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The Dilemma of Digital Music Royalties: Between Public Creativity and Creators' Rights

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Abstrak: Penelitian ini bertujuan untuk mengkaji sinkronisasi pengaturan royalti atas praktik *cover* lagu dan pemutaran musik di ruang publik guna memberikan perlindungan terhadap hak ekonomi pencipta di tengah perkembangan monetisasi digital. Dinamika distribusi musik berbasis platform menghadirkan tantangan baru, khususnya terkait batas penggunaan komersial dan nonkomersial yang belum dirumuskan secara eksplisit. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan konseptual guna menilai konsistensi norma serta relevansinya terhadap praktik aktual. Kebaruan penelitian ini terletak pada analisis terhadap norma kabur dan kekosongan norma parsial dalam klasifikasi penggunaan digital yang berimplikasi pada ketidakpastian hukum. Hasil penelitian menunjukkan bahwa meskipun sistem pengelolaan royalti telah diatur dan dilembagakan, implementasinya masih menghadapi tantangan berupa ambiguitas parameter komersialisasi, rendahnya kesadaran hukum pengguna, serta kebutuhan peningkatan transparansi dalam distribusi royalti. Kesimpulannya, perlindungan hak ekonomi pencipta telah tersedia secara normatif, namun efektivitasnya dalam menjamin kepastian hukum masih memerlukan penguatan pada aspek implementatif. Rekomendasinya, diperlukan penegasan parameter monetisasi digital, harmonisasi pengaturan klasifikasi penggunaan komersial, serta penguatan transparansi dan akuntabilitas sistem pengelolaan royalti guna mewujudkan kepastian hukum yang lebih adaptif dan berkeadilan di era digital.

Kata Kunci : Hak Cipta, Royalti, Cover Lagu, Komersial, Kepastian Hukum

Abstract: *This study aims to examine the synchronization of royalty regulations on song cover practices and music playback in public spaces in order to protect the economic rights of creators amid the development of digital monetization. The dynamics of platform-based music distribution present new challenges, particularly regarding the boundaries between commercial and non-commercial use, which have not been explicitly defined. This study uses a normative legal method with a legislative and conceptual approach to assess the consistency of norms and their relevance to actual practices. The novelty of this study lies in its analysis of vague norms and partial normative gaps in the classification of digital use, which have implications for legal uncertainty. The results show that although the royalty management system has been regulated and institutionalized, its implementation still faces challenges in the form of ambiguity in commercialization parameters, low legal awareness among users, and the need for increased transparency in royalty distribution. In conclusion, the protection of creators' economic rights is available normatively, but its effectiveness in ensuring legal certainty still needs to be strengthened in terms of implementation. The recommendation is that it is necessary to clarify the parameters of digital monetization, harmonize regulations on the classification of commercial use, and strengthen the transparency and accountability of the royalty management system in order to achieve greater legal certainty that is more adaptive and equitable in the digital era.*

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Keywords: *Copyright, Royalty, Song Cover, Commercial, Legal Certainty*

PENDAHULUAN

The development of digital technology has fundamentally transformed the patterns of distribution and consumption of copyrighted works, including songs and/or music. The increasing use of the internet in Indonesia has accelerated the digitalization of creative works. Data from the Indonesian Internet Service Providers Association (APJII) shows that more than 80%, or around 229.4 million people in Indonesia, are connected to the internet, the majority of whom use it to access social media and digital platforms.[1] The high level of internet penetration has driven the transformation of social and economic activities, including in the music industry, which now relies on digital platforms and social media as the primary means of distributing works.

The transformation of music distribution from physical media to digital-based systems enables individuals to record, reproduce, upload, and redistribute songs at relatively low cost. Platforms such as YouTube, TikTok, and other streaming services function not only as spaces for expression but also as mediums for monetization.[2] This condition creates new dynamics in copyright protection, particularly concerning the practices of song covers and the playing of music in public spaces.

Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright explains that copyright is an exclusive right held by the creator or rights holder to announce, reproduce, and grant permission for the use of their work, while still observing the limitations stipulated in the applicable laws and regulations. Copyright protection as regulated in Article 8 and Article 9 includes exclusive rights, namely the moral rights and economic rights of the creator.

Thus, any use of a copyrighted work for commercial purposes requires permission from the creator or the copyright holder. However, in digital practice, the boundary between commercial and non-commercial use has become increasingly blurred. Many creators upload song covers without permission but still gain benefits through monetization features, advertising, or increased popularity that generates indirect economic value.[3]

In addition to the practice of song covers, controversy also arises in the context of playing music in public spaces such as cafés, restaurants, shopping centers, and various other commercial venues. The playing of music intended to support the business atmosphere essentially constitutes a form of economic exploitation of copyrighted works. The management and distribution of royalties are carried out through collective management mechanisms; however, in practice, they often give rise to debates regarding payment obligations, transparency in distribution, and fairness for both business operators and creators.[4]

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The controversy surrounding royalty payments in public spaces is even linked to the concept of communication to the public in the European Union legal system, which emphasizes that any communication of a work to the public for commercial purposes gives rise to an obligation to pay royalties.[5] This comparison shows that the issue of royalties is not merely an administrative matter, but also concerns the conceptual construction regarding the limits of public use of copyrighted works.

Previous studies generally discuss the protection of song copyrights in the digital era through several approaches, namely normative studies on the legal protection of copyright holders in digital music distribution, research on the use of music on social media platforms from the perspective of intellectual property law, studies on the economic rights of creators in relation to cover version practices, as well as analyses of royalty management and distribution through collective management organizations. Although these studies provide important contributions, most of them still examine the practice of song covers in digital spaces and the playing of music in public spaces separately. Moreover, there has not yet been a comprehensive analysis regarding the ambiguity of norms in determining the commercial nature of the use of works on digital platforms, as well as the partial normative gaps in the transparency of royalty distribution. Therefore, a research gap exists concerning the construction of a comprehensive legal protection framework that ensures legal certainty for creators in the digital era. This article offers a state of the art contribution by integrating the analysis of royalty regulations concerning song cover practices and the playing of music in public spaces within a single framework of economic rights protection oriented toward the principle of legal certainty.

Based on the above description, the research questions posed are: (1) how are the legal regulations concerning the payment of royalties for song cover practices and the playing of music in public spaces arranged within the Indonesian legal system; and (2) how is legal protection provided for creators and copyright holders in ensuring legal certainty regarding such practices in the digital era. To answer these questions, this study employs a normative juridical approach through the analysis of legislation, legal doctrines, and principles of copyright protection in order to bridge the construction of legal norms with the digital practices that are developing in society.

Systematically, this article consists of several main sections, namely the introduction, which contains the background, previous studies, the research gap, the formulation of the problem, and the main argument; the research method, which explains the approach used in analyzing legal issues; the discussion on the legal regulation of royalty payments for song cover practices and the playing of music in public spaces, as well as the analysis of legal protection for creators and copyright holders; and the conclusion, which presents the answers to the research questions and recommendations for strengthening the regulation.

The main argument of this article is that the issue of royalty payments for song cover practices and the playing of music in public spaces is not merely caused by the absence of legal norms,

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but rather by the ambiguity of regulations concerning the limits of commercial use in the digital space, as well as the lack of transparency and oversight in the collective royalty distribution mechanism. Therefore, strengthening legal protection for creators and copyright holders must be directed toward a systemic approach that integrates the clarification of parameters for commercial use, the improvement of accountable royalty management governance, and the harmonization of legal norms so that legal certainty is not only normative in nature but also effective in the practice of the digital economy.

RESEARCH METHOD

This study is a normative legal research aimed at analyzing the legal norms governing copyright protection in the utilization of musical works. The approaches used in this research are the statutory approach and the conceptual approach. The legal materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include various regulations governing copyright and the management of song royalties. Secondary legal materials consist of books, academic journals, and various literature related to intellectual property rights and copyright protection. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources relevant to the research. The collection of legal materials was carried out through library research. All legal materials obtained were then analyzed qualitatively by interpreting the applicable legal norms and examining their conformity with the practices of utilizing musical works in the digital era.

DISCUSSION

1. Legal Regulation of Royalties for Song Covers and the Playing of Music in Public Spaces within the Indonesian Legal System

Royalties themselves constitute compensation granted to creators or related rights holders for the utilization of the economic rights of a work, as regulated in Article 1 of Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties. The regulation explains that royalty management is carried out through a collective mechanism by the National Collective Management Organization (LMKN), which cooperates with Collective Management Organizations (LMK) to collect, accumulate, and distribute royalties to creators and related rights holders.

Within the Indonesian legal system, the existence of LMKN has a strategic function in ensuring the protection of the economic rights of creators. LMKN is understood as a state auxiliary organ that performs a public function in managing the collection and distribution of royalties at the national level, even though the institution is not entirely funded by the State Budget. This position indicates that the management of song and/or music royalties in

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Indonesia forms part of a legal system that involves coordination between the state, collective management organizations, and copyright holders.

According to Hendra Tanu Admadja, creators possess economic rights to obtain benefits from the exploitation of their copyrighted works, which consist of Performing Rights, Broadcasting Rights, Reproduction Rights (including mechanical rights, printing rights, synchronization rights, and advertising rights), and Distribution Rights.

Any reproduction of songs in either physical or digital form—including song covers, re-recordings, and digital content—principally requires permission and the obligation to pay royalties to the creator or the related rights holder.

Normatively, the regulation concerning the commercial use of songs and/or music is stipulated in Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties. Article 3 of the regulation states that any person may carry out the commercial use of songs and/or music in the form of commercial public services, with the obligation to pay royalties to creators, copyright holders, and related rights owners through LMKN.

The utilization of musical works does not only occur through the distribution of recordings or live performances, but also through various forms of use in commercial public services. The provision in Article 3 indicates that any use of musical works related to economic activities—including the playing of music in restaurants, hotels, shopping centers, public transportation, and various other business activities—falls within the category of commercial use that requires permission as well as the payment of royalties. This is consistent with the concept of public performance rights in copyright law, which grants creators the right to receive compensation for the playing of musical works in public spaces.

Protection of musical works within the Indonesian legal system is regulated under Law Number 28 of 2014 concerning Copyright (Copyright Law). Copyright is an exclusive right that arises automatically once a work has been expressed in a tangible form, as stipulated in Article 1 paragraph (1) of the Copyright Law.

These exclusive rights include moral rights and economic rights, which grant the creator the authority to control the use of their work and to obtain economic benefits from the utilization of that work.

In the context of musical works, economic rights grant creators or copyright holders the authority to obtain benefits from the exploitation of their copyrighted works. Article 8 of the Copyright Law affirms that economic rights constitute the exclusive rights of creators to obtain economic benefits from their works. Furthermore, Article 9 paragraph (1) explains

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various forms of utilization of copyrighted works that fall within the scope of economic rights, including reproduction, distribution, publication, performance, and the communication of works to the public. Therefore, any use of musical works by other parties that falls within these forms of utilization must obtain permission from the creator or the copyright holder, as emphasized in Article 9 paragraph (2).

One of the consequences of the commercial use of musical works is the obligation to pay royalties. The regulation of royalties for the utilization of songs and/or music within the Indonesian legal system forms part of the copyright protection regime that recognizes the economic rights of creators. Copyright essentially constitutes an exclusive right that grants creators the authority to regulate the use of their works and to obtain economic benefits from their utilization. In principle, any use of musical works by other parties requires permission from the creator or the copyright holder and must be accompanied by the obligation to pay royalties as a form of appreciation for the intellectual work that has been produced.[6]

From the perspective of copyright law, the playing of music in public spaces cannot be viewed merely as a form of entertainment, but rather as a form of utilization of copyrighted works that carries economic value. Therefore, any business actor who uses songs or music in commercial activities is required to obtain a license and pay royalties to the creator through a collective management mechanism.

Every instance of music being played in public places by business operators is required to involve the payment of royalties to creators and related rights holders. This rule applies without exception, even to businesses that have subscribed to digital music streaming services such as Spotify, YouTube Premium, Apple Music, or similar platforms.[7] This affirms that the obligation to pay royalties for playing music in public spaces is based on the copyright regime of public performance rights, rather than on the ownership of personal access to streaming services.

A subscription to a digital platform only grants a private use license, and therefore does not eliminate the legal obligation of business actors to pay royalties when music is played to the public. Thus, this norm affirms a clear distinction between personal consumption licenses and commercial use licenses, which constitutes an important principle in the protection of the economic rights of creators.

There is a national data system for managing song and music copyright royalties in Indonesia known as the Song and Music Data Center (PDLM) managed by the Directorate General of Intellectual Property (DJKI), and the Song and/or Music Information System (SILM) managed by the National Collective Management Institute (LMKN), as regulated in Article 8 of Government Regulation Number 56 of 2021. However, Article 62 of the Minister of

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Law Regulation Number 27 of 2025 states that the distribution and management of song and/or music royalties cannot yet be carried out through SILM sourced directly from PDLM; therefore, royalty management continues to be conducted in accordance with the prevailing laws and regulations.

In addition to the playing of music in public spaces, the development of digital technology has also given rise to the practice of song covers on digital platforms. From the perspective of copyright law, the practice of covering songs can be qualified as a form of reproduction of a work that falls within the scope of mechanical rights, namely the right to reproduce or re-record a work in another form. Therefore, any reproduction of a song in the form of a re-recording, digital distribution, or monetized digital content in principle requires permission from the creator or the copyright holder.

The practice of covering songs that has developed on digital platforms is often carried out by content creators for the purposes of entertainment or creative expression. However, in many cases, such content is also monetized through advertising systems, endorsements, or commercial collaborations with digital platforms. This condition indicates that song covers are no longer merely a form of artistic expression, but can also become an economic activity that generates financial benefits.

Nevertheless, the development of practices involving the use of musical works in the digital era has raised various normative issues in the implementation of copyright law. One of the main issues that arises is the existence of vague norms. One example is the definition of "commercial use" as regulated in Article 1 paragraph (25) of the Copyright Law and Article 1 of Government Regulation Number 56 of 2021, which defines commercial use as the utilization of a work to obtain economic benefits, either directly or indirectly. However, this formulation remains general in nature and does not yet provide clear operational parameters to distinguish between commercial and non-commercial use, particularly in the context of digital platforms.

The vagueness of this norm creates the potential for multiple interpretations in practice. For instance, song cover content uploaded to digital platforms often does not sell the song directly, but generates profit through advertising monetization or increased popularity of a digital channel. This situation raises debate as to whether such practices fall within the category of commercial use, which requires the payment of royalties, or whether they merely constitute a form of creative expression in the digital space.Selain kekaburan norma mengenai penggunaan komersial, pengaturan hukum mengenai pengelolaan royalti juga menunjukkan adanya kekosongan norma parsial dalam aspek transparansi distribusi royalti to the creator. The legislation indeed regulates the obligation of financial audits and performance reporting by LMKN and LMK as a form of accountability in royalty management. However, these regulations do not explicitly provide a guarantee of the

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creator's right to access information regarding the detailed calculation of the royalties they receive.

Kekosongan norma parsial tersebut menunjukkan bahwa sistem pengelolaan royalti di Indonesia masih lebih menitikberatkan pada akuntabilitas kelembagaan, tetapi belum sepenuhnya menjamin transparansi substantif bagi pencipta sebagai pemilik hak ekonomi. Kondisi ini berpotensi menimbulkan ketidakpastian hukum bagi pencipta karena mereka tidak memiliki akses langsung terhadap informasi mengenai sumber penggunaan karya, metode pembagian royalti, maupun dasar pengurangan biaya operasional dalam pengelolaan royalti.

Akibatnya, meskipun sistem pengelolaan royalti telah diatur secara normatif, implementasinya masih menghadapi tantangan dalam hal transparansi dan akuntabilitas. Oleh karena itu, diperlukan pengaturan yang lebih komprehensif mengenai klasifikasi penggunaan karya musik serta mekanisme transparansi distribusi royalti agar tercipta kepastian hukum yang lebih kuat dalam sistem perlindungan hak cipta.

Selain itu, pengaturan mengenai tarif royalti juga masih menunjukkan karakter norma delegatif karena penetapan besaran tarif diserahkan kepada keputusan menteri yang hingga saat ini belum sepenuhnya diperbarui. Keadaan ini menimbulkan ketidakpastian hukum bagi pelaku usaha, khususnya usaha mikro dan kecil yang belum memperoleh kejelasan mengenai skema keringanan tarif royalti sesuai dengan skala usaha mereka.

2. Perlindungan Hukum bagi Pencipta dalam Praktik Cover Lagu dan Pemutaran Musik di Ruang Publik

Perlindungan hukum terhadap pencipta merupakan salah satu tujuan utama dari sistem hukum hak cipta. Satjipto Rahardjo memandang perlindungan hukum sebagai upaya memberikan pengayoman terhadap kepentingan individu dengan memberikan kekuasaan kepada seseorang untuk mempertahankan haknya. Sementara itu, Philipus M. Hadjon menjelaskan bahwa perlindungan hukum merupakan bentuk pengakuan dan jaminan terhadap hak-hak subjek hukum berdasarkan prinsip negara hukum.[8] Perlindungan hukum terhadap pencipta merupakan salah satu tujuan utama dari sistem hukum hak cipta. Perlindungan tersebut bertujuan untuk memberikan jaminan bahwa pencipta dapat menikmati manfaat ekonomi dari karya yang dihasilkannya serta memperoleh perlindungan terhadap penyalahgunaan ciptaannya oleh pihak lain.

Dalam sistem hukum Indonesia, perlindungan terhadap hak cipta dapat dilakukan melalui dua mekanisme utama, yaitu perlindungan hukum preventif dan perlindungan hukum represif. Perlindungan hukum preventif bertujuan untuk mencegah terjadinya pelanggaran hak cipta melalui pembentukan norma hukum, sistem lisensi, serta mekanisme pengelolaan

royalti yang transparan. Sebaliknya, perlindungan hukum represif diberikan melalui mekanisme penegakan hukum apabila terjadi pelanggaran terhadap hak cipta.

Perlindungan hukum preventif bertujuan untuk mencegah terjadinya pelanggaran hak cipta melalui pembentukan norma hukum yang jelas, mekanisme lisensi, serta sistem pengelolaan royalti yang transparan. Perlindungan preventif dalam sistem hak cipta Indonesia diwujudkan melalui berbagai peraturan perundang-undangan, antara lain Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, Peraturan Pemerintah Nomor 56 Tahun 2021 tentang Pengelolaan Royalti Hak Cipta Lagu dan/atau Musik, serta Peraturan Menteri Hukum Nomor 27 Tahun 2025 yang mengatur mekanisme teknis pengelolaan royalti.

Perlindungan preventif dalam sistem hukum hak cipta Indonesia diwujudkan melalui berbagai peraturan perundang-undangan yang mengatur hak moral dan hak ekonomi pencipta. Undang-Undang Hak Cipta secara tegas menyatakan bahwa lagu dan/atau musik dengan atau tanpa teks termasuk dalam kategori ciptaan yang dilindungi hukum sebagaimana diatur dalam Pasal 40 ayat (1). Perlindungan tersebut mencakup hak moral yang berkaitan dengan integritas dan reputasi pencipta, serta hak ekonomi yang memberikan kewenangan kepada pencipta untuk memperoleh manfaat ekonomi dari ciptaannya.

Selain itu, mekanisme lisensi kolektif melalui LMK dan LMKN merupakan instrumen preventif yang bertujuan memberikan kemudahan bagi pengguna karya musik untuk memperoleh izin penggunaan ciptaan secara sah tanpa harus meminta izin secara langsung kepada setiap pencipta.

Lisensi merupakan perjanjian yang mengikat, dalam ilmu hukum perjanjian tersebut disebut perjanjian *Obligatoire*. Perjanjian lisensi hak cipta juga merupakan perjanjian konsensualisme karena perjanjian itu dilandasi dengan sebuah konsensus atau kata sepakat, kemudian perjanjian lisensi hak cipta mengikuti asas kebebasan berkontrak. Perjanjian lisensi hak cipta harus dibuat secara tertulis dan dicatatkan ke Direktorat Jenderal Kekayaan Intelektual sesuai Pasal 83 UUHC serta Peraturan Pemerintah Nomor 36 Tahun 2018 tentang Pencatatan Perjanjian Lisensi Kekayaan Intelektual. Pencatatan lisensi merupakan kewajiban hukum yang harus dilakukan oleh pemberi lisensi dan/atau pernerima lisensi dengan melampirkan perjanjian lisensi beserta dokumen pendukung kepada DJKI.

Para musisi yang tergabung dalam Aliansi Pencinta Musik Indonesia (APMI) mengajukan uji materiil Pasal 89 ayat (1)–(4) Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta ke Mahkamah Konstitusi karena dinilai tidak memberikan kepastian hukum, keadilan, dan perlindungan hak ekonomi bagi pencipta lagu dan pemilik hak terkait. Ketidakjelasan pengaturan mengenai mekanisme pengelolaan dan distribusi royalti membuka ruang tafsir yang luas, sehingga melahirkan praktik sentralisasi melalui pembentukan LMKN yang tidak secara eksplisit diamanatkan oleh undang-undang. Meskipun Pasal 87 UU Hak Cipta

mengatur keberadaan LMK sebagai penerima kuasa pencipta untuk mengelola hak ekonomi, Peraturan Pemerintah Nomor 56 Tahun 2021 justru menempatkan LMKN sebagai koordinator penghimpunan dan pendistribusian royalti. Kondisi ini dinilai melampaui kewenangan undang-undang (ultra vires) dan berpotensi bertentangan dengan Pasal 28D ayat (1), Pasal 28H ayat (4), serta Pasal 1 ayat (2) UUD 1945, sehingga secara normatif menunjukkan adanya problem delegasi kewenangan yang perlu direformulasi agar selaras dengan asas hierarki peraturan perundang-undangan.[9] Dengan demikian, secara normatif terdapat problem delegasi kewenangan (*delegated norm problem)* yang perlu direformulasi agar selaras dengan asas hierarki peraturan perundang-undangan.

Dalam praktiknya, berbagai sengketa terkait penggunaan karya musik masih sering terjadi, terutama dalam konteks cover lagu di platform digital. Salah satu kasus yang cukup dikenal adalah sengketa antara pencipta lagu Erwin Agam dengan penyanyi Tri Suaka dan Zinidin Zidan yang mengunggah cover lagu "Buih Jadi Permadani" di media sosial tanpa izin pencipta. Kasus ini menunjukkan bahwa praktik cover lagu yang dimonetisasi tanpa lisensi dapat dikualifikasikan sebagai pelanggaran terhadap hak ekonomi pencipta.[10]

Kasus lain yang menunjukkan kompleksitas perlindungan hak cipta di bidang musik adalah sengketa antara Keenan Nasution dan Vidi Aldiano terkait penggunaan lagu "Nuansa Bening". Sengketa tersebut diajukan melalui gugatan di Pengadilan Niaga dengan tuntutan ganti rugi atas penggunaan karya musik untuk tujuan komersial tanpa memperoleh lisensi dari pencipta.

Selain sengketa di ranah digital, konflik terkait kewajiban royalti juga terjadi dalam praktik pemutaran musik di ruang publik. Salah satu contoh yang menonjol adalah kasus pemutaran musik di gerai restoran Mie Gacoan yang berujung pada tuntutan pembayaran royalti kepada lembaga pengelola hak cipta. Sengketa tersebut akhirnya diselesaikan melalui kesepakatan pembayaran royalti sebagai bentuk pemenuhan kewajiban hukum atas penggunaan karya musik dalam kegiatan usaha.[11]

Kasus-kasus tersebut menunjukkan bahwa konflik terkait penggunaan karya musik dapat terjadi dalam berbagai konteks, baik pada platform digital maupun dalam aktivitas usaha di ruang publik. Hal ini menunjukkan bahwa implementasi perlindungan hak cipta masih menghadapi berbagai tantangan, terutama terkait dengan kejelasan norma hukum, kesadaran hukum, serta sistem pengelolaan royalti.

Secara konseptual, Pasal 43 hingga Pasal 51 UUHC merupakan manifestasi prinsip pembatasan hak cipta yang sejalan dengan doktrin *fair use doctrine* (Amerika Serikat) atau *fair dealing* (Negara Common Law).[12] Meskipun istilah *fair use* tidak digunakan secara eksplisit, substansi norma menunjukkan pengakuan bahwa hak cipta tidak bersifat absolut dan harus dibatasi demi kepentingan publik. Di Indonesia menganut model *fair dealing*

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tertutup, yakni pengecualian hanya berlaku untuk perbuatan yang secara limitatif disebutkan dalam undang-undang, berbeda dengan *fair use* terbuka yang bersifat fleksibel. Konsekuensinya, setiap penggunaan di luar daftar yang disebutkan dalam undang-undang tersebut berpotensi dikualifikasikan sebagai pelanggaran.

Perlindungan hukum represif dalam sistem hukum hak cipta diberikan melalui mekanisme penegakan hukum apabila terjadi pelanggaran terhadap hak cipta. Undang-Undang Hak Cipta memberikan hak kepada pencipta atau pemegang hak cipta untuk mengajukan gugatan ganti rugi melalui Pengadilan Niaga sebagaimana diatur dalam Pasal 96 sampai dengan Pasal 101. Selain gugatan perdata, pelanggaran hak cipta juga dapat dikenakan sanksi pidana sebagaimana diatur dalam Pasal 113 UUHC yang mengancam pelaku pelanggaran dengan pidana penjara dan/atau denda.

Namun efektivitas penegakan hukum tersebut sangat bergantung pada kejelasan norma hukum yang mengatur penggunaan karya musik. Apabila definisi penggunaan komersial tidak dirumuskan secara jelas, maka penerapan sanksi pidana berpotensi menimbulkan ketidakpastian hukum serta membuka kemungkinan kriminalisasi yang tidak proporsional terhadap pelaku usaha kecil atau kreator digital.

Menurut Gustav Radbruch, *Where law reaches intolerable injustice, it must yield to justice* (ketika hukum mencapai tingkat ketidakadilan yang tak tertahankan, maka hukum itu harus tunduk kepada keadilan). Setelah melihat hukum Nazi yang secara formal sah tetapi tidak adil dan melanggar kemanusiaan, lahirlah *Formula Radbruch* yang menegaskan bahwa hukum tidak boleh dijadikan alat untuk menindas manusia. Ketika hukum kehilangan moral, maka ia kehilangan hakikatnya. Teori hukum Gustav Radbruch, hukum harus menjaga keseimbangan antara keadilan, kepastian hukum, dan kemanfaatan. Oleh karena itu, pengaturan mengenai penggunaan karya musik di era digital harus mampu memberikan perlindungan yang adil bagi pencipta sekaligus tetap memberikan ruang bagi perkembangan kreativitas masyarakat.[13]

Lisensi kolektif dikelola oleh LMK atau LMKN, badan hukum nirbala yang diberi kuasa oleh pencipta untuk menghimpun dan mendistribusikan royalti secara massa. Sistem ini berlaku untuk penggunaan komersial lagu/musik di radio, TV, atau platform digital melalui *blanket licenseI* satu pintu. Di Indonesia, lisensi kolektif menjadi sistem utama untuk efisiensi dengan LMKN sebagai pengelola nasional.

Sedangkan lisensi langsung (*direct license*) merupakan perjanjian tertulis pemilik hak cipta yang dilakukan langsung antara pemilik hak cipta dengan pengguna karya tanpa melalui perantara LMK. Sistem ini menempatkan pencipta atau pemegang hak cipta sebagai pihak yang memiliki kontrol penuh atas pemberian lisensi, baik eksklusif maupun non-eksklusif, dengan kewenangan untuk bernegosiasi secara langsung mengenai royalti dan ketentuan

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penggunaan karya. Meski diizinkan Pasal 81 ayat (1) UUHC, namun di Indonesia belum sepenuhnya memberlakukan karena memprioritaskan sistem kolektif.[14]

Perjanjian lisensi di Indonesia pada prinsipnya sah sebagai perjanjian innominaat sepanjang tidak bertentangan dengan hukum positif, norma kesopanan, kesusilaan, dan ketertiban umum. Hal ini sejalan dengan Pasal 82 ayat (1) dan ayat (2) UUHC yang melarang perjanjian lisensi memuat ketentuan yang merugikan perekonomian negara atau bertentangan dengan hukum nasional, serta Pasal 1338 KUH Perdata mengenai asas *pacta sunt servanda* yang menjadi dasar konseptual *direct licensing*.

Karena sistem pengelolaan hak cipta di Indonesia saat ini menganut mekanisme kolektif, *direct licensing* belum dapat diterapkan secara efektif. Penerapannya justru berpotensi menimbulkan penarikan royalti ganda, karena pengguna karya yang telah memperoleh lisensi langsung masih dapat ditagih royalti oleh LMKN melalui skema *blanket licensing*, sehingga menimbulkan ketidakpastian hukum, kerancuan administrasi, dan ketidakadilan distribusi royalti.

Relasi antara lisensi kolektif dan lisensi langsung yang tidak jelas, menunjukkan adanya disharmonisasi regulasi pada level implementasi. UUHC memberikan ruang bagi lisensi langsung melalui Pasal 81, sedangkan regulasi pelaksana cenderung memprioritaskan lisensi kolektif. Kondisi ini menciptakan konflik norma horizontal yang berpotensi menimbulkan ketidakpastian hukum bagi pengguna maupun pencipta.

Disamping itu, dorongan terhadap digitalisasi sistem lisensi otomatis atau *royalty automation system* menjadi kebutuhan yang tidak terpisahkan dari pengelolaan royalti di era digital. *Royalty automation system* berbasis *Open Digital Rights Language (ODRL)* yang dirancang untuk mengotomatisasi proses lisensi, penyelesaian, dan distribusi royalti hak cipta dalam layanan Over-the-Top (OTT). Sistem yang diusulkan bekerja dengan mengekstraksi informasi hak dan kewajiban secara otomatis dari kebijakan ODRL, termasuk rasio pembagian royalti antar pemegang hak cipta, sehingga memungkinkan proses *royalty settlement and distribution* dilakukan tanpa intervensi manual.[15]

Di Indonesia, kehadiran konsep PDLM sebagai basis pengelolaan royalti nasional yang terintegrasi dengan SILM pada dasarnya dimaksudkan untuk meningkatkan keterpaduan data karya, pemegang hak, serta penggunaan lagu dan/atau musik secara nasional. Keberadaan sistem ini dapat dipandang sebagai instrumen administratif untuk mendukung transparansi dan akurasi distribusi royalti. Namun, PDLM dan SILM belum beroperasi secara optimal akibat kendala teknis, kesiapan infrastruktur, serta sinkronisasi data antar pemangku kepentingan.

Dengan demikian, penguatan perlindungan hukum terhadap pencipta tidak hanya bergantung pada keberadaan norma hukum, tetapi juga pada kejelasan perumusan norma, efektivitas

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mekanisme lisensi, serta transparansi pengelolaan royalti. Reformulasi norma mengenai parameter penggunaan komersial dalam ruang digital serta peningkatan transparansi pengelolaan royalti menjadi langkah penting untuk mewujudkan kepastian hukum bagi pencipta maupun pengguna karya musik.

KESIMPULAN

Pengaturan royalti atas pemanfaatan lagu dan/atau musik dalam sistem hukum Indonesia pada dasarnya telah diatur melalui Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, Peraturan Pemerintah Nomor 56 Tahun 2021, serta Peraturan Menteri Hukum Nomor 27 Tahun 2025 yang menegaskan kewajiban pembayaran royalti atas penggunaan lagu secara komersial melalui mekanisme pengelolaan kolektif oleh LMK dan LMKN. Namun demikian, pengaturan tersebut masih menunjukkan adanya kekaburan norma mengenai batasan penggunaan komersial, khususnya dalam praktik cover lagu di platform digital, serta kekosongan norma parsial dalam aspek transparansi distribusi royalti kepada pencipta. Kondisi tersebut berimplikasi pada belum optimalnya kepastian hukum dalam sistem pengelolaan royalti musik di Indonesia.

Perlindungan hukum bagi pencipta dalam praktik cover lagu dan pemutaran musik di ruang publik secara normatif telah disediakan melalui perlindungan preventif berupa pengaturan hak moral dan hak ekonomi, mekanisme lisensi, serta pengelolaan royalti melalui LMK dan LMKN, serta perlindungan represif melalui gugatan perdata, penyelesaian sengketa non-litigasi, dan sanksi pidana terhadap pelanggaran hak cipta. Meskipun demikian, berbagai sengketa yang terjadi menunjukkan bahwa efektivitas perlindungan tersebut masih dipengaruhi oleh ketidakjelasan parameter penggunaan komersial dan keterbatasan transparansi pengelolaan royalti, sehingga diperlukan penguatan perumusan norma dan mekanisme implementasi agar perlindungan hak ekonomi pencipta dapat terwujud secara lebih efektif dan memberikan kepastian hukum di era digital.

REFERENCE

[1] D. Admadja, “Juridical Analysis of Music Uploaded on Tiktok Media in View of Intellectual Property Law,” *International Asia Of Law and Money Laundering (IAML)*, vol. 1, no. 3, pp. 193–197, 2022, doi: 10.59712/iaml.v1i3.33.

[2] S. B Simanjuntak, B. Nainggolan, and H. Jayadi, “Perlindungan Hukum Pemegang Hak Cipta Lagu dan Musik Di Era Digital,” *Jurnal Syntax Transformation*, vol. 3, no. 1, pp. 141–152, 2022, doi: 10.46799/jurnalsyntaxtransformation.v3i1.501.

[3] A. Juardi, Martin Roestamy, and Nurwati, "Analisis Hukum Terhadap Hak Ekonomi Pencipta Karya Musik Dan Lagu Yang Di Cover Version Pada Platform Digital," *Jurnal Ilmiah Living Law*, vol. 15, no. 2, pp. 129–140, 2023, doi: 10.30997/jill.v15i02.9551.

[4] E. J. Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu Dan/Atau Musik (Royalty on the Management of Copyright Songs and Music," *Jurnal Ilmiah Kebijakan Hukum*, vol. 14, no. 3, p. 553.

[5] M. Shaleh, *Polemic Pembayaran Royalti Lagu di Ruang Publik: Studi Komparatif dengan Konsep Communication To The Public Di Uni Eropa, MARINews*. Mahkamah Agung.

[6] "Tinjauan Normatif Kedudukan Lembaga Manajemen Kolektif Nasional (LMKN) Sebagai State Auxiliary Organ Berdasarkan Peraturan Mohamad Alen Aliansyah, "Pemerintah Nomor 56 Tahun 2021 tentang Pengelolaan Royalti Lagu dan/atau Musik," *Dialogia Iuridica Law Journal*, vol. 13, no. 2, p. 10.

[7] H. P. Wetmen Sinaga, *Performing Right Hak Cipta Atas Karya Musik dan Lagu Serta Aspeknya, edisi revisi*. Jakarta: UKI Press.

[8] A. M. Erwin Aditya Pratama, "Analisis Hukum Mengenai Pengelolaan Royalty Atas Hak Cipta Lagu Populer," *Pancasakti Law Journal*, vol. 1, no. 2, pp. 279–286.

[9] H. Dwi, "DJKI Tegaskan Putar Musik di Ruang Publik Wajib Bayar Royalti."

[10] Romli, *Perlindungan Hukum*. Palembang: CV. Doki Course and Training.

[11] M. K. R. I. Humas, "Dualisme Kewenangan LMK dan LMKN dalam Pengelolaan Royalti Hak Cipta."

[12] N. S.K., J. S., and R. S.M, "Pelanggaran Hak Cipta Lagu yang Diperbanyak Tanpa Izin Pencipta di Media Sosial YouTube Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Lex Privatum*, vol. 15, no. 3, p. 3.

[13] A. Pingkan, *Bayar Rp 2,2 M, Urusan Royalti Mie Gacoan Selesai*. Detik.com.

[14] A. Mashdurohatun and M. Ali, "Model Fair Use/Fair Dealing Hak Cipta Atas Buku dalam Pengembangan IPTEK pada Pendidikan Tinggi," *Jurnal Hukum Ius Quia Iustum*, vol. 24, no. ue 1.

[15] K. P. U. Kab.Jayawijaya, "Teori Keadilan Menurut Gustav Radbruch: Antara Hukum Positif dan Moralitas Kemanusiaan."

[16] I. P. L. Firm, "Ketentuan Direct Licensing Di Indonesia Dan Di Beberapa Negara."

[17] W. Son and etal, "Automated Over-the-Top Service Copyright Distribution Managenment System Using the Open Digital Rights Languange."