

## FUTURISTIC INTERPRETATION OF SINGER LICENSING TO SONGWRITERS IN THE ENFORCEMENT OF ROYALTY RIGHTS BY LMKN (NATIONAL COLLECTIVE MANAGEMENT INSTITUTION) IN INDONESIA

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### Abstract

This research aims to analyze the role and authority of the National Collective Management Institute (LMKN) in regulating and enforcing licensing and royalty distribution between singers and songwriters. In addition, this study also examines a futuristic interpretation that can be applied in the licensing system between singers and songwriters to strengthen the enforcement of royalty rights in the future in accordance with Article 34 of Law Number 28 of 2014 on Copyright, which states that in cases where a creation is designed by one person and realized and executed by another under the leadership and supervision of the designer, the designer is considered the creator. The problem is the legal uncertainty felt by performers regarding the use of copyrighted works in concerts or performances without direct permission from the song creators. The exception for direct permission is for those who request that the use of their works in commercial performances does not require direct permission from the song creators, as long as royalties are still paid. The obligation to pay royalties must contain legal certainty that the obligation to pay royalties becomes the responsibility of the event organizer, unless there is a different agreement between the parties involved, as royalty payments are a civil matter according to the content of Article 1320 of the Civil Code. In conclusion, the potential for abuse of power and arbitrariness due to the lack of a clear control mechanism over LMKN creates the potential for abuse of authority in the management of royalties, even arbitrariness. The duality of authority with Collective Management Institutions (LMK). Government Regulation no. 56 of 2021 concerning the Management of Copyright Royalties for Songs and/or Music based on Law No. 28 of 2014 concerning Copyright grants LMKN the authority to collect and distribute royalties. This authority is the same as that of LMK. This means that one authority is granted to two different institutions.

**Keywords:** *Futuristic Interpretation, Licensing of Singers to Song Creators, Enforcement of Royalty Rights, LMKN (National Collective Management Institution)*

### A. Introduction

Article 31 of Law Number 28 of 2014 concerning Copyright states that the creator is a person whose name is mentioned in a creation, stated as the creator of a creation, mentioned in the creation registration letter and/or listed in the general list of creations as the creator. If a creation consists of several separate parts created by two or more people, then according to Article 33 paragraph 1 of Law Number 28 of 2014 concerning Copyright, the person who is considered the creator is the person who leads and supervises the completion of the entire creation, or in the event that there is no such person, the person who is considered the creator according to Article 33 paragraph 2 of Law Number 28 of 2014 concerning Copyright is the person who collects it without reducing the copyright of each part of the creation.<sup>1</sup>A creation designed by someone is realized and worked on by another person under the leadership and supervision of the person who designed the creator according to Article 34 of Law Number 28 of 2014 concerning Copyright is the person who designed the creation. Meanwhile, if a creation is made in an official relationship according to Article 35 paragraph 1 of Law Number 28 of 2014 concerning Copyright, the creator is considered to be a government agency. Creations made in an employment relationship

<sup>1</sup> Law Number 28 of 2014 concerning Copyright

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or based on orders, then the party who makes the work is considered the creator and copyright holder, unless otherwise agreed between the two parties. A total of 29 well-known Indonesian musicians, who are members of the One Vision Movement, have filed a material review of Law Number 28 of 2014 concerning Copyright to the Constitutional Court (MK) on Friday, March 7, 2025. This lawsuit has been entered in application number 33/PUU/PAN.MK/AP3/03/2025 and is currently awaiting further processing at the Constitutional Court. These musicians, who comprise a number of big names in the Indonesian music industry, hope that Law Number 28 of 2014 concerning Copyright can be revised to provide clearer legal certainty for songwriters and performers.<sup>2</sup>

The names of the musicians who are members of the One Vision Movement and are in the lawsuit include Nazril Irham (Ariel NOAH), Tubagus Arman Maulana (Armand Maulana), Bunga Citra Lestari (BCL), Raisa Andriana, Judika Nalom Abadi Sihotang, Sri Rosa Roslaina H (Rossa), and Nadin Amizah, Dwi Jayati (Titi DJ), as well as other musicians such as Oxavia Aldiano (Vidi Aldiano), Afgansyah Reza (Afgan), Wahyu Setyaning Budi Trenggono (Yuni Shara), and Tantri Syalindri Ichlasari (Tantri Kotak), Vina DSP Harrijanto Joedo (Vina Panduwinata), Bernadya Ribka Jayakusuma, Anindyo Baskoro (Nino), Ruth Waworuntu Sahanaya, Andi Fadly Arifuddin (Fadly Padi), Ahmad Z Ikang Fawzi (Ikgang Fawzi), Andini Aisyah Hariadi (Andien), Dewi Yuliarti Ningsih (Dewi Gita), Hedi Suleiman (Hedi Yunus), Mario Ginanjar, Teddy Adhytia Hamzah, David Bayu Danang Joyo, Hatna Danarda (Arda), Ghea Indrawari, Rendy Pandugo, Gamaliel Krisatya, and Mentari Gantina Putri (Mentari Novel).

This lawsuit is motivated by the legal uncertainty felt by the performers regarding the use of copyrighted works in concerts or performances without direct permission from the songwriter. The lawsuit material in the lawsuit application document, the applicants convey several points of the lawsuit material related to Law Number 28 of 2014 concerning Copyright, including: Exceptions to direct permission, for them requesting that the use of creations in commercial performances does not require direct permission from the songwriter, as long as royalties are still paid. The obligation to pay royalties must contain legal certainty that the obligation to pay royalties is the responsibility of the event organizer, unless there is a different agreement between the related parties.

Moral rights are rights that are personally inherent in the creator to continue to include his name on copies in connection with the use of his creation for the public, use his alias or pseudonym, change his creation according to social propriety, change the title and subtitle of the creation and defend his rights in the event of distortion of the creation, mutilation of the creation, modification of the creation, or anything that is detrimental to his honor or reputation. Moral rights cannot be transferred while the creator is still alive, but the implementation of these rights can be transferred by will or other aspects in accordance with statutory regulations after the creator dies. A fair royalty rate is included in this lawsuit, which requests that the royalty rate set by songwriters not be unilaterally determined without following applicable regulations. Elimination of criminal threats, because musicians demand the elimination of criminal threats for performers who are late in paying royalties, because this obligation should be civil. This lawsuit was filed with the hope of providing fairer and more transparent legal clarity in the Indonesian music industry, as well as protecting the rights of musicians and performers who are often caught in regulatory uncertainty. In Indonesia, copyright is conceptualized as copyright or copy rights. This begins when the cost and effort expended to make a copy of a work is equal to the creation of the original work.<sup>3</sup>

Based on what has been described in the background above, there are 2 (two) problems that will be discussed in this research, namely:

1. What is the role and authority of the National Collective Management Institute (LMKN) in regulating and enforcing licensing and distribution of royalties between singers and songwriters?
2. How can futuristic interpretations be applied in the licensing system between singers and songwriters to strengthen the enforcement of royalty rights in the future?

### **B. Research methods**

The research method used is normative juridical. Therefore, this study will utilize more secondary data sources, predominantly analyzing existing documents and legal materials (literature study). The main approach

<sup>2</sup>This article has been published on [Tribunnews.com](https://www.tribunnews.com/nasional/2025/03/12/29-musicians-sued-to-the-copyright-law-to-the-mk-ini-daftar-nama-dan-materi-gugatan-mereka?page=all) with the title 29 Musicians Sue the Copyright Law at the Constitutional Court, Here is the List of Names and Material of Their Lawsuit, <https://www.tribunnews.com/nasional/2025/03/12/29-musicians-sued-to-the-copyright-law-to-the-mk-ini-daftar-nama-dan-materi-gugatan-mereka?page=all>.

<sup>3</sup>Richkido Febrian, History of Copyright in the World and Indonesia, <https://www.kompasiana.com.03/01/2021>.

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of this study uses the statute approach of Law Number 28 of 2014 concerning Copyright as the main legal framework. The approach used is a conceptual approach to understand the legal concepts underlying copyright legal issues. Data obtained from various sources are then analyzed qualitatively. This analysis involves evaluating and interpreting existing legal norms and linking them to the context of the case. This approach helps researchers to more easily understand intellectual property rights issues, especially copyright, in more depth and illustrates how regulations are applied in existing concrete cases. The legal material analysis technique used in this study is the deductive reasoning method. This deductive reasoning method is used to draw conclusions from general matters to specific matters which are then drawn into a conclusion.

### **C. Research Results and Discussion**

#### **1. The Role and Authority of the National Collective Management Institution (LMKN) in Regulating and Enforcing Royalty Distribution between Singers and Songwriters**

According to Article 1 number 1 of Law Number 28 of 2014 concerning Copyright, Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions. In the legal literature in Indonesia, the first known term is the author's right after the enactment of the Author's Rights Law (Auteurswet 1912 Stb. 1912 No. 600), then followed by the term copyright.<sup>4</sup> The Constitutional Court (MK) plans to summon the leaders of the National Collective Management Institute (LMKN) as related parties in the judicial review application for Law Number 28 of 2014 concerning Copyright filed by Nazril Ilham (Ariel Noah) and 28 musicians. Is it possible for us to ask LMKN as a related party, this was conveyed by Constitutional Justice Daniel Yusmic Foekh in the hearing of case number 28/PUU-XXIII/2025, which was held in the Main Courtroom of the Constitutional Court, Central Jakarta, Monday (30/6/2025). After hearing statements from the DPR and the Government, Daniel suspected that there were implementation problems in implementing the Job Creation Law by LMKN.<sup>5</sup>

The possibility of royalty payment issues arose due to the LMKN's very large authority in regulating royalties and touched on the issue of the LMKN's existence in other cases. In another case, musicians who are members of the Indonesian Music Lovers Alliance (APMI) filed a judicial review of Article 89 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) of Law Number 28 of 2014 concerning Copyright against the 1945 Constitution of the Republic of Indonesia (UUD 1945) to the Constitutional Court (MK). They are M. Ali Akbar (Petitioner I), Ento Setio Wibowarno (Petitioner II), Pamungkas Narashima Murti (Petitioner III), Sugiyatno (Petitioner IV), Muhammad Gusni Putra (Petitioner V), and Anton Setyo Nugroho (Petitioner VI). The preliminary examination hearing Case Number 30/PUU-XXIII/2025 The hearing was held at the Constitutional Court on Thursday (April 24, 2025). Therefore, he believes the Constitutional Court needs to examine how songwriters who did not participate in the LMKN (National Student Council) are treated.

Petitioners I–IV are songwriters, Petitioner V is a singer, and Petitioner VI is a book writer and Indonesian music lover as well as the initiator who formed the Indonesian Music Lovers Alliance (APMI). In the trial led by Constitutional Justice M. Guntur Hamzah, Anton Setyo Nugroho stated that the norms being tested had failed to provide legal certainty regarding the distribution and management of songwriter royalties. The ambiguity of this regulation allows for wild interpretations that have given rise to institutions such as the National Collective Management Institute (LMKN). As a result, there has been a deviation from the rules with the issuance of Government Regulation Number 56 of 2021 concerning the Management of Song and Music Copyright Royalties, which is detrimental to songwriters and related rights owners, and creates injustice in the practice of managing royalties as guaranteed by the constitution in Article 28 D paragraph (1) of the 1945 Constitution regarding the principle of legal certainty and justice. Article 1 point 22 of Law Number 28 of 2014 concerning Copyright defines a Collective Management Institution (LMK) as an institution in the form of a non-profit legal entity that is authorized by the Creator, Copyright Holder, and/or Related Rights Owner to manage their economic rights in the form of collecting and distributing royalties. This institution is given the right to manage economic rights to a creation, such as songs, music, books and films, and/or related rights such as performing works, recording works, broadcast works, to represent and on behalf of the rights holder.

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<sup>4</sup>Eddy Damian, *Copyright Law*, Bandung: Alumni, 1999, page: 61

<sup>5</sup>This article has been published on Kompas.com with the title "MK Will Summon LMKN as a Related Party in the Judicial Review of Ariel and Co.'s Copyright Law", Click to read: [https://nasional.kompas.com/read/2025/06/30/15244281/mk-akan-panggil-lmkn-sebagai-bagian-terkait-dalam-uji-materi-uu-hak-cipta#google\\_vignette](https://nasional.kompas.com/read/2025/06/30/15244281/mk-akan-panggil-lmkn-sebagai-bagian-terkait-dalam-uji-materi-uu-hak-cipta#google_vignette).

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Article 1 of Law Number 28 of 2014 concerning Copyright does not regulate the existence of the LMKN, so this institution does not have a clear legal basis for its formation and authority. The existence of LMKN has an impact on social uncertainty for Creators and Copyright Owners. In practice, the Collective Management Institution (LMK) has long served as a forum for creators to manage their economic rights independently. While LMKN does not have legitimacy under Law Number 28 of 2014 concerning Copyright, a dualism of authority has occurred that confuses creators. The uncertainty in the distribution of royalties due to the duality of LMK and LMKN makes it difficult for many creators to obtain economic rights due to delays in royalty payments. Reported from the LMKN.id page, the National Collective Management Institute (LMKN) was born based on Law Number 28 of 2014 concerning Copyright. The law mandates LMKN to handle the collection of royalties for the use of song and music creations in Indonesia. LMKN has the authority to collect royalties for the use of song and music creations from commercial users at rates set and authorized in the Decree of the Minister of Law and Human Rights of the Republic of Indonesia and distribute them to creators, rights holders, and related rights owners through the Collective Management Institute (LMK).

Potential Erosion of Songwriter Royalties. LMKN, which is authorized to collect and distribute royalties, apparently does not fully carry out this task independently. Most of the collection is still carried out by LMK through a team that LMKN calls PHC (Daily Collecting Officer), who then deposits the results to LMKN. After receiving the deposit from the PHC (Daily Collecting Officer), LMKN first deducts 10% of the funds for the institution's operational costs and honorariums for LMKN commissioners, then returns 90% to LMK to be distributed to songwriters. Based on the information we obtained, each LMKN commissioner is given an honorarium of Rp 15,000,000 (fifteen million rupiah) per person per month, or Rp 180,000,000 (one hundred and eighty million rupiah) per person per year. The LMKN commissioners consist of 10 people, resulting in Rp 1,800,000,000 (one billion eight hundred million rupiah) in songwriter royalties being deducted to pay the LMKN commissioners' honorariums. This mechanism not only adds unnecessary layers of bureaucracy but also erodes songwriter royalties and creates the potential for double taxation.<sup>6</sup> The potential for abuse of authority and arbitrariness due to the lack of a clear control mechanism for LMKN raises the potential for abuse of authority in royalty management, even arbitrariness. It has been proven that LMKN unilaterally, without seeking the consent of creators, plans to increase its operational costs and commissioner fees to 20% of the total royalties collected by creators. This fact reinforces the assessment of songwriters who believe that LMKN is merely a tool for certain parties to extort money from creators' royalties.

## **2. Futuristic Interpretation Can Be Applied In The Licensing System Between Singers And Songwriters To Strengthen Royalty Rights Enforcement In The Future**

The transfer of economic rights can be done due to inheritance, grant, endowment, will, written agreement or other reasons that are justified in accordance with the provisions of the law. Copyright can be used as an object of fiduciary security. The use of Copyright as Fiduciary Security is inseparable from the characteristics of the object of Fiduciary Security. The characteristics of objects that can be pledged as objects of Fiduciary Security are objects that have economic value in the sense that one day if the debtor cannot repay his debt, the object can cover the debt.<sup>7</sup> Article 89 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) of Law Number 28 of 2014 concerning Copyright states, “1) For the management of Copyright Royalties in the field of songs and/or music, 2 (two) national Collective Management Institutions shall be formed, each of which represents the following: a. the interests of the Creator; and b. the interests of the owner of Related Rights. 2) The two Collective Management Institutions as referred to in paragraph (1) have the authority to collect, collect and distribute Royalties from Users of a commercial nature. 3) To carry out the collection as referred to in paragraph (2), the two Collective Management Institutions are required to coordinate and determine the amount of Royalties to which each Collective Management Institution is entitled in accordance with customary practices based on fairness. 4) Provisions regarding guidelines for determining the amount of Royalties shall be determined by the Collective Management Institution as referred to in paragraph (1) and approved by the Minister.” Futuristic interpretation is an anticipatory method of legal discovery, namely the explanation of laws that do not yet have legal force. Futuristic interpretation also includes the interpretation of laws that are guided by laws that do not yet have legal force. Futuristic interpretation is also called the anticipatory method of legal

<sup>6</sup>Results of an Interview with Anton Setyo Nugroho, SPi., MP., M.Agr., PhD as the Applicant for Material Review of the Copyright Law on April 9, 2025

<sup>7</sup>Lutfi Ulinnuha, “Use of Copyright as Fiduciary Collateral”, Journal of Private and Commercial Law, Volume 1 No. 1 November 2017, p. 89

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discovery. This interpretation explains the meaning of laws that do not yet have legal force. In other words, futuristic interpretation explains current legislation (*ius constitutum*) by referring to provisions of future or aspired legislation (*ius constituendum*). For example, for regulations still in the legislative process or draft laws (RUU), judges can use this interpretation with the belief that the bill will soon be enacted.<sup>8</sup> The norms tested in the Constitutional Court violate individual property rights guaranteed in Article 28 H paragraph (4) of the 1945 Constitution. In fact, the economic rights of creators, which should be protected, are vulnerable to being taken over by non-transparent and unfair mechanisms. These norms are used to grant broad authority to LMKN to collect and collect royalties, without any strict control mechanisms. Therefore, this has the potential to be a form of deprivation of economic rights that is contrary to the 1945 Constitution.

In addition, the norm is also considered to violate the principle of people's sovereignty as guaranteed by Article 1 paragraph (2) of the 1945 Constitution. Because the centralization of royalty management through LMKN, without directly involving creators, has the potential to violate the principle of democracy. There is no open space for songwriters to participate in determining the amount and mechanism for distributing royalties, thus ignoring the principle of people's sovereignty in managing the creative economy. The norm from several aspects is also considered to have exceeded the authority granted by law, because in Article 89 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) of Law Number 28 of 2014 concerning Copyright which is used as the basis for establishing the National Collective Management Institution (LMKN) even though there is no mandate for its formation. This norm only regulates the authority of one entity called the Collective Management Institution (LMK) and does not mention other entities. Therefore, the establishment of LMKN is *ultra vires* beyond the authority granted by its parent law. Article 89 paragraph (1) of Law Number 28 of 2014 concerning Copyright cannot be interpreted as the basis for the establishment of a new institution called the National Collective Management Institution (LMKN). The royalty management mechanism will continue to be carried out by the Collective Management Institution (LMK) as has been the case previously, without intervention from unnecessary intermediary entities.

Dualism of Authority with Collective Management Institutions (LMK). Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties, which is based on Law Number 28 of 2014 concerning Copyright, gives the LMKN the authority to collect and distribute royalties. This authority is the same as the authority of the LMK. This means that one authority is given to two different institutions. Many songwriters feel that their rights have been manipulated, because in accordance with Article 87 paragraph (1) of Law Number 28 of 2014 concerning Copyright, they only hand over the mandate (power) to manage their royalties to the LMK, without ever giving it to the LMKN. Law Number 28 of 2014 concerning Copyright stipulates that the LMK can operate if it has at least 200 songwriters, while the existence of the LMKN is not regulated in Law Number 28 of 2014 concerning Copyright and does not have members. Thus, it can be confirmed that LMK operates based on a direct mandate from the creator, while LMKN is given similar authority without a clear legal basis.

### **D. Closing**

The potential for abuse of authority and arbitrariness due to the lack of a clear control mechanism for LMKN raises the potential for abuse of authority in royalty management, even arbitrariness. It has been proven that LMKN unilaterally, without seeking the consent of creators, plans to increase its operational costs and commissioner fees to 20% of the total royalties collected by creators. This fact reinforces the assessment of songwriters who believe that LMKN is merely a tool for certain parties to extort money from creators' royalties. Dual Authority with Collective Management Institutions (LMK). Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties, which is based on Law Number 28 of 2014 concerning Copyright, grants LMKN the authority to collect and distribute royalties. This authority is the same as that of LMK. This means that one authority is granted to two different institutions.

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<sup>8</sup>Muwahid, The Method of Legal Discovery (*Rechtsvinding*) by Judges in an Effort to Realize Responsive Law, *Jurnal Al-Hukama The Indonesian Journal of Islamic Family Law*, Vol. 7, No. 1, 2017, p. 238.

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