United States recognizes the distinction between Performing Rights Organizations ("PRO") and music publishers. The difference is that PRO only manages performing rights or the right to announce to the public the copyright of songs and music. PRO can be compared with LMK in Indonesia. United States PROs for example are BMI and ASCAP. Meanwhile, to manage mechanical rights and other rights from song and music copyrights, the United States recognizes the existence of music publishers as organizations that manage song and music copyrights apart from PRO.

These various systems that have been implemented throughout the world can be examples and also benchmark for developing a system for registration of song and music copyrights in Indonesia. When users are international parties, finding authors or copyright holders of songs and music becomes easier when it is registered in a comprehensive system. As well as to adapt the system to the use of international catalogs from countries whose CMOs collaborate with LMK in Indonesia.

Internationalization of the system for registering and using song and music copyrights in Indonesia is also necessary for the sake of synchronizing the use of Indonesian songs and music in various countries throughout the world. With the increasing use of internet-based digital platforms, the use of Indonesian songs and music internationally is also increasing. The increase in the number of listeners and users of Indonesian songs and music certainly provides a breath of fresh air for Indonesian music activists, both song and music authors, as well as performers and phonogram producers as owners of neighbouring rights. The economic and non-economic benefits obtained by every part of the song and music ecosystem in Indonesia will increase.

### 2.3 Folk Song and Music Copyrights Registration

As a form of traditional cultural expression, copyright of folk songs and music cannot be categorized as copyright of folk songs and music in the IPR regime. Copyright of folk songs and music has significant differences from copyright of folk songs and music, which means that both need to be regulated differently in Indonesia. Indonesia, which is rich with various tribes, customs and cultures, certainly cannot be limited by an IPR regime that does not accommodate the local wisdom of the indigenous people who bear this culture.

Confucius' thinking was very deep and paid attention to the characteristics of traditional cultural expressions, that regulation was more a moral issue than a regulatory one. That it is not merely the rules that are made that beat the traditions that have been carried out and maintained for years[24]. This idea is very much in line with the basic principles of regional cultural expression, in this case the copyright of folk songs and music.

One of the bodies under the UN that plays an active role in protecting intellectual property rights is the World Intellectual Property Organization (WIPO), using the term "Traditional Knowledge". This term is included in the Convention on Biological Diversity ("CBD") which provides an understanding of traditional knowledge in a broad sense, one of which includes traditional cultural expressions, known as folklore[25].

Folk songs and music as folklore, cannot simply be equated with the concept of song and music copyright in the Copyright Law[26]. Folklore is usually the result of creativity that has been passed down from generation to generation, so that original and new elements are not characteristics of folklore that can be protected by IPR. Some possible copyright reforms for traditional cultural expressions include recognition of community representatives as copyright owners; omitted the question of the duration of folklore expressions as an exception to the limited duration of copyright; and eliminates the requirement of fixation in any material form[27].

Folk songs and music clearly do not fulfill the elements of 'new' and fixation as required by copyright in the IPR regime. Historically, folk songs and music have actually lived, grown and developed much longer than songs and music that exist today. Even if there are similarities, what needs to be protected is the copyright of folk songs and music that already existed. The originality of copyright for folk songs and music is not registered administratively, either in a particular system or in writing, so there

needs to be an effort from the State, who has mandate from the Copyright Law to manage folk songs and music as traditional cultural expressions protected by Indonesian.

Likewise with fixation conditions. The creation of copyrights for folk songs and music is mostly passed down from one person to another, from one generation to the next. Fixation is a form of modern embodiment of copyright for folk songs and music, which requires the initiative of the phonogram producer. It was passed down by word of mouth since the time of the ancestors of the Indonesia. It was preserved and taught from generation to generation, some of which were written down and many others have no written evidence. Some folk songs and music were arranged and recorded by regional music fans, but because the previous records which constitute prior art do not exist or are not written, their originality is also a big question.

One of the fundamental differences between folk songs and music as culture and song and music copyright in the IPR regime is in terms of authors, where the copyright for folk songs and music is not known who the author or copyright holder is. Usually these folk songs and music have been passed down from generation to generation and have been rooted in the lives of indigenous people for many years. An appropriate method needs to be applied in searching, finding and registering which party is the appropriate copyright holder for folk songs and music. The state, as the party mandated to carry out management of the copyright of folk songs and music as expressions of traditional culture in the Copyright Law, can take assistance from the central government and regional governments as explained in the Culture Advancement Law. If synergy between organizations can be implemented optimally, the process of managing copyright for folk songs and music will certainly take place more easily, effectively and efficiently.

The Copyright Law regulates that in the event that the author of a work is not known and the creation has not been announced, copyright for the work is held by the State for the benefit of the author. In the event that a work has been announced but the author is not known, or only the alias or pseudonym of the author is listed, the copyright in the work is held by the party making the announcement for the benefit of the author. In the event that a work has been published but is unknown to the author and the party making the announcement, the copyright in the work is held by the state for the benefit of the author.

Another exception to folk songs and music as expressions of regional culture which is different from song and music copyright in the IPR regime is that because they have been passed down from generation to generation for hundreds or even thousands of years, copyright for folk songs and music is not may be time-limited. The Copyright Law stipulates that copyright has a term, and after the term expires, the copyright becomes public domain and can be used commercially by anyone. This of course cannot be applied in the case of folk songs and music as expressions of regional culture which are the heritage and legacy of the ancestors of a particular tribe and indigenous community.

Renewing the legal system is defined as compiling a law to adapt to changes in society[28]. The promulgation of PP no. 56/2021 is a response to business and technological developments in copyright, and this legal update should be appreciated.

In addition, the rights of indigenous peoples are regulated in the United Nations Declaration on the Rights of Indigenous Peoples in 2007. Based on this Declaration, as well as under several national laws, indigenous peoples have the right to maintain, control, protect and develop their intellectual property rights over cultural heritage, traditional knowledge, and traditional cultural expressions[29]. In line with this, the Copyright Law of Indonesia provides protection for traditional cultural expressions, including folk songs and music, through Chapter V concerning Traditional Cultural Expressions and Protected Creations.

Article 39 of the Copyright Law gives mandate to the State to manage folk songs and music as a form of Traditional Cultural Expression, but until now a comprehensive, reliable and accountable management has not been implemented. Users use folk songs and music as public domain because they are considered as 'public property' so there is no need to provide benefit sharing in any form to tribes and communities as the bearers or do not need to pay any royalties to anyone. In fact, the Copyright Law stipulates that copyright for traditional cultural expressions is held by the State, and Indonesian cultural wealth in the form of songs and music should not be in the public domain.

It is appropriate that moral rights and economic rights over copyright of folk songs and music are given by stating at least the name of the tribe that owns the folk songs and music and receive benefit sharing in the form of royalties and other forms, for their commercial and non-commercial use. The state is considered to be the party that manages folk songs and music, including registering and granting licenses for their use both commercially and non-commercially, So that benefit sharing and royalties are given to indigenous peoples who own the copyright of folk songs and music.

It should be emphasized that royalties in the copyright regime are recognized as benefit sharing by WIPO. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization to the Convention on Biological Diversity stipulates that these benefits include monetary and non-monetary benefits[30]. Different designations also have different consequences. Based on UUHC provisions, authors and copyright holders have the right to obtain economic benefits, namely royalties for the use of song and music copyrights. Meanwhile, the Nagoya Protocol states that the benefits of traditional cultural expressions are not only economic but broader than that. It can be seen that the individualistic and capitalistic nature of the copyright regime is not in accordance with the copyright of folk songs and music as expressions of traditional culture.

Due to its unique nature as copyright which cannot be managed under the IPR regime, it is best to administer folk songs and music copyright to SPKT, which is then connected to PDLM as a folk songs and music copyright database. The state will register copyrights for folk songs and music as expressions of traditional culture that are owned and managed by the indigenous communities that bear them, not based on geographic or political territory. If the SPKT is then removed and its function is carried out by PDN KIK then further accountability is needed. It should cover the SPKT which has been mandated by the Culture Advancement Law as well as regarding its implementation, including websites, budgets, planning and so on. It would be better if PDN KIK was called SPKT in accordance with the mandate of the Culture Advance-

ment Law. Only the ministry responsible for it would be changed from the Ministry of Education, Culture, Research and Technology to the Ministry of Law and Human Rights.

Furthermore, data regarding the copyright of folk songs and music will be included in SILM. In relation to the nature of copyright for folk songs and music, if there is a user who intends to make commercial use of the copyright for folk songs and music, the indigenous people who bear it will get benefit sharing, both in the form of economic benefits in the form of royalties, as well as non-economic benefits, namely the preservation of copyrights as cultural heritage.

The author is of the opinion that to obtain optimal benefit sharing for the use of folk songs and music copyright, in SILM it is necessary to have a special branch or nomenclature for folk songs and music copyright. So that it does not overlap with the registration and use of song and music copyright in general. The specificity of copyright of folk songs and music in SILM is one way of categorizing the principles of copyright of folk songs and music as expressions of traditional culture. The existence of this specificity will also show the privilege of folk songs and music copyrights which are managed by the State as a form of State protection for regional cultural expressions as communal intellectual property.

Furthermore, the government can issue an implementing regulation that regulates the registration of copyright for folk songs and music separately, specifically, in detail and comprehensively. This special regulation will carry out the mandate of registration and use of copyright of folk songs and music in accordance with laws and regulations that regulate copyright of folk songs and music as culture and as copyright.

Disharmonization between regulations regarding the registration of copyright for folk songs and music in Indonesia needs to be straightened out constitutionally, so that it can become appropriate, effective and efficient rules and guidelines in implementing the registration of copyright for folk songs and music. The formulation and publication of synergistic and related laws and regulations will form a better national legal system and provide legal certainty and protection for owners and/or copyright holders of folk songs and music, including supporting the creation of a copyright data collection system in for folk songs and music as expressions of traditional culture that must be protected and preserved.

### **3 Conclusion**

Based on the aforementioned discussion, there are several data collection systems (databases) related to copyrights of folk songs and music as expressions of traditional culture (as meant in the Copyright Law) and as culture (as set out in the Culture Advancement Law). A copyright for folk songs and music must be registered at least in the Sistem Pendataan Kebudayaan Terpadu (SPKT), Daftar Umum Ciptaan, Pusat Data Lagu dan/atau Musik (PDLM), Pusat Data Nasional Kekayaan Intelektual Komunal (PDN KIK) and Sistem Informasi Lagu dan/atau Musik (SILM). There are several regulations related to the entire system of registration copyrights for folk songs and music, but they are not regulated synergistically. They may cause ambigu-

ty and confusion in their implementation. It is a disharmonization of laws and regulations in Indonesia regarding the registration of copyrights for folk songs and music.

Disharmonization of regulations regarding the registration of folk songs and music needs to find a constitutional solution, either by synergizing existing regulations, making implementing regulations that can accommodate the specificity and uniqueness of copyrights for folk songs and music, or if necessary amending regulations that are deemed incompatible with registration and use copyright songs and regional music itself.

In terms of substance and material, copyrights for folk songs and music have their own uniqueness and characteristics that make them different from copyrights for songs and music in general. It can be concluded from the point of view of songwriters and regional music, the period of protection, its utilization in the form of benefit sharing and the fulfillment of the 'new' requirements and fixation as with song and music copyrights in general.

From the point of view of the electronic system as a medium or 'venue' for the implementation of the registration and use of folk songs and music copyrights, the system for registration the copyrights of folk songs and music must be organized in accordance with the provisions as an electronic system. If these various systems can be synergized or at least made more effective and efficient, it is hoped that information and use of folk songs and music copyrights can be regulated more comprehensively, neatly, accountably, and reliably. This can provide optimal protection and rights for authors and/or holders of folk songs and music copyrights and parties involved in the management of folk songs and music copyrights.

The management of folk songs and music copyrights by the State as a form of responsibility and protection of the State for traditional cultural expressions will be more optimal if it is carried out properly through an integrated and special system to accommodate the uniqueness of folk song and music copyrights.

Following up on the disharmony of regulations regarding the registration of copyrights for folk songs and music, the Government of Indonesia needs to issue an implementing regulations related to the registration and use of copyrights for folk songs and music as part of traditional cultural expressions, so that communal rights are contained therein and constitute local wisdom will be maintained and protected.

Regarding the data collection system for folk songs and music copyrights, the State is obliged to carry out its obligations to provide legal protection and certainty by establishing an integrated system from upstream to downstream. In the sense of registration and management by the State, shall include granting licenses for commercial and non-commercial use, the withdrawal, the collection and distribution of song and music copyright royalties that is carried out in a professional, responsible, good faith, reliable and accountable manner.

## References

1. Indonesia, Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta, Lembaran Negara Republik Indonesia (LNRI) Tahun 2014 No. 266, dan Tambahan Lembaran Negara (TLN) No. 5599



2. Silfiani, D.: Personal Data Protection in Relation with Data Exchange for the Purpose of Collection and Distribution of Economic Rights of the Copyright of Indonesian Songs in Digital Worldwide. Proceedings of the 2nd International Conference on Law and Human Rights 2021 (ICLHR 2021), Ministry of Law and Human Rights of Republic of Indonesia. Retrieved from <https://www.atlantis-press.com/proceedings/iclhr-21/125963805>
3. Indonesia, Peraturan Pemerintah No. 56 Tahun 2021 tentang Pengelolaan Royalti Lagu dan/atau Musik, Lembaran Negara Republik Indonesia (LNRI) Tahun 2021 No. 86, Tambahan Lembaran Negara (TLN) No. 6675
4. Search results on the page [http://kikomunal-indonesia.dgip.go.id/Jenis/1/besar-kultur-tradisional?page=1&q=&prov\\_id=16](http://kikomunal-indonesia.dgip.go.id/Jenis/1/besar-kultur-tradisional?page=1&q=&prov_id=16) on August 26, 2023
5. Kemenkumham Luncurkan Aplikasi Pusat Data nasional Kekayaan Intelektual Komunal, retrieved from <https://dgip.go.id/artikel/detail-artikel/kemenkumham-luncurkan-aplikasi-pusat-data-nasional-kekayaan-intelektual-komunal?kategori=Berita%20Resmi%20Indikasi%20Geografis>
6. Indonesia, Undang-Undang No. 5 tahun 2017 tentang Pemajuan Kebudayaan, Lembaran Negara Republik Indonesia (LNRI) Tahun 2017 No. 104, Tambahan Lembaran Negara (TLN) No. 6055
7. Retrieved from <https://spkt.kemdikbud.go.id/#spkt>
8. Sardjono, A.: Hak Cipta Bukan Hanya Copyright. *Jurnal Hukum dan Pembangunan* 40(2), 256 (2010)
9. Indonesia, Peraturan Menteri Hukum dan Hak Asasi Manusia No. 9 tahun 2022 tentang Peraturan Pelaksanaan Peraturan Pemerintah No. 56 Tahun 2021 tentang Pengelolaan Royalti Lagu dan/atau Musik, Berita Negara Tahun 2022 No. 437
10. Indonesia, Peraturan Pemerintah No. 87 Tahun 2021 tentang Peraturan Pelaksana Undang-Undang No. 5 tahun 2017 tentang Pemajuan Kebudayaan, Lembaran Negara Republik Indonesia (LNRI) Tahun 2021 No. 191, Tambahan Lembaran Negara (TLN) No. 6713
11. Silfiani, D.: Song and Music Information System As A Protection of Song Copyrights in Indonesia. *Jurnal Ilmiah Kebijakan Hukum* 16(1), 1-6 (2022)
12. Indonesia, Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Lembaran Negara Republik Indonesia (LNRI) Tahun 2008 No. 58, Tambahan Lembaran Negara (TLN) No. 4843
13. Indonesia, Undang-Undang No. 19 Tahun 2016 tentang Perubahan atas Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Lembaran Negara Republik Indonesia (LNRI) Tahun 2016 No. 251, Tambahan Lembaran Negara (TLN) No. 5952
14. Indonesia, Peraturan Pemerintah No.71 tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik, Lembaran Negara Republik Indonesia (LNRI) Tahun 2019 No. 185, Tambahan Lembaran Negara (TLN) No. 6400
15. Endeshaw, A.: *Hukum E-Commerce dan Internet dengan Fokus di Asia Pasifik*. Jogjakarta: Pustaka Pelajar (2007).
16. Mertokusumo, S.: *Penelitian Hukum, Sebuah Pengantar*. Jogjakarta: Penerbit Liberty (2004).
17. Riswandi, B.A.: *Hak Cipta di Internet Aspek Hukum dan Permasalahannya di Indonesia*. Jogjakarta: FH UII Press (2009).
18. Dingley, F.W.: *What is Digital Rights Management?* (2016) retrieved from <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1121&context=libpubs>
19. Confédération Internationale des Sociétés d'Auteurs et Compositeurs: CISAC and BMAT Sign Landmark Agreement for Easier Identification of Digital Music All Over The World, Press Release dated 3 June, 2014

20. US Copyright Office, Registration Portal, retrieved from <https://www.copyright.gov/registration/>
21. WIPO, Japan's Responses to WIPO Questionnaire for Survey on Copyright Registration and Deposit System, retrieved from <https://www.wipo.int/export/sites/www/copyright/en/registration/replies/pdf/japan.pdf>
22. Japanese Society For Rights of Authors, Composers and Publishers (JASRAC), Distribution of Royalties, retrieved from <https://www.jasrac.or.jp/ejhp/authors/distribution.html>
23. BMAT, About Us, retrieved from <https://www.bmat.com/cmo/>
24. Herlihy, D., and Zhang, Y.: Music Industry and Copyright Protection in United States and China. *Global Media and China* 1 (4), 394 (2016)
25. Bustani, S.: Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat. *Jurnal Hukum Prioris* 2 (4), 253 (2010)
26. Sardjono, A.: Perlindungan Folklore: Apakah Rezim Hak Cipta Memadai? *Jurnal Hukum Internasional* 1(1), 128 (2003).
27. Nwauche, ES.: Protecting Expressions of Folklore Within The Right To Culture in Africa. *Potchefstroom Electronic Journal* 13 (4), 82-83 (2010).
28. Sulisty, A.: Reformasi Hukum Ekonomi Indonesia. Surakarta: LPP UNS dan UNS Press (2008).
29. WIPO, Intellectual Property and Folk, Arts and Cultural Festival, Practical Guide, 2018, retrieved from [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1043\\_2018.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1043_2018.pdf)
30. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization to the Convention on Biological Diversity

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