



Management of Royalties on Songs and/or Music in Indonesia

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Abstract

The existence of a royalty system is a form of protection and fulfillment of economic rights for creators, copyright holders and owners of related rights to songs and/or music. In order to carry out royalty management for songs and/or music in Indonesia, a Collective Management Institution (which is referred to as LMK) and a National Collective Management Institution (which is referred to as LMKN) were formed. LMK and LMKN in this case have the authority to attract, collect, and distribute royalties. Through this article, the author wants to explain the management of royalties on songs and/or music in Indonesia, related to institutions authorized to carry out royalty management on songs and/or music in Indonesia, the implementation of royalty management on songs and/or music, as well as the settlement efforts that can be taken if there is a dispute over royalty management on songs and/or music in Indonesia. This research is a normative juridical research type, using the Legislation Approach and Conceptual Approach. Through this research, it can be concluded that LMK and LMKN are both entitled to carry out royalty management of songs and/or music in Indonesia. Where the withdrawal of royalties is carried out by LMKN, while the collection and distribution are carried out by LMK and LMKN. Regarding dispute resolution efforts, if there is a dispute regarding the distribution of royalties, the resolution is mediation through LMKN, while for royalty withdrawal disputes can be resolved in accordance with the provisions contained in the Copyright Law.

Keywords: Copyright; Royalty Management; Royalty Withdrawal Disputes

A. Introduction

Intellectual Property Rights (IPR) is a right that protects the overall intellectual activity that produces a creation/work in the industrial world, be it in the form of science, written works, or art.¹ One part of IPR that is very familiar with people's daily lives is Copyright. The scope

¹ Nuzulia Kumala Sari, *Hukum Hak Kekayaan Intelektual: Dasar-dasar Hukum Kekayaan Intelektual di Indonesia* (Depok: RajaGrafindo Persada, 2021), 12.

of Copyright itself is quite broad, including scientific, artistic, and literary.² Copyright is one part of intellectual property with the broadest scope of protected objects.³ Copyright itself is also a form of recognition of human rights, where everyone can express themselves freely, whether in the form of sound, images, writing, or other creations that have artistic value.⁴

Copyright is an exclusive right to publish or reproduce his work or give permission for it, which is owned by the creator or assignee.⁵ There are 2 (two) kinds of rights attached to Copyright, namely moral rights and economic rights. Based on Article 6 of the Bern Convention, moral rights are claims to authorship rights (integrity right) and objections to certain modifications or other contrary actions (attribution right). Moral rights are rights that are eternally attached to the Creator, namely to include the name of the Creator.⁶ Meanwhile, economic rights are the exclusive rights of the Creator or Copyright Holder to obtain economic benefits for the creation.⁷

Even though it has obtained legal protection, the fact is that there are still many people who do not heed the existence of copyright and even consciously or unconsciously have violated the moral rights and economic rights of copyright owners. One of the scopes of Copyright that is often infringed upon is in the field of art, especially related to songs and/or music.⁸ Songs and/or music itself is a very common and widely encountered object of Copyright, so violations of it often occur, especially violations of its economic rights. One form of protection provided by the legislation on the economic rights of the Creator emerges through the existence of a royalty system. The royalty system here is an effort to fulfill the economic rights of the Creator, which is also a form of appreciation for one's copyrighted work. The existence of the royalty system itself requires any party who wants to use or utilize songs and/or music commercially to make royalty payments to the Copyright owner. If the utilization of the song and/or music is not accompanied by royalty payments, then it can be classified as a form of infringement of copyright and can be subject to sanctions based on the provisions contained in the Law No. 28 of 2014 on Copyright (Copyright Law).

² Rahmi Jened, *Hukum Hak Cipta (Copyright Law)*, (Bandung: Citra Aditya Bakti, 2014), 90.

³ "Kekayaan Intelektual," Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM R.I, accessed October 24, 2022, <https://www.dgip.go.id/tentang-djki/kekayaan-intelektual>.

⁴ Edward James Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu dan/atau Musik," *Jurnal Ilmiah Kebijakan Hukum* 14, No. 3 (2020): 554, <http://dx.doi.org/10.30641/kebijakan.2020.V14.553-578>.

⁵ H. O. K. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellektual Property Rights)*, (Jakarta: Raja Grafindo Persada, 2003), 58.

⁶ Law No. 28 of 2014 on Copyright, Article 5.

⁷ Law No. 28 of 2014 on Copyright, Article 8.

⁸ Iin Indriani, "Hak Kekayaan Intelektual: Perlindungan Hukum Terhadap Hak Cipta Karya Musik," *Jurnal Ilmu Hukum* 7, No. 2 (2018): 255, <http://dx.doi.org/10.30652/jih.v7i2.5703>.

In order to support the implementation of the royalty system, the Collective Management Institution (LMK) emerged as a royalty management institution for songs and/or music as stipulated by the Copyright Law. This LMK was formed to fulfill the economic rights of copyright owners and so that the management of royalties on songs and/or music in Indonesia can run well and take place efficiently. In supporting the management of royalties on songs and/or music, Government Regulation No. 56 of 2021 concerning the Management of Royalties for Copyright of Songs and/or Music was formed which is an implementing regulation of the Copyright Law, as well as Regulation of The Minister of Law and Human Rights No. 9 of 2022 about the Implementation of Government Regulation No. 56 of 2021 about the Management of Royalties for Copyright of Songs and/or Music. Government Regulation No. 56 of 2021 and Regulation of The Minister of Law and Human Rights No. 9 of 2022 then provided a new institution in addition to the LMK which is also authorized to manage royalties on songs and/or music, called the National Collective Management Institution (LMKN).

Payment of royalties for the commercial use of songs and/or music itself is not a new thing, considering that this arrangement has been regulated by the Copyright Law. The existence of LMK and LMKN, which aims to ensure that royalty payments can be made properly for the fulfillment of the economic rights of the creators, then creates problems that can harm the parties who use or utilize songs and/or music. The problem is about the double royalty withdrawal. Maulana Yusran, Deputy Chairperson of the Indonesian Hotel and Restaurant Association (PHRI) said that there are still frequent problems with royalty collection by the LMK and LMKN, where both are equally collecting royalties.⁹ The problem of double royalty collection by LMK and LMKN can certainly cause losses to users who use or utilize a work commercially. Where they are then required to spend twice as much to pay royalties as a consequence of using songs and/or music for their commercial interests. The issue of double royalty withdrawal is felt to be a result of the lack of clarity in the existing laws and regulations. The ambiguity is because the existing laws and regulations do not explicitly describe the authority of LMK and LMKN in managing royalties on songs and/or music in Indonesia, and there are still arrangements that contain multiple interpretations. Where it certainly indicates the existence of vagueness in the legislation, especially related to copyright and royalty management of songs and/or music in force in Indonesia.

⁹ Abdul Basith Bardan, "APPBI Berharap Tak Ada Dobel Penarikan Royalti Lagu dan Musik," *Nasional Kontan.co.id*, April 6, 2021, <https://nasional.kontan.co.id/news/appbi-berharap-tak-ada-dobel-penarikan-royalti-lagu-dan-musik>.

This research will describe the management of royalties on songs and/or music in Indonesia, which is related to the institution authorized to carry out royalty management on songs and/or music in Indonesia, the implementation of management, and legal remedies that can be passed if there is a dispute in the management of royalties on songs and/or music. The type of research used in this research is normative juridical research. This type of normative juridical research is conducted by examining pre-existing library materials.¹⁰ Where then, the research approach that the author uses in this research is a statute approach and conceptual approach. The source of legal material in this writing consists of primary legal materials, in the form of Law No. 28 of 2014 on Copyright, Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Regulation of The Minister of Law and Human Rights No. 9 of 2022 on the Implementation of Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music; secondary legal materials in the form of books, as well as legal journals; and non-legal materials relevant to the topic of this research. These various sources are then collected using the library research method as a method of collecting legal materials in this research.

B. Discussion

B. 1. Collective Management Institution (LMK) and National Collective Management Institution (LMKN) as Royalty Management Institutions for Songs and/or Music in Indonesia

Copyright as one part of IPR is an exclusive right for creators to reproduce their work and to obtain economic rights from their creations.¹¹ Copyright actually is a form of protection of intellectual work. Everyone is basically prohibited from copying and/or using a work commercially. However, the commercial use of a work can still be done as long as the users pay royalties to the Creator, Copyright Holder, and the owner of Related Rights through the Collective Management Institution.¹² The payment of royalties by these users must also be accompanied by an agreement made with the LMK which contains an obligation to pay royalties for Copyright and Related Rights used.¹³ Therefore, the obligation to pay royalties on

¹⁰ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2009), 13–14.

¹¹ Afifah Husnun U.A., Muhammad Hafiz, Rachmalia Ramadhani, Wuri Handayani Balerina, “Mekanisme Pengelolaan Hak Royalti Musik Oleh LMK & LMKN ditinjau dari Peraturan Pemerintah No 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu dan/atau Musik,” *Padjadjaran Law Review* 9, no. 1 (2021): 2.

¹² Law No. 28 of 2014 on Copyright, Article 87(2).

¹³ Law No. 28 of 2014 on Copyright, Article 87(3).

a work which in this discussion is a song and/or music arises when the song and/or music is used for commercial purposes.

The existence of a royalty management institution for songs and/or music in Indonesia itself is a mandate from the Copyright Law. The regulation of LMK as a royalty manager in Indonesia in the Copyright Law is contained in Article 1 Number 22, regarding the definition of LMK which explains that LMK obtains power from the Creator, Copyright Holder, and/or owner of Related Rights to manage their economic rights in the form of collecting and distributing royalties. While the safeguarding of LMKn as a royalty manager in the Copyright Law can be seen from Article 89 Paragraph (2) which reads "both Collective Management Institutions as referred to in Paragraph (1) have the authority to attract, collect, and distribute royalties from commercial users." Where we can see that the provision also refers to Article 89 Paragraph (1) of the Copyright Law which discusses the national Collective Management Institution. Thus, through this provision, it can be understood that the national Collective Management Institution also has the authority to attract, collect, and distribute royalties from commercial users. Therefore, both LMK and LMKn, have responsibilities related to the management of royalties for songs and/or music in Indonesia.

The regulation of the LMK and LMKn in the Copyright Law is considered to still contain many weaknesses because it still contains the potential for multiple interpretations. This can be seen from the emergence of problems between LMK and LMKn related to the authority to manage royalties on songs and/or music in Indonesia. The problem stems from the existence of Regulation of The Minister of Law and Human Rights No. 29 of 2014 concerning Procedures for Application and Issuance of Operational Licenses and Evaluation of LMK.¹⁴ Regulation of The Minister of Law and Human Rights No. 29 of 2014 then gave rise to LMKn which has the same authority as LMK, namely to attract, collect and distribute royalties, but without any conditions that must be met, unclear legal form, no power of attorney from the Creator, Copyright Holder or Related Rights Owner, and no operational license.¹⁵ The legal conflict then widened when Yasona Laoly, Minister of Law and Human Rights inaugurated the LMKn board and gave a ban in the form of a statement for LMK-LMK to collect and distribute royalties.¹⁶ LMK KCI even filed a judicial review of Regulation of The Minister of Law and

¹⁴ Asma Karim, "Kepastian Hukum Lmkn Sebagai Lembaga Terpadu Satu Pintu Penghimpun dan Pendistribusi Royalti Hak Cipta dan Hak Terkait Bidang Musik dan Lagu", *Legalitas: Jurnal Hukum* 13, no.1 (2021), <http://dx.doi.org/10.33087/legalitas.v13i1.232>.

¹⁵ *Ibid.*

¹⁶ FX Ismanto, "Menkumham Tak Izinkan LMK Kelola Royalti, Ini Respon KCI," *Tribunnews*, February 8, 2019, <https://www.tribunnews.com/seleb/2019/02/08/menkumham-tak-izinkan-lembaga-manajemen-kolektif-lmk-kelola-royalti>.

Human Rights No. 29 of 2014 to the Supreme Court on December 5, 2018, and registered on January 2, 2019, with Register No. 7P/HUM/2019.¹⁷

One of the problems questioned in the lawsuit is the writing of the LMKN name. The provisions of Article 89 of the Copyright Law use a small "n" in its writing, namely LMKn and not LMKN. Because it is written using a small "n" letter, the word "national" in LMKn as referred to in the Copyright Law is an adverb and not part of the name. The writing will have a different meaning when it is written with a capital "N", which is part of the name.¹⁸ Where Regulation of The Minister of Law and Human Rights No. 29 of 2014 then gave rise to LMKN whose writing uses a capital "N". This is not in accordance with what is stated in the Copyright Law and can be called a flawed interpretation of the norm.¹⁹ However, Regulation of The Minister of Law and Human Rights No. 29 of 2014 was later revoked and replaced with Regulation of The Minister of Law and Human Rights No. 36 of 2018 concerning Procedures for Application and Issuance of Operational Licenses and Evaluation of Collective Management Institutions. Over time, Regulation of The Minister of Law and Human Rights No. 36 of 2018 was then amended by Regulation of The Minister of Law and Human Rights No. 20 of 2021 concerning Regulations on the Implementation of Government Regulation No. 56 of 2021 concerning the Management of Royalties for Copyright of Songs and/or Music. Where for the next Regulation of The Minister of Law and Human Rights No. 20 of 2021 was revoked and replaced by Regulation of The Minister of Law and Human Rights No. 9 of 2022 which is valid until now. However, the provisions contained in the regulation are still about LMKN whose writing is using the letter "N" capitalized and not "LMKn" written with a small "n" in accordance with the provisions in the Copyright Law.

In addition to the problem of writing the name of the institution, the existence of LMKN as a royalty manager raised by Regulation of The Minister of Law and Human Rights No. 29 of 2014 is also felt to have no strong and clear legal basis. In contrast to LMKs that do obtain authorization from creators, copyright holders, and owners of related rights and obtain operational licenses to carry out royalty management for songs and/or music in Indonesia, LMKN does not have such requirements. The obligation to apply for an operational license is contained in Article 88 Paragraph (1) of the Copyright Law, which states that the Collective Management Institution must apply for an operational license to the Minister of Law and

¹⁷ Asma Karim, *op.cit.*, 68.

¹⁸ Agus Sardjono, "Problem Hukum Regulasi LMK & LMKN sebagai Pelaksanaan UU No. 28 Tahun 2014," *Jurnal Hukum & Pembangunan* 46, no. 1 (2016): 50, <http://dx.doi.org/10.21143/jhp.vol46.no1.64>.

¹⁹ FX Ismanto, *op.cit.*

Human Rights. The conditions that must be met in relation to the LMK operational license, including: in the form of an Indonesian legal entity that is non-profit; receiving authorization from the Creator, Copyright Holder, or owner of Related Rights to attract, collect, and distribute royalties; have a power of attorney as a member of at least 200 (two hundred) creators for Collective Management Institutions in the field of songs and/or music that represent the interests of creators and at least 50 (fifty) people for Collective Management Institutions representing owners of Related Rights and/or other Copyright objects; aims to attract, collect, and distribute royalties; and is able to attract, collect, and distribute royalties to creators, copyright holders, or owners of related rights.²⁰ LMK will be prohibited from attracting, collecting, and distributing royalties if it does not have an operational license from the Minister of Law and Human Rights.²¹

Regarding the overlapping authority of LMK and LMKN in managing royalties on songs and/or music in Indonesia, the Directorate General of Intellectual Property (DJKI), the Ministry of Law and Human Rights (Kemenkumham), the National Collective Management Institute (LMKN) and 8 (eight) Collective Management Institutions (LMK) such as KCI, WAMI, RAI, SELMI, PAPPRI, ARDI, ARMINDO, and SMI then agreed on the Bali Declaration regarding the collection of royalties for songs and/or music with a 1 (one) door system on April 26, 2019.²² Through the Bali Declaration, there was an agreement that LMKN would be the only body authorized to collect, collect, and distribute royalties from users of commercial songs and/or music in Indonesia.²³ The existence of the Bali Declaration should be used as an answer to the problem of overlapping authority of LMK and LMKN that had occurred. The agreement in the Bali Declaration came before the existence of Government Regulation Number 56 of 2021 concerning the Management of Royalties for the Copyright of Songs and/or Music and Regulation of The Minister of Law and Human Rights Number 9 of 2022 concerning the Implementation of Government Regulation Number 56 of 2021 concerning the Management of Royalties for Copyright of Songs and/or Music. Whereas, the existing laws and regulations regulate the management of royalties on songs and/or music in

²⁰ Law No. 28 of 2014 on Copyright, Article 88(2).

²¹ Law No. 28 of 2014 on Copyright, Article 88(3).

²² "Deklarasi Bali Sepakati Pemungutan Royalti Musik Satu Pintu Jadi Lebih Tertib dan Transparan," DJKI, accessed May 13, 2023, <https://www.dgip.go.id/artikel/detail-artikel/deklarasi-bali-sepakati-pemungutan-royalti-musik-satu-pintu-jadi-lebih-tertib-dan-transparan?kategori=Berita%20Resmi%20Desain%20Industri>.

²³ *Ibid.*

Indonesia more explicitly when compared to the arrangements contained in the Copyright Law, but all of the new laws and regulations still do not use the provisions of the 1 (one) door system as contained in the Bali Declaration.

It has been explained earlier that the obligation to pay royalties on songs and/or music arises from the use of songs and/or music for commercial purposes. The obligation to pay royalties for commercially utilized songs and/or music is done through LMK, which must be accompanied by an agreement between the user and the relevant LMK, which contains the obligation to pay royalties.²⁴ This is then specifically emphasized in Article 3 of Government Regulation No. 56 of 2021 which states that anyone can make commercial use of songs and/or music in the form of commercial public services by paying royalties to the Creator, Copyright Holder, and/or owner of Related Rights through LMKN. That commercial use of songs and/or music in the form of commercial public services can be done by submitting a license application to the Copyright Holder or the owner of the Related Rights through LMKN.²⁵ Through this, it can be understood that to use songs and/or music commercially, there is a requirement for users to pay royalties, make agreements with LMK, and submit License Applications to LMKN. The recording of the License Agreement itself is carried out by the Minister of Law and Human Rights as explained in Article 9 Paragraph (2) of Government Regulation No. 56 of 2021. The implementation of this license is also accompanied by an obligation to provide reports on the use of songs and/or music to LMKN through the Song and Music Information System (SILM),²⁶ which is regulated in the provisions of Article 37 Regulation of The Minister of Law and Human Rights No. 9 of 2022.

Song and Music Information System (SILM) is an information and data system used in the distribution of song and/or music royalties.²⁷ SILM contains data about all songs and/or music that have been recorded and sourced from the song and/or music data center managed by DJKI.²⁸ SILM itself is managed by LMKN.²⁹ SILM can only be accessed by LMK, LMKN,

²⁴ Law No. 28 of 2014 on Copyright, Article 87(2)–(4).

²⁵ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 9(1).

²⁶ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 9(3).

²⁷ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 1(14).

²⁸ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 38.

²⁹ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 39(1).

creators and/or their attorneys, copyright holders and/or their attorneys, owners of related rights and/or their attorneys, and users who utilize songs and/or music for commercial purposes only.³⁰ Article 3 Paragraph (2) of Government Regulation No. 56 of 2021 then mentions the forms of public services that are commercial in nature, which include: seminars and commercial conferences, restaurants, cafes, pubs, bars, bistros, nightclubs, discotheques, music concerts, airplanes, buses, trains, ships, exhibitions and fairs, cinemas, telephone waiting tones, banks, offices, shops, recreation centers, television broadcasting institutions, radio broadcasting institutions, hotels, hotel rooms, hotel facilities, and karaoke businesses. Therefore, the use of songs and/or music in these forms of public services will be subject to the obligation to make royalty payments. If the obligation is not fulfilled, the user can be said to have violated the economic rights of the Creator, Copyright Holder, or related Rights owner, and can be subject to sanctions for Copyright infringement in accordance with the provisions of the applicable laws and regulations.

Payment of royalties to Creators, Copyright Holders, and/or owners of Related Rights through LMKN,³¹ is a form of royalty management implementation which is the duty of LMKN.³² The provisions in Article 89 of the Copyright Law, Article 18 of Government Regulation No. 56 of 2021, and Regulation of The Minister of Law and Human Rights No. 9 of 2022 then explain that LMKN consists of LMKN Creators and LMKN owners of Related Rights, each of which represents the interests of the Creator and the owner of the Related Rights. In carrying out this royalty management, LMKN is responsible to the Minister of Law and Human Rights.³³

The implementation of the authority to manage royalties on songs and/or music carried out by LMK and LMKN, also gives obligations to LMK and LMKN to carry out financial audits and performance audits conducted by public accountants, at least once a year, the results of which are then announced to the public through 1 (one) national print media and 1 (one) electronic media. Provisions regarding financial audits and performance audits for LMK itself are contained in the provisions of Article 90 of the Copyright Law, and for LMKN are

³⁰ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 39(2).

³¹ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 3.

³² Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 4.

³³ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 2.

contained in Article 17 of Government Regulation No. 56 of 2021 and Article 27 of Regulation of The Minister of Law and Human Rights No. 9 of 2022. Not only the obligation to carry out financial audits and performance audits, LMK and LMKN must also undergo an evaluation at least 1 (one) time a year carried out by the Minister of Law and Human Rights. Where for further based on the provisions in Article 43 Regulation of The Minister of Law and Human Rights No. 9 of 2022, the evaluation of LMK and LMKN is carried out by a supervisory team established by the Minister of Law and Human Rights. If from the results of the evaluation the LMK is declared not to comply with the provisions of Article 88, Article 89 Paragraph (3), Article 90, or Article 91 Copyright Law, the LMK operational license will be revoked by the Minister of Law and Human Rights.

The next obligation is regarding the membership of LMK and LMKN. LMK members must consist of at least 200 (two hundred) creators for LMKs that represent the interests of creators, and at least 50 (fifty) Related Rights owners for LMKs that represent the interests of Related Rights owners. Membership in LMK is different from membership in LMKN, where LMKN members are called commissioners. In carrying out royalty management on songs and/or music, LMKN consists of LMKN Creator and LMKN Related Rights owners. Commissioners of LMKN Creators and LMKN owners of Related Rights consists of 5 (five) people for each LMK.³⁴ LMKN Creator commissioners come from elements: 1 (one) representative of the government; 3 (three) representatives of LMK Creator; and 1 (one) creator. Meanwhile, the LMKN commissioners of Related Rights owners come from: 1 (one) a representative of the government; 3 (three) representatives of LMKs of Related Rights owners; and 1 (one) Related Rights owner. Where the owners of the Related Rights consist of performers, phonogram producers, or broadcasting institutions.³⁵ Regarding the determination of LMKN commissioners, the government representatives are appointed by the Minister of Law and Human Rights. The determination of LMK representatives of Creators, LMK representatives of Related Rights owners, Creators, and Related Rights owners is based on an agreement between LMKs. Henceforth, LMKN Creators and LMKN owners of Related Rights will be merged into 1 (one) main LMKN.³⁶

³⁴ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 7.

³⁵ Law No. 28 of 2014 on Copyright, Article 1(5).

³⁶ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 8(1).

The Commissioner of LMKN in carrying out the management of royalties on songs and/or music is assisted by a daily Executive.³⁷ Daily Executive is a person who has the task of withdrawing and distributing royalties under LMKN.³⁸ The Daily Executive here is the coordinator of the withdrawal, collection, distribution of royalties and carries out the administrative functions of LMKN.³⁹

B. 2. Implementation of Royalty Management on Songs and/or Music for Members of the National Collective Management Institution (LMKN) and Non-Members of the National Collective Management Institution (LMKN)

The provisions in Government Regulation No. 56 of 2021 and Regulation of The Minister of Law and Human Rights No. 9 of 2022 regarding the definition of LMKN, explain that LMKN has the authority to collect, collect and distribute royalties. Meanwhile, in the definition of LMK both contained in the Copyright Law, Government Regulation No. 56 of 2021, and Regulation of The Minister of Law and Human Rights No. 9 of 2022, it is explained that LMK has the task of managing the economic rights of Creators, Copyright Holders, and/or owners of Related Rights in the form of collecting and distributing royalties. Through these provisions, it can be understood that LMKN has the authority to attract, collect, and distribute royalties, while LMK has the authority only to collect and distribute royalties.

Regarding the withdrawal of royalties, LMKN withdraws royalties from people who make commercial use of songs and/or music in the form of commercial public services for Creators, Copyright Holders, and owners of Related Rights who have become members of an LMK. Furthermore, Paragraph (2) of the article provides an explanation that in addition to withdrawing royalties for creators, copyright holders, and owners of related rights who have become members of an LMK as referred to in Paragraph (1), LMKN withdraws royalties for creators, copyright holders, and owners of related rights who have not become members of an LMK. Therefore, through the provisions regarding the withdrawal of royalties in the Copyright Law and Government Regulation No. 56 of 2021, several important things can be understood regarding the withdrawal of royalties on songs and/or music. First, the withdrawal of royalties

³⁷ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 9(1).

³⁸ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 1(11).

³⁹ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 10(1).

on songs and/or music is carried out by LMKN and not by LMK. Second, LMKN has the right to withdraw royalties on songs and/or music for creators, copyright holders, and owners of related rights who have become members, as well as creators, copyright holders, and owners of related rights who have not become members of LMK.

The withdrawal of royalties on songs and/or music has caused quite serious problems and can be said to be detrimental to users who utilize songs and/or music for commercial purposes who have carried out their obligations to pay royalties. The problem is the double royalty withdrawal, which is done by LMK and by LMKN against a hotel.⁴⁰ The withdrawal of royalties which should have been the duty and authority of LMKN alone was also carried out by LMK. However, this problem can actually be understood, where the provisions in the Copyright Law are quite ambiguous. The problem of double royalty withdrawal has been going on for a long time, even before the existence of Government Regulation No. 56 of 2021 and Regulation of The Minister of Law and Human Rights No. 9 of 2022. The problem of the authority of LMK and LMKN should not have happened, considering that an agreement has been reached to carry out royalty management for songs and/or music in Indonesia with a 1 (one) door system as agreed in the Bali Declaration on April 26, 2019. But unfortunately, until now the confusion of the authority of the LMK and LMKN contained in the Copyright Law has not been corrected.

The confusion is related to the overlapping authority of LMK and LMKN described in the Copyright Law. Article 88 Paragraph (2) of the Copyright Law explains that there are conditions that must be met by LMK in order to obtain an operational license, which in letter (d) states that LMK has the aim of attracting, collecting, and distributing royalties; and in letter (e) states that LMK is expected to be able to attract, collect, and distribute royalties to creators, copyright holders, or owners of related rights. Through this, it can be understood that LMK actually has the authority to withdraw royalties. Meanwhile, based on the provisions in Article 89 Paragraph (2) of the Copyright Law, it is stated that LMKN also has the right to withdraw royalties. The existence of this provision in the Copyright Law then creates confusion which ultimately has an impact on the emergence of the problem of double royalty withdrawal.

In addition to the withdrawal of royalties, the authority of the royalty management institution for songs and/or music is to collect royalties. After withdrawing royalties, the royalties must not be directly distributed to the Creator, Copyright Holder and Related Rights

⁴⁰ Fajar Pebrianto, "Pengusaha Hotel Ungkap Masalah Tagihan Ganda Royalti Lagu dan Musik," *Tempo.co*, April 9, 2021, <https://www.tempo.co/ekonomi/pengusaha-hotel-ungkap-masalah-tagihan-ganda-royalti-lagu-dan-musik-523547>

owner, but first collected and then distributed. The LMKN is entitled to collect royalties on songs and/or music from users⁴¹ and any royalties collected will be compiled in the LMKN account.⁴² The collection done by LMKN can also be known by all existing LMKs.⁴³ During the royalty collection period by LMKN, LMKN coordinates and afterwards will determine the amount of royalties that each LMK is entitled to.⁴⁴ Which henceforth, LMKN will establish provisions regarding guidelines for determining the amount of royalties and then ratified by the Minister of Law and Human Rights. The guidelines intended in this case were then realized through the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number HKI.OT.03.01-02 of 2016.

Previously, the author also briefly explained the mechanism for collecting royalties on songs and/or music, where LMKN not only collects royalties for creators, copyright holders, and owners of related rights who have become LMK members, but also collects royalties for creators, copyright holders, and owners of related rights who have not become LMK members. In this collection, if the Creator, Copyright Holder, and the owner of the Related Rights have become members of the LMK then there is no problem whatsoever, where the royalties obtained will be distributed to the Creators, Copyright Holders, and owners of the Related Rights. In contrast to this, for creators, copyright holders, and owners of related rights who have not become members of the LMK, then in accordance with the provisions contained in Article 15 Paragraph (1) Government Regulation No. 56 of 2021 and Article 20 Paragraph (3) Regulation of The Minister of Law and Human Rights No. 9 of 2022, the royalties are not distributed and only collected by the LMKN.

Royalties for Creators, Copyright Holders, and owners of Related Rights who are not yet members of the LMK, which are collected by the LMKN will be announced for a period of 2 (two) years to be known to the Creators, Copyright Holders, and owners of Related Rights who are entitled to them.⁴⁵ If within that period, the Creator, Copyright Holder, and the owner of the Related Rights to the song and/or music are known and/or have become members of an

⁴¹ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 13(1).

⁴² Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 19.

⁴³ *Ibid.*

⁴⁴ Law No. 28 of 2014 on Copyright, Article 89(3); Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 13(2).

⁴⁵ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 15(1); Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 24(1).

LMK, then the royalties will be distributed.⁴⁶ However, if the Creator, Copyright Holder, and the owner of the Related Rights who are entitled to the royalties within a predetermined period of time are not known and/or do not become members of an LMK, then the related royalties will be used as a reserve fund by LMKN.⁴⁷

Royalties collected by LMKN are not necessarily only to be distributed to Creators, Copyright Holders, and owners of Related Rights, but can also be used as operational funds and reserve funds.⁴⁸ The operational funds here are the rights of LMK and LMKN as royalty managers for songs and/or music in Indonesia. Where, LMK and LMKN can use a maximum of 20% (twenty percent) of the total royalties collected annually as operational funds.⁴⁹ The use of operational funds is carried out based on a joint agreement between LMKN and LMK.⁵⁰ This operational fund itself is a support for commissioners and daily executives in carrying out activities related to their duties. The implementation of the use of LMKN operational funds is based on an annual budget plan that has been approved through the LMKN plenary meeting.⁵¹

As for the reserve fund, what will be classified into the reserve fund, namely: royalties for songs and/or music that are not recorded for use; royalties for songs and/or music that still have disputes between the owners; or royalties from Creators, Copyright Holders, and/or owners of Related Rights who have not registered as LMK members.⁵² That reserve fund can be used by LMKN to organize music education, organize social or charitable activities, social security for LMK members, and to organize the socialization of Copyright and Related Rights related to royalty management.⁵³

⁴⁶ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 15(2); Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 24(2).

⁴⁷ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 15(3); Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 24(3).

⁴⁸ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 14(1); Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 18.

⁴⁹ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 22(1).

⁵⁰ Ibid., Article 22(2).

⁵¹ Ibid., Article 22(4).

⁵² Ibid., Article 24(4).

⁵³ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 26.

The authority of LMK and LMKN is related to the distribution of royalties. The procedure for distributing royalties itself, according to the provisions in Article 5 of Regulation of The Minister of Law and Human Rights No. 9 of 2022, is determined by LMKN. Royalties that have been collected by LMKN will then be distributed by LMKN to authorized LMKs. For Creators, Copyright Holders and Related Rights owners who wish to obtain their economic rights, each Creator, Copyright Holder and Related Rights owner must first become a member of the Collective Management Institution.⁵⁴ Therefore, it is a requirement for Creators, Copyright Holders and owners of Related Rights to become members of the LMK if they really want to get their economic rights in the form of royalties.

The distribution carried out by LMKN is based on reports on the use of song and/or music data in SILM.⁵⁵ Then, for distribution to Creators, Copyright Holders, and owners of Related Rights, the LMK is authorized to carry it out.⁵⁶ The distribution of royalties to creators, copyright holders, and owners of related rights, will be given according to the calculation of each LMK based on data on the use of songs and/or music by users.⁵⁷ In carrying out its duties to distribute royalties on songs and/or music that have been obtained, LMKs are required to notify LMKN at least 2 (two) times in 1 (one) year regarding the amount distributed, the party receiving royalties, and user data per type of commercial-based public service.⁵⁸

Chart 1. Management of songs and/or music in Indonesia

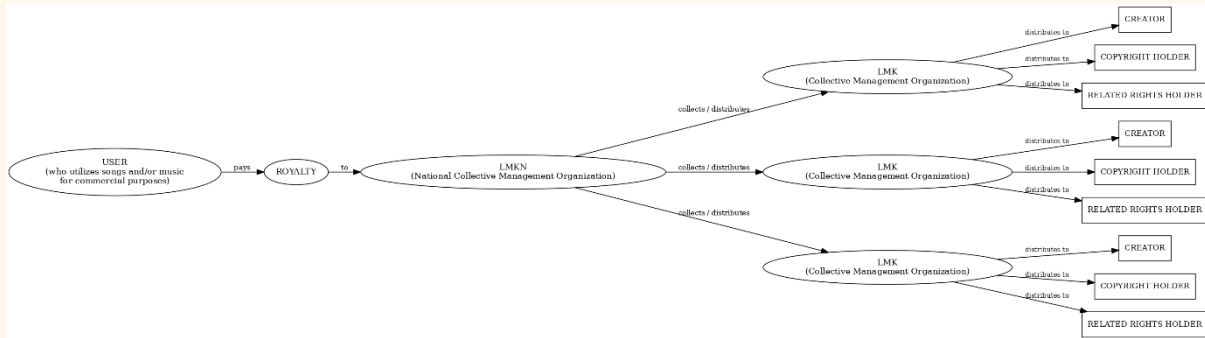
⁵⁴ Law No. 28 of 2014 on Copyright, Article 87(1).

⁵⁵ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 14(2).

⁵⁶ Government Regulation No. 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music, Article 14(3); Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 20(1).

⁵⁷ Regulation of the Minister of Law and Human Rights No. 9 of 2022 on Implementation of Government Regulation No. 56 of 2021 Regarding Management of Royalties for Copyright of Songs and/or Music, Article 21(1).

⁵⁸ Ibid., Articles 21(2)–(3).



(Source: author, processed, 2023)

B. 3. Dispute Resolution Efforts related to Royalty Management of Songs and/or Music in Indonesia

Problems arising in the implementation of the provisions in a regulation are inevitable. These problems will of course then become disputes and if they are not resolved, they will cause chaos in the implementation of the relevant regulatory provisions. Therefore, the existence of dispute resolution is something that is needed in resolving disputes related to. The settlement of disputes regarding Copyright in the Copyright Law is explained in Article 95 Paragraph (1) which states that dispute resolution in the field of Copyright can be done through alternative dispute resolution, arbitration, or court. Copyright dispute resolution through the courts is carried out through the Commercial Court.⁵⁹ Looking at the explanation in Article 95 Paragraph (1) of the Copyright Law, there may not be a link between these provisions and the management of royalties on songs and/or music in Indonesia. However, if seen in the explanation of the Copyright Law, namely in the explanation of Article 95 Paragraph (1), then in fact the provisions of dispute resolution related to Copyright in the Copyright Law are related to the issue of dispute resolution related to royalty management. The Explanation of Article 95 Paragraph (1) states that one of the forms of disputes related to Copyright is a dispute over rates in the withdrawal of fees or royalties. Article 96 Paragraph (1) of the Copyright Law then explains that Creators, Copyright Holders, and/or owners of Related Rights or their heirs who suffer losses to their economic rights are entitled to compensation. Article 99 Paragraph (1) of the Copyright Law then emphasizes that the Creator, Copyright Holder, or owner of Related Rights has the right to apply for compensation to the Commercial Court for infringement of Copyright or Related Rights products.

Government Regulation No. 56 of 2021 and Regulation of The Minister of Law and Human Rights No. 9 of 2022 also regulate the settlement of disputes that may occur in the

⁵⁹ Law No. 28 of 2014 on Copyright, Article 95(2).

management of royalties for songs and/or music in Indonesia, which are related to the discrepancy in the distribution of royalties to the Creator, Copyright Holder, or owner of Related Rights. Article 16 of Government Regulation No. 56 of 2021 explains that if there is a dispute related to the distribution of royalties, the Creator, Copyright Holder, or owner of Related Rights can submit it to the Directorate General of Intellectual Property (DJKI) for a mediated settlement. Similarly, Article 21 Paragraph (4) of Regulation of The Minister of Law and Human Rights No. 9 Year 2022 also explains that in the event of a dispute related to a discrepancy in the distribution of royalties, the dispute will be resolved through mediation. However, in contrast to the provisions in Article 16 of Government Regulation No. 56 of 2021 which states that the settlement of disputes over the distribution of royalties on songs and/or music is carried out through the DJKI, Article 21 Paragraph (4) of Regulation of The Minister of Law and Human Rights No. 9 of 2022 actually explains that concerning the settlement of the distribution dispute, the Creator, Copyright Holder, or owner of Related Rights must submit it to the LMKN.

Regarding the settlement of disputes over the distribution of royalties on songs and/or music, the provisions in Government Regulation No. 56 of 2021 and Regulation of The Minister of Law and Human Rights No. 9 of 2022 are not harmonious. The disharmony of this regulation can then cause confusion regarding its implementation, both for DJKI, LMKN, and even among the public. This disharmony should be straightened out so that the management of royalties on songs and/or music in Indonesia can really be maximized. However, if examined more carefully, it can actually be interpreted that the dispute over the distribution of royalties on songs and/or music can be resolved by mediation through the LMKN. The interpretation itself is not unfounded, where the interpretation can be drawn because of the provisions in Article 5 of Regulation of The Minister of Law and Human Rights No. 9 of 2022 which state that one of the functions possessed by LMKN is to carry out a mediation of royalty distribution disputes carried out by LMK if there are objections from LMK members. In addition, Regulation of The Minister of Law and Human Rights No. 9 of 2022 is a regulation that came after Government Regulation No. 56 of 2021, so according to the principle of *lex posterior derogat legi priori*, the provisions in Regulation of The Minister of Law and Human Rights No. 9 of 2022 apply. Neither Government Regulation No. 56 of 2021 nor Regulation of The Minister of Law and Human Rights No. 9 of 2022 provides a further explanation regarding other dispute resolution if mediation cannot resolve the dispute. Therefore, if the distribution dispute cannot be resolved through mediation, then the settlement can be adjusted to the provisions contained in the Copyright Law.

C. Conclusion

LMK and LMKN as royalty managers for songs and/or music in Indonesia, have the authority to collect, collect and distribute royalties for songs and/or music. However, in carrying out this authority, LMK and LMKN have their duties, where LMKN is the institution entitled to withdraw royalties in accordance with the provisions in Article 12 of PP No. 56 of 2021. As for the collection and distribution of royalties, both LMK and LMKN are both entitled to carry it out. The funds collected by LMKN are royalties obtained from users who utilize songs and/or music for commercial purposes and then LMKN distributes them to the relevant LMKs, while the task of collecting LMK is to collect royalty funds from LMKN, which will then be distributed by the LMK to the Creator, Copyright Holder, and Related Rights Owner who have become members. The royalty funds collected by LMKN are not necessarily distributed entirely to the Creators, Copyright Holders, and Related Rights Owners alone. In addition to being distributed, the royalties obtained can also be utilized as operational funds and reserve funds by LMK and LMKN. Furthermore, for dispute resolution efforts related to the management of royalties on songs and/or music in Indonesia, namely regarding the resolution of royalty distribution disputes, the resolution is carried out by mediation through LMKN. As for the royalty withdrawal dispute, the legal remedies that can be taken are under the provisions in the Copyright Law.

Although there are laws and regulations governing, the implementation of royalty management for songs and/or music in Indonesia is still not going well, the number of overlapping regulations in existing regulations confuses its implementation, and the existence of LMK and LMKN which can be said to be less efficient and cause overlapping is also worth noting. Therefore, the Ministry of Law and Human Rights should improve the existing regulations, and simplify the existence of royalty managers by combining or charging the authority to manage royalties on songs and/or music to one institution only. In addition, LMK and LMKN are expected to carry out royalty management of songs and/or music transparently, so that everyone can obtain information related to royalty management organized by LMK and LMKN.

REFERENCES

Laws and Regulations

The 1945 Constitution of the Republic of Indonesia.

Republic of Indonesia Law Number 28 Year 2014 on Copyright.

Government Regulation Number 56 of 2021 on the Management of Royalties for Copyright of Songs and/or Music.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2022 on the Implementation of Government Regulation Number 56 of 2021 concerning the Management of Royalties for Copyright of Songs and/or Music.

Books

Jened, Rahmi. *Hukum Hak Cipta (Copyright Law)*. Bandung: Citra Aditya Bakti, 2014.

Saidin, H. O. K. *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*. Jakarta: Raja Grafindo Persada, 2003.

Sari, Nuzulia Kumala. *Hukum Hak Kekayaan Intelektual: Dasar-dasar Hukum Kekayaan Intelektual di Indonesia*. Depok: RajaGrafindo Persada, 2021.

Soekarto, Soerjono and Sri Mamudji. *Penelitian Hukum Normatif suatu Tinjauan Singkat*. Jakarta: PT. Raja Grafindo Persada, 2009.

Journal Articles

Ananta, Afifah Husnun Ubaidah, Muhammad Hafiz, Rachmalia Ramadhani, and Wuri Handayani Balerina. "Mekanisme Pengelolaan Hak Royalti Musik Oleh LMK & LMKN ditinjau dari Peraturan Pemerintah No 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu dan/atau Musik," *Padjadjaran Law Review* 9, No. 1 (2021): 1-12.

Indriani, Iin. "Hak Kekayaan Intelektual: Perlindungan Hukum Terhadap Hak Cipta Karya Musik," *Jurnal Ilmu Hukum* 7, No. 2 (2018): 246–263. <http://dx.doi.org/10.30652/jih.v7i2.5703>.

Karim, Asma. "Kepastian Hukum Lmkn Sebagai Lembaga Terpadu Satu Pintu Penghimpun dan Pendistribusi Royalti Hak Cipta dan Hak Terkait Bidang Musik dan Lagu", *Legalitas: Jurnal Hukum* 13, No.1 (2021): 64–79. <http://dx.doi.org/10.33087/legalitas.v13i1.232>.

Sardjono, Agus. "Problem Hukum Regulasi LMK & LMKN sebagai Pelaksanaan UU No. 28 Tahun 2014," *Jurnal Hukum & Pembangunan* 46, No. 1 (2016): 50–69, <http://dx.doi.org/10.21143/jhp.vol46.no1.64>.

Sinaga, Edward James. "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu dan/atau Musik," *Jurnal Ilmiah Kebijakan Hukum* 14, No. 3 (2020): 553–578. <http://dx.doi.org/10.30641/kebijakan.2020.V14.553-578>.

News Articles

Bardan, Abdul Basith. "APPBI Berharap Tak Ada Dobel Penarikan Royalti Lagu dan Musik." *Nasional Kontan.co.id*. April 6, 2021. <https://nasional.kontan.co.id/news/appbi-berharap-tak-ada-dobel-penarikan-royalti-lagu-dan-musik>.

Ismanto, FX. "Menkumham Tak Izinkan LMK Kelola Royalty, Ini Respon KCI." *Tribunnews*. February 8, 2019. <https://www.tribunnews.com/seleb/2019/02/08/menkumham-tak-izinkan-lembaga-manajemen-kolektif-lmk-kelola-royalti>.

Pebrianto, Fajar. "Pengusaha Hotel Ungkap Masalah Tagihan Ganda Royalti Lagu dan Musik." *Tempo.co*. April 9, 2019. [Pengusaha Hotel Ungkap Masalah Tagihan Ganda Royalti Lagu dan Musik - Bisnis Tempo.co](https://www.tempo.co.id/read/1144444).

Website Contents

DJKI. "Deklarasi Bali Sepakati Pemungutan Royalti Musik Satu Pintu Jadi Lebih Tertib dan Transparan." Accessed May 13, 2023. <https://www.dgip.go.id/artikel/detail-artikel/deklarasi-bali-sepakati-pemungutan-royalti-musik-satu-pintu-jadi-lebih-tertib-dan-transparan?kategori=Berita%20Resmi%20%20Desain%20Industri>.

Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM R.I. "Kekayaan Intelektual." Accessed October 24, 2022. <https://www.dgip.go.id/tentang-djki/kekayaan-intelektual>.