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Legal Liability of Event Organizers in Cases of Song Copyright Infringement: A Study of Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst

Rusdinah Rusdinah^{1*}, Rolib Sitorus²

^{1,2} Faculty of Law, Universitas Pelita Harapan, Indonesia

*correspondence email : rusdinah@gmail.com

Abstract

The purpose of this study is to analyze the effectiveness of legal norms in Law No. 28 of 2014 concerning Copyright and Government Regulation No. 56 of 2021 concerning the Management of Song and/or Music Royalties in guaranteeing the protection of the economic and moral rights of songwriters in the context of live performances, through a case study of Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst.

The method used is normative juridical with a statutory approach, case approach, and conceptual approach which are analyzed qualitatively.

The novelty of this study lies in the reconstruction of dual legal liability between performers (singers) and event organizers, as well as the application of Hans Kelsen's theory regarding the separation between legal norms (*the should*) and reality (*being*) in music copyright disputes.

The results of the study show that there is still an imbalance between regulation and practice; industry players often ignore licensing mechanisms and royalty payments through the National Collective Management Agency (LMKN), and do not include the names of creators or make changes to works without permission. Although the judge in the case granted part of the lawsuit, the recognition of direct licensing practices outside the collective mechanism indicates a regulatory loophole and potential legal uncertainty.

In conclusion, the effectiveness of positive law in copyright protection in Indonesia has not yet been fully achieved. Therefore, policy reforms are needed to integrate direct licensing mechanisms into the official legal framework, strengthen the role of the LMKN, and enforce stricter sanctions against moral rights violations, so that legal norms truly become a substantive protection instrument for creators.

Keywords: Copyright; Music Performances; Licensing; Royalties; LMKN

Abstrak:

Tujuan penelitian ini adalah untuk menganalisis efektivitas norma hukum dalam Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan Peraturan Pemerintah Nomor 56 Tahun 2021 tentang Pengelolaan Royalti Lagu dan/atau Musik dalam menjamin perlindungan hak ekonomi dan hak moral pencipta lagu dalam konteks pertunjukan langsung, melalui studi kasus Putusan No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst.

Metode yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual yang dianalisis secara kualitatif.

Kebaruan dari penelitian ini terletak pada rekonstruksi tanggung jawab hukum ganda antara

pelaku pertunjukan (penyanyi) dan penyelenggara acara, serta penerapan teori Hans Kelsen mengenai pemisahan antara norma hukum (*das sollen*) dan realitas (*sein*) dalam sengketa hak cipta musik.

Hasil penelitian menunjukkan bahwa masih terdapat ketidakseimbangan antara regulasi dan praktik; pelaku industri sering mengabaikan mekanisme perizinan dan pembayaran royalti melalui Lembaga Manajemen Kolektif Nasional (LMKN), serta tidak mencantumkan nama pencipta atau melakukan perubahan terhadap karya tanpa izin. Meskipun hakim dalam perkara *a quo* mengabulkan sebagian gugatan, pengakuan terhadap praktik lisensi langsung (*direct licensing*) di luar mekanisme kolektif menunjukkan adanya celah regulasi dan potensi ketidakpastian hukum.

Kesimpulannya, efektivitas hukum positif dalam perlindungan hak cipta di Indonesia masih belum sepenuhnya tercapai. Sehingga, diperlukan reformasi kebijakan yang mengintegrasikan mekanisme lisensi langsung ke dalam kerangka hukum resmi, memperkuat peran LMKN, dan menegakkan sanksi lebih tegas terhadap pelanggaran hak moral, sehingga norma hukum benar-benar menjadi instrumen perlindungan substantif bagi para pencipta.

Kata Kunci: Hak Cipta; Pertunjukan Musik; Izin; Royalti; LMKN

1. INTRODUCTION

In Indonesia, the creative economy sector shows significant potential in contributing to national economic growth. Its existence not only encourages the creation of a conducive business climate, but also plays a strategic role in strengthening the national image and identity. Furthermore, the creative economy also increases Indonesia's competitive advantage at the global level and provides a constructive social impact on society.¹

Intellectual Property Rights (IPR) are a fundamental pillar in the protection system for creative works and innovations, especially in the context of a modern knowledge-based society. However, the rapid advancement of information technology and the digitization process have brought new, complex challenges to the effectiveness of IPR protection. These developments have driven significant transformations in the process of creation, distribution, and consumption of intellectual works, which in turn complicates the legal and ethical constructions that underpin the IPR protection system.²

Legally, the scope of IPR covers various forms of rights, including copyright and related rights (including the rights of performers, producers of sound recordings, and broadcasting institutions), as well as rights to brands, geographical indications, industrial designs, patents, integrated circuit layout designs, and confidential information, including trade secrets and test data. With such a broad scope, the urgency of protecting all aspects of IPR becomes increasingly relevant, especially in ensuring legal certainty over copyright as one of its main instruments.³

¹ Deylla Eka Novita et al., "Inovasi Produk Industri Kreatif Tenun Ikat Bandar Kota Kediri : Strategi Dan Tantangan," *Journal Creative Economics and Trading Halal Ecosystem* 1, no. 01 (2023): 7–12, <https://doi.org/10.56404/cethe.v1i01.60>.

² Putri Maha Dewi and Supriyono Supriyono, "Integrasi Hukum Hak Kekayaan Intelektual Melalui Proses Transformasi Ide Inovasi Doing Business Produk Ekonomi Sektor Industri Kreatif," *Journal of Innovation Research and Knowledge* 4, no. 4 (2024): 2349–58, <https://mail.bajangjournal.com/index.php/JIRK/article/view/8575>.

³ Uha Suhaeruddin, "Hak Kekayaan Intelektual Dalam Era Digital: Tantangan Hukum Dan Etika Dalam Perlindungan

According to Article 40 paragraph (1) of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law), copyright protection is granted to works created in the fields of science, art, and literature. This indicates that the scope of copyright covers various forms of creations originating from these three fields, ranging from scientific writings and works of fine art to literary works such as poetry or novels. The protected creations include written works such as books, lectures, and articles; music and songs, including lyrics and notation; works of fine art such as paintings, sculptures, and photography; films, dramas, and performances; architectural works; computer programs; translations, adaptations, and compilations; as well as other forms of expression in the fields of science, art, and literature.⁴

In the intellectual property system, economic rights in copyright have a broader scope compared to patents and trademarks.⁵ Copyright Law, specifically Article 8, grants exclusive rights to creators or copyright holders to obtain economic benefits from their creations. These benefits are not only limited to sales or royalties, but also include other economic activities such as publishing, duplication, translation, and performances. Article 9 paragraph (2) clarifies that any form of commercial use of a creation must be accompanied by permission from the creator. Without such permission, use of the work is considered a violation of the law. Copyright protection is also not limited to physical forms alone; works in digital format that are announced electronically remain within the scope of legal protection. Thus, moral rights and economic rights remain attached to the creator or copyright holder, regardless of the form of distribution.⁶

The development of the entertainment industry in Indonesia shows a significant growth trend, marked by the increasing number of music concerts and other commercial performances. However, behind the growth of this industry, legal issues often arise related to copyright infringement, especially in the use of songs without a license from the creator. This is problematic because copyright is an exclusive right inherent in the creator, both economically and morally, as guaranteed in Copyright Law. Copyright as part of Intellectual Property Rights (IPR) not only provides moral protection to creators, but also guarantees economic rights as a legitimate source of livelihood. In the Indonesian legal system, this protection has been formulated normatively in Copyright Law and Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Song and/or Music Royalties.⁷

Karya Kreatif Dan Inovasi," *Jurnal Hukum Indonesia* 3, no. 3 (2024): 122–28, <https://doi.org/10.58344/jhi.v3i3.888>.

⁴ M Lase, "Scope of Copyright and Definition of Copyright Based on Copyright Law," 2022, <https://www.aksarahukum.com/2022/02/ruang-lingkup-hak-cipta-dan-pengertian-hak-cipta-berdasarkan-uu-hak-cipta.html>.

⁵ Manohar Lal Meghwal et al., "A Comprehensive Review on the Impacts of Intellectual Property Rights on the Global Agricultural Economy," *Asian Journal of Agricultural Extension, Economics & Sociology* 41, no. 12 (2023): 160–73, <https://doi.org/10.9734/AJAEES/2023/v41i122316>.

⁶ Revanza Franseda, Ranti Fauza Mayana, and Tasya Safiranita Ramli, "Penentuan Hak Ekonomi Pencipta Lagu Dalam Konteks Unggahan Cover Soundcloud Berdasarkan Hukum Di Indonesia.," *Jurnal Ilmu Hukum, Humaniora Dan Politik (JIHHP)* 5, no. 1 (2024).

⁷ Moren S Terok, "Akibat Hukum Bagi Konten Kreator Yang Melanggar Copyright Menurut Undang-Undang

However, in the reality of practice, these legal provisions have not been fully implemented effectively. One concrete case that reflects the imbalance between legal rules (*the should*) and the reality that occurs (*being*) is Decision Number 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst. In this case, Arie Sapta Hernawan (Ari Bias) as the creator of the song "Bilang Saja" sued Agnes Monica (Agnez Mo) for alleged copyright infringement for singing the song in 3 (three) commercial performances in Jakarta, Surabaya, and Bandung without an official license from the creator. The lawsuit also dragged PT Aneka Bintang Gading as the concert organizer, although only as a Co-Defendant.

Normatively (*the should*), Article 9 and Article 113 of the Copyright Law explicitly require any party that commercially utilizes the economic rights of a creation to obtain permission from the creator or copyright holder and impose legal sanctions for violations. In addition, Articles 3 and 10 of PP 56/2021 stipulate the obligation of commercial public service providers to pay royalties through the National Collective Management Institution (LMKN). However, in practice (*being*), this norm is ignored, both by the performers and by the event organizers.

This disparity between norms and practices indicates the existence of law *in books* which has not yet fully become law *in action*, as criticized by Hans Kelsen through the separation between legal norms (*the should*) and social statements (*being*) Kelsen's thinking emphasizes that only from norms can other norms be derived, and that reality does not immediately create legal obligations without a valid normative basis.⁸

Hans Kelsen's theory of norms and reality is relevant to analyzing copyright infringement because it offers a perspective that distinguishes between *das Sollen* (what should be according to legal norms) and *das Sein* (what happens in social reality). Kelsen's thinking helps to interpret this issue not only as a technical violation, but as evidence of a mismatch between the structure of norms and social behavior that should be subject to those norms.

Previous studies have highlighted various aspects related to copyright infringement. Ibrahim and Fakrulloh reviewed direct licensing practices that have the potential to weaken the LMKN mechanism.⁹ Syaharani emphasized the weak legal awareness of event organizers as the cause of low compliance with royalty payments.¹⁰ Ramadani et al. assessed that the effectiveness of the LMKN in royalty distribution is still not optimal.¹¹ Meanwhile, Nafillah

Republik Indonesia Nomor 22 Tahun 2014 Tentang Hak," *Lex Privatum* 11, no. 4 (2023), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/48291>.

⁸ Hans Kelsen, *General Theory of Law and State* (Routledge, 2017), <https://www.taylorfrancis.com/books/mono/10.4324/9780203790960/general-theory-law-state-hans-kelsen>.

⁹ Zudan Arief Fakrulloh, "Legal Study on the Payment Mechanism of Copyright Royalties and Its Implications in the Indonesian Creative Industry," *Jurnal Greenation Sosial Dan Politik* 3, no. 2 (2025): 273–83, <https://doi.org/10.38035/jgsp.v3i2.363>.

¹⁰ Nindhitya Mega Putri Syaharani, Chrisna Bagus Edhita Praja, and Hary Abdul Hakim, "Studi Kepatuhan Musisi Dan Penyedia Layanan Berbasis Komersial Dalam Membayar Royalti," *Borobudur Law and Society Journal* 2, no. 4 (2023): 176–87, <https://doi.org/10.31603/10041>.

¹¹ Muhammad Aru Ramadani, H Hartana, and Puguhi Aji Hari Setiawan, "Perlindungan Hukum Hak Cipta Lagu/Musik Atas Royalti Dalam Perspektif Teori Keadilan Menurut Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," *Media Hukum Indonesia (MHI)* 3, no. 3 (2025), <https://ojs.daarulhuda.or.id/index.php/MHI/article/view/2164>.

identified regulatory disharmony in the division of responsibilities between performers and event organizers.¹²

From this review, it appears that there is a gap in research, namely that there has been no study that integrates normative analysis with empirical reality regarding copyright infringement in live music performances, particularly those that relate to the issue of dual liability between performers and event organizers. Thus, the novelty of this study lies in the reconstruction of dual legal liability between performers (singers) and event organizers, as well as the application of Hans Kelsen's theory regarding the separation between legal norms (the should) and reality (being) in music copyright disputes.

This study aims to critically examine the gap between legal regulations and their implementation in cases of song copyright infringement in live performances. Using a normative (das Sollen) and empirical (das Sein) framework, this study focuses on assessing the effectiveness of positive law in ensuring copyright protection in Indonesia and analyzing the role of LMKD in preventing the recurrence of similar violations. This study is expected to provide new insights into the effectiveness of copyright protection while clarifying the division of legal responsibility between performers and event organizers in music performances.

2. METHOD

This study uses a qualitative approach with a legal-normative type combined with empirical analysis. The normative-juridical method was chosen because it allows researchers to examine legislation, legal principles, and court decisions as a normative basis. Meanwhile, the empirical dimension is added through case study analysis, thereby providing a more comprehensive picture of how legal norms are applied in the field.

The type of data used in this study is secondary data, which includes various forms of legal materials. Primary legal materials consist of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright and Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Song and/or Music Royalties. In addition, secondary legal materials are employed in the form of legal literature, scientific journal articles, and expert opinions that are relevant to copyright issues, serving to strengthen the analysis and provide academic depth. Furthermore, tertiary legal materials such as legal dictionaries and legal encyclopedias are used to support a clearer understanding of technical legal terms and concepts applied in this research. The data collection technique was carried out through literature studies, namely by tracing and reviewing various legal documents, laws and regulations, and court decisions, especially Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst as the focus of the study.

The data analysis method used is qualitative analysis, by systematically reviewing and interpreting legal materials to draw logical conclusions. Legal reasoning is carried out deductively, namely from general legal rules to analysis of concrete cases, in order to identify

¹² Ananda Nafilah, "Telaah Hukum Terkait Event Organizer (Eo) Terhadap Hak Royalti Kepada Pencipta Lagu (Studi Kasus Once Mekel Dan Ahmad Dhani Dewa 19)," *Jurnal Ilmu Hukum Lasadindi* 2, no. 1 (2025): 103–12.

the conformity between legal norms and their application practices in the context of copyright protection for musical performances. This technique allows researchers to identify patterns, themes, and inconsistencies between legal norms and practical realities. The limitation of this study lies in its scope, which focuses on specific case studies in the field of music performance, so the generalization of the results may be limited to a broader context.

3. DISCUSSION

3.1. Construction of Legal Liability of Event Organizers and Performers for the Use of Unlicensed Songs in Commercial Performances According to Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst

Economic rights in copyright law are the exclusive rights of creators to obtain economic benefits from their creations (Article 8 of Law No. 28 of 2014). Responsibility for violations of economic rights is not only limited to the performers, but also other parties who benefit from the exploitation of the work, including event organizers.¹³ According to Julio in his research, the party that directly profits from the commercialization of an invention is legally responsible if it does not obtain permission from the rights holder.¹⁴ This was also emphasized by Rosborough who stated that the principle of responsibility in copyright follows the principle of "*benefit and burden*", that is, whoever takes advantage also bears the legal consequences.¹⁵

Copyright infringement in the entertainment industry, especially the use of unlicensed songs in concerts or public performances, is an increasingly relevant issue amidst the increasing commercialization of copyrighted works. One case that reflects this concretely is Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst, where the court has issued a decision against copyright infringement of a song by a performer, in this case a singer in a concert.

In this case, Arie Sapta Hernawan (Ari Bias) as the creator of the song "Bilang Saja" filed a lawsuit against Agnes Monica Muljoto (Agnez Mo), who allegedly sang the song commercially without a license at 3 (three) concerts held in Jakarta, Bandung, and Surabaya. The plaintiff considered the action to violate his economic and moral rights as regulated in Law No. 28 of 2014 concerning Copyright, and demanded material compensation of Rp1,500,000,000 and moral compensation of Rp1,000,000,000. In addition, the plaintiff also withdrew PT Aneka Bintang Gading as a Co-Defendant because it acted as the concert organizer.

This case began with a lawsuit filed by Arie Sapta Hernawan (Ari Bias), the creator of the song entitled "Bilang Saja", against Agnes Monica Muljoto or Agnez Mo (her real ID card

¹³ Admiral Adrian Dwisatrio Bassar, Sri Handayani, And Dian Afrilia, "Tanggung Jawab Hukum Penyelenggara Acara (Event Organizer) Musik Terhadap Penggunaan Lagu Dan/Atau Musik Tanpa Izin," *Sriwijaya University*, 2024, <http://repository.unsri.ac.id/id/eprint/154165>.

¹⁴ Muhamad Rizky Julio, "Perlindungan Hukum Hak Ekonomi Produser Fonogram Atas Komersialisasi Tanpa Izin Oleh Pihak Lain" (Universitas Islam Indonesia, 2022), <https://dspace.uui.ac.id/handle/123456789/53311>.

¹⁵ Anthony D Rosborough, "Technologies of Servitude Understanding Firmware TPMs as Interests in Personal Property," *Canadian Journal of Law and Technology* 20, no. 1 (2022): 39, <https://digitalcommons.schulichlaw.dal.ca/cjlt/vol20/iss1/3/>.

identity is Agnes Monica), the performer who is a famous singer, and PT Aneka Bintang Gading as the concert organizer. The Plaintiff stated that the Defendant had sung his song in 3 (three) commercially held concert performances in Jakarta, Bandung, and Surabaya in May 2023, without ever asking for or obtaining a license from the creator. The song is still fully under copyright and is not included in the public domain or open license.

The Plaintiff had previously sent a warning letter, but did not receive a response or settlement from the Defendant. On the basis of violations of economic and moral rights, the Plaintiff then filed a civil lawsuit with the Central Jakarta Commercial Court, demanding material and moral compensation. During the trial, the Defendant attempted to deny by stating that licensing was the obligation and responsibility of the concert organizer, while the Co-Defendant did not provide a substantive response.

At the end of the trial, the Panel of Judges granted the Plaintiff's lawsuit in part and stated that the Defendant had committed copyright infringement and sentenced the Defendant to pay material damages of Rp1,500,000,000. The Judge also imposed court costs on the Defendant, emphasizing that the commercial use of the song without a license clearly violates the creator's exclusive rights.

Law Number 28 of 2014 concerning Copyright provides legal protection for 2 (two) types of rights owned by creators, namely moral rights and economic rights. Moral rights are personal rights that are permanently attached to the creator, which cannot be removed or canceled for any reason, even after the copyright is transferred to another party or the protection period has expired. However, moral rights can be transferred to heirs through a will or legal provisions after the creator dies.¹⁶

Article 5 paragraph (1) stipulates that moral rights include, among other things: the right to include or not include a name on a work when used in public spaces, the right to use a pseudonym or alias, the right to change a creation according to applicable norms, the right to change the title or subtitle, and the right to reject changes that damage the integrity, meaning, or reputation of the work. These rights not only protect the dignity of the creator, but also have strategic value in encouraging growth and innovation in the creative economy sector.¹⁷

On the other hand, the economic rights held by the Creator or Copyright Holder to obtain economic benefits from the creative works they produce have been confirmed in Article 8 of the Copyright Law. These economic rights cover various forms of utilization of works, as further explained in Article 9 paragraph (1), namely: publishing creations, duplicating creations in any form, translating creations into other languages, adapting, arranging, or transforming creations, distributing creations or copies thereof, showing creations to the public, announcing creations openly, communicating creations to the public, and renting creations. Paragraph (2) confirms that anyone who wants to use these economic rights must first obtain permission

¹⁶ Christine S T Kansil and Devy Yulyana Harjanto, "Perlindungan Hukum Atas Hak Moral Dan Hak Ekonomi Pencipta Terhadap Karya Cipta Yang Dijadikan Sebagai Jaminan Fidusia," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 3 (2024): 332–44.

¹⁷ Yosman Leonard Silubun and Marlyn Jane Alputila, "Youtube Youtube Dan Hak Cipta: Legalitas Hak Moral Dalam Cover Music Atas Hasil Karya Pemuda Merauke," *Jurnal Restorative Justice* 5, no. 1 (2021): 66–77.

from the creator or copyright holder. Meanwhile, paragraph (3) strictly prohibits anyone from duplicating or using works commercially without permission.

Violations of the economic rights of creators can be subject to criminal sanctions as regulated in Article 113 of the Copyright Law. Article 113 paragraph (2) states that anyone who without rights and/or without permission from the creator or copyright holder violates the economic rights of the creator for commercial use can be punished with imprisonment for a maximum of 3 (three) years and/or a maximum fine of IDR 500,000,000.¹⁸ As a form of respect for the economic rights of creators, anyone who uses someone else's creative work, such as songs, music, or other works of art commercially, is required to pay royalties to the creator or copyright holder. These royalties are not just a legal obligation, but also reflect a form of respect for someone's work and intellectual property. On the other hand, royalties are also a source of legal and sustainable income for creators.¹⁹

In Indonesia, the obligation to pay royalties for the commercial use of music has been implemented since the first Copyright Law came into effect in 1982. Further regulations are regulated in Government Regulation No. 56 of 2021, in which Article 3 paragraph (2) lists 14 types of public services of a commercial nature, such as commercial seminars and conferences, restaurants, cafes, music concerts, hotels, karaoke businesses, and other entertainment venues are required to pay royalties if they use songs and/or music in their place of business. In order for the royalty payment process to be more orderly and organized, creators can register and hand over the management of their economic rights to the Collective Management Institution (LMK). LMK will take care of the license for the use of works, collect royalties from users, and distribute them back to the creators. At the national level, this management is supervised by the National Collective Management Institution (LMKN).²⁰

A songwriter, in this case Arie Sapta Hernawan (Ari Bias), has exclusive rights to his creation, both morally and economically. This right not only protects the work as a personal expression, but also as an economic asset that can provide income to the creator. Therefore, using a song without permission is the same as taking something that is legally and morally not the property of the user without the owner's consent. In the context of a concert or music show, the event organizer is not only responsible for the smooth running of the event, but must also ensure all aspects of legality, including the use of the songs performed. If the song is used commercially without permission from the creator, then the event organizer is also legally responsible for the copyright infringement. This is because they are the parties who facilitate and organize the show.²¹

¹⁸ Aldi Firmansyah et al., "Penjatuhan Sanksi Pidana Kepada Pelaku Penggandaan Hak Cipta Buku Sebagai Upaya Pemberantasan Penggandaan Buku Di Indonesia," *Jurnal Esensi Hukum* 4, no. 2 (2022): 185–97, <https://doi.org/10.35586/esh.v4i2.170>.

¹⁹ Arofi Mughni and Erwin Aditya Pratama, "Analisis Hukum Mengenai Pengelolaan Royalti Atas Hak Cipta Lagu Populer," *Pancasakti Law Journal (PLJ)* 1, no. 2 (2023): 279–86, <https://doi.org/10.24905/plj.v1i2.29>.

²⁰ Kartini Djohan Consulting, "Bayar Royalti Lagu: Ke Pencipta Atau LMKN?," *Hukumonline.com*, 2024, <https://www.hukumonline.com/klinik/a/bayar-royalti-lagu-ke-pencipta-atau-lmkn-lt6626fb3a6dae0/>.

²¹ Merlinda Tabita Yambormias, Sarah Selfina Kuahaty, and Agustina Balik, "Pelanggaran Hak Cipta Karya Cipta Lagu Atau Musik Yang Dibawakan Oleh Ovent Organizer Untuk Kepentingan Komersial," *PATTIMURA Law Study Review*

In the context of this case, the violation of economic rights occurred because the creation was used in a public performance without written permission from the creator. Article 9 paragraph (2) of the Copyright Law explicitly states that "Any person who exercises economic rights as referred to in paragraph (1) must obtain permission from the Creator or Copyright holder." Furthermore, Article 113 paragraph (1) confirms that creators can claim compensation for copyright infringement through civil channels. In this case, the losses calculated include material losses from 3 (three) concerts as well as moral losses because the creator's name was not included.

In this case, the Plaintiff did not bring the event organizer, namely PT Aneka Bintang Gading, as the main Defendant, but only as a Co-Defendant. In fact, according to PP No. 56 of 2021 and the Copyright Law, the one who is required to pay royalties for the commercial use of songs publicly is the event organizer, not the singer as a performer. Article 3 paragraph (1) of PP No. 56/2021 emphasizes that "Everyone can carry out Commercial Use of songs and/or music... by paying royalties through LMKN." Article 87 of the Copyright Law also states that royalties are collected from users (organizers), not performers.

In this case, the event organizer also bears legal responsibility as stipulated in Article 87 of the Copyright Law and clarified through Government Regulation No. 56 of 2021 concerning Management of Copyright Royalties for Songs and/or Music. In these regulations, parties who organize commercial public services (such as music concerts) are required to pay royalties to creators through the National Collective Management Institute (LMKN).²²

The judge granted the lawsuit based on a direct license (*direct licensing*) claimed by the creator. In fact, according to the provisions of the Copyright Law and Government Regulation No. 56 of 2021, royalty management should be carried out through Collective Management Organizations (LMK) and National Collective Management Organizations (LMKN). The direct licensing system itself has not been fully recognized or integrated into the applicable legal framework, so that the court's recognition of this mechanism actually creates legal uncertainty and contradicts the spirit of the collective royalty system established by the state. Therefore, based on the provisions of the legislation, event organizers actually have full legal responsibility for the use of songs in performances. This responsibility includes the obligation to ensure that every song used has a valid license, to pay royalties through LMKN in accordance with the applicable mechanism, and to prevent the unauthorized use of works that could potentially violate the economic and moral rights of the creator.²³

Concert organizers who fail to fulfill these obligations may be held legally liable under civil law, as regulated in the Copyright Law and Government Regulation Number 56 of 2021

2, no. 1 (2024): 76–83.

²² Komang Satria Wibawa Putra, Made Dinda Saskara Putri, and I Nengah Dasi Astawa, "Harmonisasi Pengaturan Penggunaan Ciptaan Pada Pertunjukan Komersial Tanpa Izin Pencipta," *Unizar Law Review* 7, no. 1 (2024): 16–34, <https://doi.org/10.36679/ulr.v7i1.62>.

²³ Vira Nur Maharani and Dwi Desi Yayi Tarina, "Wewenang Dan Tanggungjawab Lembaga Manajemen Kolektif Nasional (LMKN) Dalam Perlindungan Hak Ekonomi Musisi Indonesia," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 881–88, <https://doi.org/10.22225/juinhum.5.1.8545.881-888>.

concerning Management of Copyright Royalties for Songs and/or Music.

The Copyright Law does not explicitly provide normative limitations regarding who is meant as a user in the context of commercial use of creations. Article 8 *juncto* Article 9 only regulates that users can be individuals or legal entities, without further explaining the legal position of each party that utilizes the creation in various forms of economic activity, such as live performances or use in recorded media.

This creates an interpretive gap in practice, especially in relation to live performances of creative works (*live performance*), where the roles and legal responsibilities are often blurred between the performers and the organizers. In general practice in the entertainment industry, the event organizer is the entity that acts as the primary user of the copyrighted work. This is because the event organizer gains economic benefits from the performance of songs that are the object of copyright protection, such as from ticket sales, sponsorships, and other commercial activities.

As a party actively exploiting copyrighted works, event organizers are legally required to obtain permission from the creators or copyright holders of the songs to be used in the concert. Generally, event organizers will first request a list of songs from the singers or performing artists, which will then become the basis for calculating and paying royalties to each creator through a collective or direct mechanism (*direct licensing*). However, in cases where the performance is performed without the involvement of the event organizer, for example in the form of an independent performance, *street performance*, or personal performance, legal responsibility as a user shifts directly to the performer, namely the artist, musician, or singer. Therefore, the construction of legal responsibility in this context must consider who obtains direct economic benefits from the use of the copyrighted work.²⁴

Due to the use of the song without permission, the creator loses his economic rights to the song. This is not only about money, but also appreciation for the intellectual work that has been created. In addition, in this case, the creator also suffered a loss of moral rights because his name was not mentioned as the songwriter in the performance, which psychologically and professionally can hurt his self-esteem and reputation. From a humanist perspective, this case reminds us that works of art are the result of human hard work and creativity that must be appreciated and protected. Using works without permission means belittling the efforts and rights of others. Event organizers should have an attitude of respecting copyright as a form of respect for fellow creative people.

According to Saidin in his book *Legal Aspects of Intellectual Property Rights*, the use of a work without permission in the form of a public performance is a violation of the creator's economic rights which can be subject to a claim for compensation. Saidin emphasized that in the context of copyright, every party who obtains economic benefits from the use of a work, such as in a musical performance, has a legal responsibility to ensure that the use has obtained

²⁴ Sahala T.P. Sihombing and Novizal Kristianto, "Telaah Penggunaan Lagu Ciptaan Dalam Putusan Agnes Mo vs Ari Bias," *Hukumonline.com*, 2025, <https://www.hukumonline.com/berita/a/telaah-penggunaan-lagu-ciptaan-dalam-putusan-agnes-mo-vs-ari-bias-lt67b434f44b7cf/?page=1>.

valid permission from the copyright holder. This is in line with the principle that copyright grants exclusive rights to the creator or rights holder to control the use of his work, including in a commercial context.²⁵

3.2. Effectiveness of Legal Norms in Law No. 28 of 2014 and PP No. 56 of 2021 in Guaranteeing the Protection of the Economic and Moral Rights of Creators in the Context of Live Performances.

In the era of an increasingly digitized and commercialized music industry, the issue of copyright protection, especially in the form of live performances (*live performance*), becomes increasingly crucial. Law No. 28 of 2014 concerning Copyright and Government Regulation No. 56 of 2021 concerning Management of Song and/or Music Royalties are normative frameworks designed to guarantee protection of the economic and moral rights of creators, including the right to royalties and recognition of creators of works.

Legally, the Copyright Law has emphasized that creators have exclusive rights to their works in the form of economic rights and moral rights (Article 8 and Article 9 paragraphs (1)-(3)). Economic rights give creators the authority to obtain commercial benefits from their creations, while moral rights guarantee respect for the integrity and attribution of the work. PP 56/2021 then strengthens the implementation of these rights through a collective system managed by the National Collective Management Institute (LMKN) with a mandate to collect and distribute royalties for the commercial use of music in public spaces (Articles 3, 10, and 12 PP 56/2021).

The case in Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst is an important precedent in assessing the effectiveness of the norm. The decision shows that legal norms in the Copyright Law and PP 56/2021 can be formally enforced through litigation. However, in the context of legal substances, its effectiveness is still limited by a number of structural and cultural factors. First, the collective mechanism through LMKN has not fully reached all music industry players, especially at the local level where many still practiced direct *licensing without* legal clarity. This creates overlapping jurisdictions between direct licensing and the collective system regulated by laws and regulations.

Article 81 of the Copyright Law does open up the possibility for creators to provide direct licenses to users without going through LMKN. However, in practice, the use of this direct license is often not followed by a clear mechanism, there is no transparent recording system and verification of the use of creations. Because there are no technical regulations such as a digitalization system or code of ethics that regulate how direct *licensing this* operates, direct licensing practices are prone to causing: a) Double royalty withdrawal, if the user has paid directly but is still requested again by LMKN. Even though a songwriter has given direct permission to a certain party, such as a restaurant or event organizer to use his work, the user can still be subject to the obligation to pay royalties to LMKN. This is due to the implementation of the system blanket *license*, which is a collective licensing model that

²⁵ Eric Drott, "Copyright, Compensation, and Commons in the Music AI Industry," *Creative Industries Journal* 14, no. 2 (August 4, 2021): 190–207, <https://doi.org/10.1080/17510694.2020.1839702>.

charges a single flat fee in return for access to use the entire song catalog managed by LMKN, regardless of whether the user has entered into a direct license with a particular songwriter; b) Overlapping responsibilities, as it is unclear what the legitimate path is for licensing and royalties, whether via the creator directly or through a collective body.²⁶

Indonesian regulations are still too focused on collective management, so that the model of direct *licensing does not* get adequate legal protection. This causes legal uncertainty and overlapping responsibilities among creators and users of creations, as well as opening up the potential for disputes and double administration.²⁷

Second, the legal awareness of event organizers regarding the obligation to pay royalties is still low, which causes non-compliance with norms even though regulations are available. Third, the aspect of protecting the moral rights of creators, although guaranteed in Article 5 of the Copyright Law, is difficult to enforce in practice. When a song is re-performed in a form that has been rearranged or the name of the creator is removed, the creator often does not receive compensation for his moral losses except through a long and expensive court process. Court decisions such as in the case of "Bilang Saja" show that litigation efforts are still needed, but depend entirely on the creator's initiative, not on a preventive system.

Thus, the effectiveness of legal norms in the Copyright Law and PP 56/2021 can be said to be sufficient in the legal-formal aspect, but still weak in terms of implementation. A more holistic reformulation of the approach is needed, including a revision of PP 56/2021 to accommodate a legally valid direct licensing mechanism, as well as empowering LMKN to play an active role in education, mediation, and auditing of music performances at various levels. In addition, incentives or preventive legal protection against violations of the moral rights of creators need to be strengthened through implementing regulations or procedural law regulations that support simple lawsuits in the field of IPR. Without policy updates and strengthening implementation, the legal norms that have been built will be at risk of becoming law *in books* just without being *law in action*, as criticized by Hans Kelsen in the framework of the separation between being and *the should* in the legal norm system.

In this case, the Plaintiff (Ari Bias) filed a claim for violation of economic rights related to the use of his songs in various live performances by the Defendant (Agnès Mo). The focus of the decision on economic rights is very evident from the arguments of the parties which revolve around whether the use of the song has obtained permission or proper royalty payments. Although Article 9 and Article 87 of the Copyright Law and Articles 3, 10, and 12 of PP 56/2021 explicitly emphasize the obligation to pay royalties through LMKN, practice in the field shows that many event organizers do not take care of licensing properly. Several cases show that the organizers argue that they have handed over responsibility to the performers (singers), even though legally, the obligation for licensing and royalties lies with the party

²⁶ Rianda Dirkareshza, "Dinamika Masalah Direct Licensing Musik Di Indonesia," Fakultas Hukum UPN Veteran Jakarta, 2025, <https://hukum.upnvj.ac.id/dinamika-masalah-direct-licensing-musik-di-indonesia/>.

²⁷ Ade Syaifullah Fattah and Ridha Wahyuni, "Implementation of 'Direct vs Indirect License': A Comparative Study of Music Licensing Systems between Indonesia and the United States of America," *Law Development Journal* 7, no. 2 (2024): 284–301, <http://dx.doi.org/10.30659/ldj.7.2.284-301>.

organizing the commercial use, not the performers.

In the case of Decision No. 92/Pdt.Sus-HKI/Cipta/2024/PN Niaga Jkt.Pst, the court actually determined the responsibility on the performer (Agnez Mo), while the organizer (PT Aneka Bintang Gading) was only made a Co-Defendant. This creates a disharmony between legal norms and their application in judicial practice, thus obscuring the legal subjects who should be responsible for violations. Several creators, as explained in the lawsuits *quo*, implementing the system direct *licensing or* direct licensing outside the LMKN channel. Unfortunately, the Indonesian legal system has not explicitly accommodated this mechanism, thus creating legal uncertainty for both users and creators. The lack of norms regarding direct licensing causes overlapping authority between creators and LMK, and has implications for the ambiguity of which party should be asked for permission.

The protection of the creator's moral rights, as stipulated in Article 5 of the Copyright Law, includes the right to keep his name attached or not attached to his creation, the right to use his pseudonym, the right to change his creation, and the right to defend his creation from distortion or modification. In the context of a live performance, the most relevant moral rights are the right of attribution (attribution of name) and the right of integrity (maintaining the authenticity of the work). But the reality is that in many music shows or events, the name of the creator is not included or even the creation is changed illegally. Due to the incident, there is no effective enforcement or sanction mechanism that strictly regulates the form of violation of moral rights in the context of music performances.²⁸

In Decision Number 92/Pdt.Sus-HKI/2024/PN Niaga Jkt.Pst., the Plaintiff also filed a claim related to violation of moral rights. Often, copyright disputes are more focused on the economic aspect, but violation of moral rights can also cause immaterial losses. If the decision includes considerations regarding whether the name of Ari Bias as the creator of the song is always mentioned or acknowledged in every performance by Agnez Mo, this shows the court's attention to attribution rights. Likewise, if there is a claim regarding changes to the arrangement or lyrics of a song without permission that damages the essence of the original work, and the court considers this aspect, then it can be said that the norm of integrity rights is also applied.

However, experience shows that moral rights claims often receive less attention than economic rights in commercial disputes. If the judgment does not explicitly address or reject the Plaintiff's moral rights claim, this may indicate that the norm of moral rights protection, even if it exists, may be less effective in its enforcement in the civil realm, especially if it is not accompanied by clear material damage. This indicates a potential gap between the existence of the norm and the priority of its enforcement in the courts.

Decision Number 92/Pdt.Sus-HKI/2024/PN Niaga Jkt.Pst. provides a real picture of the strength and gaps in legal norms in Law No. 28 of 2014 and PP No. 56 of 2021. The power of legal norms: a) Recognition of Exclusive Rights: This decision, if it grants the lawsuit, stand up

²⁸ Kansil and Harjanto, "Perlindungan Hukum Atas Hak Moral Dan Hak Ekonomi Pencipta Terhadap Karya Cipta Yang Dijadikan Sebagai Jaminan Fidusia."

back to the basic principle that copyright is the exclusive right of the creator and commercial use requires permission or royalties. This shows that Law No. 28 of 2014, as the main legal umbrella, is strong enough to provide a basis for copyright protection; b) Legitimacy of PP No. 56 of 2021: If the Panel of Judges refers to PP No. 56 of 2021 as the legal basis for the obligation to pay royalties, this strengthens the legitimacy and relevance of the regulation in addressing royalty management issues, especially after the reform of the LMK system. The existence of this PP provides more concrete guidance for users and LMK.

Gaps and weaknesses in legal norms: a) Complexity of Proof: The ruling may highlight that while the legal framework is in place, the realities on the ground (especially for massive and dispersed live performances) make proving infringement and calculating damages extremely complex. Data on the number of spectators, ticket prices, and frequency of use of songs in each performance may be difficult to access or independently verify. This suggests that the recording and reporting system for the use of works mandated in PP 56/2021, especially by LMK or PDLM, still needs to be improved in its effectiveness; b) The role of LMK is not optimal: If this dispute arises even though there is LMK and PP 56/2021 which regulates collective royalty management, this could indicate that the role of LMK is not optimal: LMK (both from the side reception or distribution of royalties) have not been fully effective in preventing disputes or providing proactive protection for creators. The ruling may also indicate a lack of clarity in the royalty payment flow or a lack of transparency from the parties involved; c) Unbalanced focus on moral rights: The tendency of judgments to highlight aspects of economic rights more than moral rights may be an indicator that norms protecting moral rights, although legally existing, are under-emphasized in practice or that non-material losses are difficult to assess legally; d) Legal Awareness of Users: If the Defendant is proven in the verdict to have not complied with the obligation to pay royalties, this shows that legal awareness among commercial users of copyrighted works still needs to be improved, regardless of the existence of existing regulations.

Decision Number 92/Pdt.Sus-HKI/2024/PN Niaga Jkt.Pst. is not only a dispute resolution, but also a reflection of the effectiveness of copyright legal norms in Indonesia. If the decision sides with the creator and determines significant compensation, this can be a positive signal to the music industry that the rights of creators will be upheld. Conversely, if the decision shows difficulties or rejects the lawsuit due to weak evidence, this will highlight the need for systemic improvements in copyright governance, both in terms of regulation, LMK mechanisms, and awareness of the parties.

This ruling may encourage further revision or improvement of PP No. 56 of 2021, especially in terms of the mechanism for collecting data on the use of copyrighted works in live performances, transparency of royalty distribution, and affirmation of sanctions for violators. In addition, this ruling may be an important precedent for similar cases in the future, providing an overview of how the courts interpret and apply the Copyright Law and PP No. 56 of 2021 in dealing with the dynamics of the modern music industry.

In addition to the Agnez Mo case, copyright infringement is also evident in the *Senam*

Kesegaran Jasmani 88 (SKJ88) case, which became the subject of dispute in Supreme Court Decision No. 66 PK/Pdt.Sus-HKI/2023.²⁹ In this case, the composer sued over the use of her song in television commercials and on the YouTube platform without permission. The court partially granted the lawsuit, but the ruling primarily emphasized material losses and paid little attention to the composer's moral rights. This demonstrates that copyright protection in the digital sphere still faces weaknesses, particularly concerning the recognition of moral rights that should remain inherent to the creator as stipulated in Article 5 of the Copyright Law.

The SKJ88 case illustrates another issue in the implementation of copyright law, namely the lack of consistency in upholding the protection of moral rights alongside economic rights. In fact, in the development of the digital industry, moral rights have become increasingly important as they relate to the identity and reputation of the creator. In other words, such infringements cause not only financial harm but also undermine respect for intellectual works that should be safeguarded.

Furthermore, the case of Inge Christiane involved her song being used without permission as background music in the *Putri Anisa Hijab Perfumed Doll* product marketed commercially.³⁰ In this matter, the Central Jakarta Commercial Court ordered the defendant to pay damages of IDR 4,000,000,000, a decision later upheld by the Supreme Court through Decision No. 505 K/Pdt.Sus-HKI/2021. This case underscores that copyright infringements occur not only in live performances or digital platforms but also extend to physical products that exploit musical works for commercial purposes.

A comparison of these three cases demonstrates the persistent gap between *das Sollen* (the legal norms in place) and *das Sein* (the reality of practice) as explained by Hans Kelsen, while at the same time highlighting the urgency of legal reform to ensure that copyright protection functions more effectively. Within Hans Kelsen's theoretical framework, this condition can be interpreted as a difference between *das Sollen* and *das Sein*. Normatively (*das Sollen*), Articles 9 and 113 of the Copyright Law and Articles 3 and 10 of Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Song and/or Music Royalties regulate the obligation to obtain permission and pay royalties through LMK. These norms are binding and constitute a source of legal obligation for all parties who commercially exploit creative works. However, in reality (*das Sein*), these norms are often ignored by concert organizers and performers, creating a gap between the law on paper and the law in practice.

Kelsen's critique emphasizes that social reality does not automatically give rise to legal obligations without a valid normative basis. In other words, the law only applies if it can be

²⁹ Hilda Ersella et al., "Analisis Yuridis Terhadap Sengketa Hak Cipta Atas Lagu 'SKJ88': Studi Kasus Putusan Nomor 66 PK/Pdt. Sus-HKI/2023," *Policy and Law Journal* 2, no. 1 (2025): 15–24, <https://ejournal.duniakampus.org/index.php/polaw/article/view/164>.

³⁰ Raden Herwin Rizana and Abdul Razak Nasution, "Perlindungan Hukum Terhadap Hak Cipta Lagu Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (Studi Kasus Putusan MA Nomor: 505 K/PDT.Sus-HKI/2021)," *Governance: Jurnal Ilmiah Kajian Politik Lokal Dan Pembangunan* 10, no. 3 (2024): 94–100, <http://governance.lkispol.or.id/index.php/description/article/view/148>.

derived from other valid norms in the hierarchy of the legal system. When the court, for example, recognizes direct licenses that are not yet fully integrated into the framework of positive law, it creates legal uncertainty and weakens the principle of collectivity regulated by the state. Therefore, the relevance of Kelsen's theory in this context is to assess the extent to which positive law is not only formulated but also implemented consistently so that the gap between *das Sollen* and *das Sein* can be narrowed.

Based on the preceding discussion, these rulings highlight the limitations of the current regulatory framework and may serve as a momentum for revising or strengthening Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Song and/or Music Royalties. Improvements are particularly needed in the mechanisms for collecting data on the use of copyrighted works in live performances, ensuring transparency in the distribution of royalties, and reinforcing sanctions against violators. Beyond their immediate impact, the examined rulings also provide important precedents for similar disputes in the future, offering insights into how the courts interpret and apply the Copyright Law and Government Regulation of the Republic of Indonesia Number 56 of 2021 concerning the Management of Song and/or Music Royalties in responding to the challenges of the modern music industry.

4. CONCLUSION

This study shows that copyright protection in music performances in Indonesia still faces fundamental problems in the form of a gap between applicable legal norms and practices in the field. Normatively, Law No. 28 of 2014 on Copyright and Government Regulation No. 56 of 2021 have regulated the obligation to obtain permission and pay royalties through the National Collective Management Organization (LMKN). However, concert organizers often ignore these obligations, resulting in the economic and moral rights of creators not being optimally protected. Through Hans Kelsen's theory, this study confirms the gap between *das Sollen* (what should be according to the law) and *das Sein* (what happens in social reality), which is reflected in the practice of royalty violations and direct license recognition that is not yet fully recognized in the positive legal system. Based on an analysis of three case studies, this research confirms that legal responsibility in music performances must be reconstructed to be clearer, especially in distinguishing the obligations of performers and event organizers. LMKN also needs to be strengthened, both in its supervisory function and in the transparency of royalty distribution, so that the collective system can truly guarantee copyright protection. Thus, this study contributes to the academic understanding of the relationship between legal norms and practice, while offering practical recommendations for copyright protection reform in Indonesia.

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