



## SONG AND MUSIC INFORMATION SYSTEMS AS A PROTECTION OF SONG COPYRIGHTS IN INDONESIA

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### ABSTRACT

The government of Indonesia has issued Government Regulation Number 56 of 2021 on Royalty Management for Song and/or Music Copyrights as well as Regulation of the Minister of Law and Human Rights Number 20 of 2021 on Implementation Regulation of Government Regulation Number 56 of 2021 on Royalty Management for Song and/or Music Copyrights as implementation regulation from Law Number 28 of 2014 on Copyrights. The main point of the two regulations is both arrange a mandate for the formation and development of Song and/or Music Information System (SILM). This information system is trusted in terms of administration and royalty management of songs and music copyright as a system that can be accessed by users as an integrated system. The establishment of Song and/or Music Information System is a government's effort to provide judicial protection on copyrights of songs or music owned by songwriter or composer (creator). This research used qualitative method with descriptive approach to compare the practice of Song and/or Music Information System which is relatively new in Indonesia with the practice in other countries, as an example, in the United States of America. This is a country with the largest music industry and commercialization where the copyrights of digital song have been widely recognized.

**Keywords:** song and music information systems; digital rights manager; royalties; song and/or music copyrights

### INTRODUCTION

#### Background

Music and songs are forms of copyrights protected by Indonesia. This protection applies for music and songs in the form of notation with lyrics or without lyrics (instrumental). Rich in culture and diversity, Indonesia has so many genres of songs and/or music that can be listened to and keep flourishing in this country.

As a part of copyrights, songs and/or music are protected by laws in Indonesia,

in this case is Law Number 28 of 2014 (Copyright Law). Protection on songs and/or music covers the copyright and the related rights. Copyrights consist of moral rights<sup>1</sup> and economic rights<sup>2</sup> owned by the creator. Meanwhile, the related rights consist of right for phonogram producer, performers and broadcasting institutions.<sup>3</sup> A creator is entitled to economic rights in the form of royalty for his/her creation. Meanwhile, the holder of the

<sup>1</sup> "Law No. 28 of 2014 on Copyright" (2014)

<sup>2</sup> "Law No. 28 of 2014 on Copyright" (2014)

<sup>3</sup> "Law No. 28 of 2014 on Copyright" (2014)

related rights is entitled to economic rights of royalty for product of related rights.<sup>4</sup> Royalty is paid due to the usage of song and/or music for various interest to give economic benefit for creator and holder of the related rights. The usage of song itself can be in the form of commercial and non-commercial purpose.

Along with the development of digital technology, the utilization of copyrights on song and/or music becomes wider and more varied. One of them is song and/or music distribution that does not only use physical media like vinyl, cassette, CD or DVD but also song and/or music which is distributed digitally (DEMD/Digital Electronic Media Distribution). This digital distribution includes the distribution through various digital platforms, as well as in the form of RBT (Ring Back Tone), full track downloads and other ways that are in line with technological development.

A creator of song and/or music, or so-called song writer, as an essential part of intellectual property ecosystem needs to get protection on economic rights and copyrights of his/her music and/or song. These rights include the certainty of royalty payment for the utilization copyrighted of music and/or song by the user.

Copyright Law regulates that withdrawal, collection and distribution of royalty on song and/or music copyrights can be done by the song writer, copyright holder or collective management organization (CMO) where the song writer joins in. However, Copyright Law does not further regulate the method of withdrawal, collection and distribution of royalty on song and/or music copyrights in detail, comprehensive and accountable manner.

In the practice, the withdrawal and collection of royalty are not done by the song writer himself. Instead, they are done by the

copyright holder that are music publisher, CMO and the National Collective Management Organization where the song writer joins in. Those parties can give licence for the usage of copyrights on songs and music to get economic benefit. They give license by considering the ability of song writer to do withdrawal and collection of royalty on the song writer's song and/or music copyrights. Commercially, this process is more effective and efficient if it is done collectively with other song writers who join in the music publisher and collective management organization.

On March 30, 2021 government of Indonesia issued Government Regulation Number 56 of 2021 on Royalty Management for Song and/or Music Copyrights. The regulation becomes legal basis for the development and implementation of Song and Music Information System (SILM). This system is expected to give judicial protection for song writer, copyright holder and related right holder towards economic rights on song and/or music as well as everyone who commercially uses song and/or music.

Song and Music Information System is defined as one form of legal protection provided by the government of the Republic of Indonesia for the interest of song writer and/or copyright holder. Therefore, it needs to be well managed and administered to gain the optimization of economic and non-economic benefit for song writer and copyright holder.

Although SILM is new in copyright management of songs and music in Indonesia, this kind of system actually has long been developed and implemented by the related stakeholders in other countries. This system does not only manage copyright registration but also manage the usage of songs and music copyrights by users. It includes noticing user's violation and taking royalty on the usage of songs and music copyright. United States is one of the countries with the largest scale of music industry in the world.

<sup>4</sup> "Law No. 28 of 2014 on Copyright" (2014)

It is also a country that has several copyright management systems on songs and music. This system simplifies and optimizes the copyright management on songs and music.

This research will study SILM as a system that manages copyright royalty on song and music in Indonesia. Along with this topic, the implementation of SILM in the United States, as a country with the largest music industry in the world, is used as a background comparison.

### Research Questions

The formulations of research problem analyzed in this paper are stated as follows:

1. How is the role of SILM as an information system in royalty management of copyrights on songs and music in Indonesia?
2. How is the comparison of the royalty management that uses Digital Rights Management in the United States?

### Objectives

This study aims to explain the urgency and role of SILM as an information system in copyright management on songs and music in Indonesia. In addition, this paper aims to compare similar system that has been run in the United States as a country which owns giant music industry and advanced digital technology.

### Research Method

#### 1. Approach

This study was qualitative research with descriptive analytical feature. It explained and analyzed the problem that became the main topic. This study was conducted through statutory approach and comparative approach. The statutory approach analyzed the related regulation in Indonesia, for example Law Number 28 of 2014 on Copyright, Government Regulation Number 56 of 2021 on Royalty Management for Song and/or Music Copyrights and the Regulations of the Minister of Law and Human Rights

Number 20 of 2021 on Implementation Regulation of Government Regulation Number 56 of 2021 on Royalty Management for Song and/or Music Copyrights. Comparative approach was used to explain and compare the song and music information system practice in Indonesia with the practice in the United States of America.

#### 2. Data Collection

This study was conducted through literature study to get the data and related information from books, journals, laws and other law resources that were reliable and trustworthy. This paper was also discussed with practitioners and experts in their related fields.

#### 3. Data Analysis

Data and information analysis in this study were conducted using descriptive and analytical approach. It was done to clearly and thoroughly explain the phenomenon as well as analyze data and information to answer research questions.

## DISCUSSION

### Song and/or Music Information System as Copyright Protection of song in Indonesia

Copyright is a part of Intellectual Property Rights protected by the Government of Indonesia. As an exclusive right owned by song writer and copyright holder, copyright is considered as a reward for song writer and copyright holder who have spent their time, effort, cost and other forms of sacrifice in order to making creation as well as getting incentive as motivation to make other creations.

Intellectual Property Rights (IPR) is one of the basic human rights deserved to get protected by the government. Human rights are rights owned by everyone without any exceptions. Considering human rights as given by the Almighty God, human rights are defined as natural, universal and eternal rights given by the Almighty God which are

attached to human and related with honor and human dignity.<sup>5</sup>

G.W Friedrich Hegel emphasized that intellectual creation is the embodiment of personality as an abstract right as the reason humans exist and rewards are not merely economic compensation but are more ethical and moral (reward) which have implications for the recognition of moral rights.<sup>6</sup> In Indonesian law, aside of creating song and/or music as business, song writer is entitled to moral rights and economic rights on his/her creation.

Article 7 of TRIPs regulates that IPR protection and enforcement must support technology invention, diversion and dissemination<sup>7</sup> Thus, IPR do not only give protection to song writer but also to SILM users. By doing so, conducive copyright ecosystem, social economic welfare and sustainability of rights and obligations in copyright usage will be realized.

IPR protection in the form of ownership system is a reward over the song writer's expression. It can also be defined as an incentive for song writer or designer on their sacrifice in producing intellectual creation that has significant financial implication.<sup>8</sup>

In copyright regime, economic rights on product or creation are the song writer or copyright holder's exclusive rights for gaining economic benefit.<sup>9</sup> As one of the appreciations for song writer's economic rights, there is an obligation to get written permission from song writer or copyright holder for users who use the song writer's songs and music.

Furthermore, this permission requires royalty payment from the users to the song writer or copyright holder.

Government Regulation Number 56 of 2021 states that commercial usage towards creation (song and/music) on public service includes performance, announcement and communication of creation<sup>10</sup>, both through analog as well as digital platform.<sup>11</sup> There are 14 types of public service that use creation for commercial purpose regulated in Government Regulation Number 56 of 2021 (PP No. 56/2021).<sup>12</sup>

The use of song and/or music copyright for commercial purpose or distribution in digital platforms such as YouTube, Spotify, Joox, Facebook, TikTok, and others is not included in 14 types of public service regulated in PP No. 56/2021. However, the copyright usage of songs and music for commercial purpose on digital platforms is undoubtedly included in the type of usage that requires royalty payment to song writer and copyright holder. PP No. 56/2021 unlocks room for additional type of commercial usage other than those that have been regulated. These additional types of copyright usage will be regulated in Ministerial Regulation.<sup>13</sup> It surely gives fresh air for song writer on the use of his/her creation for commercial purpose. It is because this situation means there is a regulation that specifically arrange the types of creation usage and guarantee royalty payment as the fulfillment of economic rights on song and/or music copyright owned by the song writer.

In fact, regarding the creation usage for

5 Satya Arinanto, *Hak Asasi Manusia dalam Transisi Politik di Indonesia*, (Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, 2018), 52.

6 Rahmi Jened, "Hukum Hak Cipta (Copyright Law)", 6-7 as accessed in <http://repository.unair.ac.id/93727/2/8%20m%20Hukum%20Hak%20Cipta-Rahmi.pdf> accessed on April 7, 2021

7 Rahmi Jened, *Op. Cit.*, 43

8 Rahmi Jened, *Op. Cit.*, 13

9 "Law No. 28 of 2014 on Copyright" (2014)

10 "Government Regulation No. 56 of 2021 on Royalty Management for Song and or Music"(2021)

11 "Government Regulation No. 56 of 2021 on Royalty Management for Song and or Music" (2021)

12 "Government Regulation No. 56 of 2021 on Royalty Management for Song and or Music" (2021)

13 "Government Regulation No. 56 of 2021 on Royalty Management for Song and or Music" (2021)



commercial purpose by public through digital platforms, the royalties of this type of usage are drawn, compiled and distributed by the National Collective Management Organization (LMKN).<sup>14</sup> There is the Decree of National Collective Management Organization (LMKN) Number: SK. 03. LMKN. VIII. 2019 on Delegation of LMKN Authority to Wahana Musik Indonesia and/or Sentra Lisensi Musik Indonesia as Coordinator of Withdrawal, Collection and Distribution of Royalties (KP3R) to do withdrawal and/or collection of royalties on Song and/or Music copyright and/or product of related rights. This decree has pointed Wahana Musik Indonesia and Sentra Lisensi Musik Indonesia as KP3R which is an extension of LMKN hands in doing withdrawal, collection and distribution of royalty on songs and music copyrights in Indonesia.

In order to get economic benefit through royalty on songs and music copyrights from the users, the song writer and copyright holder need proof of ownership on their songs and music copyright. Copyright in Indonesia has existed when a creation fulfills the element of originality, creativity and fixation.<sup>15</sup> Originality means novelty. It means that a creation is not the same with prior creation/art or prior copyright. Creativity means a creation has the element of thoughts, imaginations and new ideas from its creator. Fixation means a creation has special character and has been realized/fixed. Copyright is not considered existed when a creation is only in the form of an idea or imagination without the existence

of expression embodiment.

Declarative principle of copyright adopted by Indonesia has consequence that copyright in this country is not registered but recorded. If one copyright has been announced and published, then the copyright is considered to have just existed.

Registration of copyright in Indonesia is regulated in the Copyright Law Chapter X on Registration of Copyright and Products of Related Rights. Furthermore, Article 4 of PP No. 56/2021 states that the Minister conducts the registration of songs and music. It is in line with provisions in Article 64 of Copyright Law. Article 69 paragraph (1) of Copyright Law mentions that the request of copyright on creation that has been approved will be listed on the general creation list. General Creation list is managed by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia.

However, there is a difference about registration of copyright that possibly causes confusion. It is due to Article 66 (2) of Copyright Law that regulates the registration of copyright conducted through electronic and/or non electronic system, however in Article 4(2) PP no. 56/2016 mentions that the registration is conducted only by electronic system. This difference potentially causes contradiction in the field related to electronic record that is not accommodated in PP 56/2021.

In the practice, the registration of copyright songs and music is conducted to Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia, namely on the intellectual property database.<sup>16</sup>

Article 64 (2) of Copyright Law mentions that registration of creation is no longer a

<sup>14</sup> Directorate General of Intellectuals Property, Ministry of Law and Human Rights of Republic of Indonesia, *LMKN Succeeded Distribute IDR 51 Billion Royalty to the Musicians in 2020*, 23 August 2021, as accessed at <https://www.dgip.go.id/article/detailarticle/lmknberhasil-distribukanrp51miliarroyaltikeparamusisipada2020?categories=pengumuman> December 28, 2021

<sup>15</sup> Rahmi Jened, *Interface Hukum Kekayaan Intelektual dan Hukum Persaingan Usaha (Penyalahgunaan HKI)*, (Depok: Rajawali Pers, 2017), 79

<sup>16</sup> go to <https://pdkiindonesia.dgip.go.id> and find copyright to see registration of copyright managed by the Directorate General of Intellectual Property of Ministry of Law and Human Rights of the Republic of Indonesia.

condition to get copyright. However, Article 5 PP No. 56/2021 mentions that all song and or recorded music in the general creation list will be put in song and music data center. It can be seen that a creation that is not registered in the general creation list will not be put in song and music data center.

Article 1 of PP 56/2021 regarding general provision does not mention the definition of song and music data center. Additionally, Copyright Law also does not mention about song and music data center. Song and music data center in PP No. 56/2021 is mentioned in Article 5 and Article 6. Through this regulation, it is stated that song and music data center is managed by Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia.<sup>17</sup> In addition, this regulation also states the parties that can access song and music data center. Article 8 of PP No. 56/2021 regulates that royalty management carried out by LMKCN based on the integrated data in the song and music data center.

As mentioned in PP No. 56/2021, the presence of SILM has been previously mandated in Article 6 of Copyright Law. According to this regulation, the protection of song and music copyright through SILM requires a song writer to have management information of copyright or electronic information of copyright. Basically, SILM as an information system collects management information of copyright or electronic information of copyright. It is the embodiment of copyright protection on songs and music as mandated by Article 6 of Copyright Law.

Article 1(13) of PP No. 56/2021 mentions SILM as data and information system used for song and music royalty distribution. SILM is considered as a breakthrough in Indonesian copyright ecosystem.

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17 "Government Regulation No. 56 of 2021 on Royalty Management for Song and or Music" (2021)

SILM will provide the report of song and/or music usage. Then, this report will become a base for LMKCN to distribute royalty. Configuration and details regarding SILM content are not yet discussed in detail in PP No. 56/2021. The absence of clear and detailed information about SILM arises several questions from the related stakeholders. For example, what kind of data will be managed in SILM and how much royalties that will be charged to users who use the copyrighted song.

SILM as a comprehensive information system of songs and music copyright will fulfill functionality element only if it can accommodate the needs of creator and copyright holder of songs and music.

In order to withdraw, collect and distribute the royalty on the usage of song and music copyright, songs and music identification is required to be done as the first step. A song or music writer has an IPI (Interested Party Identification)/CAE (Composer, Author, Publisher) Number.<sup>18</sup> IPI and CAE are international identification number given to songwriter and music publisher for uniquely identifying copyright holder. In this case, the holder of song and music copyright is song writer and music publisher. IPI/CAE Number owned by song writer and music publisher are usually registered by the Collective Management Organization for withdrawal, collection and distribution of royalty on songs and music copyright.

In accordance with fixation as copyright requirement, song that has been recorded will get the ISRC (International Standard Recording Code). It is a code based on international registration of songs and music copyright. ISRC later will contain the data of songs and music copyright. It does not only contain the song writer's name and song title but also contains the data of music publisher,

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18 BMI, What is An IPI/CAE Number, [https://www.bmi.com/faq/entry/what\\_is\\_an\\_ipi\\_cae\\_number](https://www.bmi.com/faq/entry/what_is_an_ipi_cae_number)

song ownership and pseudoname of the song writer (if there is any). Ownership claim of song is data about how big the portion of song ownership owned by a song writer that is used in record or phonogram. Ownership claim of song is urgent for showing how much royalty on songs and music copyright that will be obtained by song writer from the usage of her/his songs and music. It is especially applied if songwriter and composer in one creation are more than one person. In this case, royalties will be shared based on the percentage of ownership claim from the song writer of songs and music copyright. Ownership claim is usually shared based on the claim on lyrics and the claim on notation. There are not any regulations that specifically arrange the division and proportions of ownership claim on songs and music copyright. It is all based on the agreement of the song writers who carried out the creation process. Every percentage of ownership claim is unique and must not be the same from one song/music copyright to another. The data in SRC are attached to the record or phonogram. These data will later be scanned if the song/music is used by the users. By doing so, it creates data liability of royalty on song and music copyright.

The existence of integrated information system of song and music copyright will lead to relatively easier process to identify the creator of song/music and copyright holder. It is because users can type some keywords in information system to find the legal creator and copyright holder of songs/ music they want to use.

Meanwhile in conventional system, users often find it difficulty to find the creator or copyright holder of songs and music that they want to use. This difficulty is often experienced by users who intent to use song/music to be background music in advertisement product or to be theme song in motion-picture. These users must look for song writer and copyright holder to make arrangement related to licence

agreement. Apart from easy identification of song writer and copyright holder, integrated information system with general creation list and song/music data center will ensure validity of song writer and copyright holder. It is because if the whole database of song and music copyright are synchronized, potential abuse and violation of songs and music copyright can undoubtedly be minimized or at least prevented. Although without complete assurance, the existence of mechanism with measured timeline in information system can give certainty of judicial protection for creator and copyright holder on the usage of his/her music/song copyright.

Information system should also guarantee the certainty of royalty rate that will be charged to users. Thus, users can use song and music copyright without worries that they will be charged with unjustified royalty rate. Copyright as an exclusive right undoubtedly gives absolute authority to song writer and copyright holder. However, copyrights still have limitation or restrictions before the law.

In ecosystem of digital song and music copyright, there are copyright identification on songs and music that undoubtedly make easier withdrawal, collection and distribution of royalty. By only scanning IPI/CAE Number for one usage of song/music copyright, the type, time and royalty rate of the song/music copyright can be accessed.

As an example, in the usage of song and music copyright on digital platforms, royalties of song and music copyright are calculated based on two types of usage. They are song and music copyright as *musical works content* and song and music copyright embedded in *non music centric content*. Copyright as *musical works content* itself is defined as music copyright that is used in record or phonogram, for example as single in an album or in a compilation. In Youtube platform, *musical works content* does not take form in phonogram audio only. They also

take form in audio that has been synced with visuals to make audiovisual, such as music videos or video clips. Meanwhile, copyright embedded in *non music centric content* is defined as content in a digital platform that is created, produced and uploaded by users with using some part of song/music copyright. *Non music centric content* can be in the form of audio only or also audiovisual in which copyrighted song and music are not fully put in the content. In other words, the related song/music does not become main focus of the content (for example in TV shows, movies, audiobooks, and podcasts) or the entertainment content that uses a little part of copyrighted songs and music. Royalty rate of each usage is undoubtedly different. *Musical works content* uses the whole copyrighted song and music whereas *non music centric content* only uses small piece of the related copyrighted song and music.<sup>19</sup> Regarding social media that grows rapidly around the world, many users of digital platform amateurishly make *non music centric content* as hers/him alone and use copyrighted song and music in her/his content.

These are brief details that need to be accommodated and regulated by SILM in its implementation. In addition, regarding the development of the music industry and technology, SILM must continuously update the system so that it is not left behind and cannot carry out its functions optimally.

The Song and/or Music Information System is a new copyright system in Indonesia. The construction and development of SILM will be carried out by LMKN through the third parties according to the provisions of the applicable law.<sup>20</sup> LMKN is a Non-State

Budget Assistance Institutions formed by the Minister. Thus, in appointing the third party that will help LMKN build and develop SILM, LMKN needs to pay attention on provisions related to procurement of goods and services as arranged in Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services and Presidential Regulation Number 12 of 2021 on Amendments to Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services.

Probably, there are not any disciplines in social science that develop as fast as the study of law in responding rapid growth of information technology (IT).<sup>21</sup> Digital disruption has changed a lot of law aspects that regulate the development of information technology itself and also regulate economic aspect, sociological aspect and other aspects. Law is always open for different interpretations because the on-going development.<sup>22</sup> Therefore, law needs to always develop to follow changes in all fields.

SILM as a new information system does not only contain law aspects such as copyright, royalty, etc that are organized and managed as objects in information system, but also as a product of information technology that is required to obey the applicable law.

As an electronic system, SILM must fulfill various conditions that previously has been applied in Indonesia. PP No. 56/2021 does not regulate in detail about content and substance on SILM as an electronic system. SILM as an information system undoubtedly provides electronic information as regulated

<sup>19</sup> Music Copyright Thailand (MCT) Ltd, Online NonMusic Centric, [http://www.mct.in.th/tariff.php?page=online\\_non\\_music\\_centric&Language=EN](http://www.mct.in.th/tariff.php?page=online_non_music_centric&Language=EN)

<sup>20</sup> "Government Regulation No. 56 of 2021 on

Royalty Management for Song and or Music" (2021)

<sup>21</sup> Assafa Endeshaw, *Hukum E-Commerce dan Internet dengan Fokus di Asia Pasifik*, (Jogjakarta: Pustaka Pelajar, 2007), 429

<sup>22</sup> Sudikno Mertokusumo, *Penelitian Hukum, Sebuah Pengantar*, (Jogjakarta: Penerbit Liberty, 2004), 23



in Article 1(1) of Law Number 19 of 2016 on Amendment to Law Number 11 of 2008.

SILM as an electronic system contains electronic transaction, namely legal acts using computers, computer networks, and or other electronic media.<sup>23</sup> If SILM will at a time organize, accommodate and conduct the royalty payment transaction of copyrighted song according to the fair rate, SILM construction needs to be built by paying attention to provisions about electronic transaction. Nowadays, the development of contract law or agreement law in business practice has rapidly developed. Sometimes it can no longer rely only on the provisions in Book III of the Civil Code concerning Obligations.<sup>24</sup> Thus, the electronic transaction that generates obligation/agreement for both SILM and its users need a more complex legal framework.

If doing transaction in SILM requires users as law subject to give hand signature, it must be arranged first that the hand signature on application/information system is defined as electronic hand signature. This signature itself is hand signature composed on Electronic Information that are embedded, associated or related with other Electronic Information used as verification tool or authentication.<sup>25</sup> The electronic signature is done by the signer as a legal subject associated with/or related to the Electronic Signature.<sup>26</sup>

Electronic Signature functions as verification and authentication tool in identifying the signer identity, wholeness and authenticity of Electronic Information. Electronic Signature is the Signer's approval on Electronic Information and/or Electronic Documents signed with the Electronic Signature. If electronic signature is abused by other parties who are not entitled, the responsibility to proof the abuse is assigned to the System Electronic Organizer. Therefore, as the responsible party in SILM implementation, it is important for LMKN to arrange procedures and methodologies in doing verification towards commercial usage form which is filled electronically through application/information system.

Aside from arranging the commercial use towards the economic rights of copyrighted song and/or music, if SILM also arranges royalty payment, then SILM requires an electronic payment system in its implementation. It undoubtedly requires cooperation with the third parties, namely payment gateways or banks. Payment Gateway is a service enabling its user for processing electronic payment transaction by using payment tool, such as debit/credit card, electronic money, and or Proprietary Channel.<sup>27</sup> Once again, assigning the third party as service provider of electronic transaction needs to pay attention to provisions in applicable law.

The amount of important information related to songs and music copyright mandated by law to SILM must be followed by the strict protection to personal data stored and used in SILM. A lot of important information related to song and music copyright data, music publisher data, rates and royalty data of song writers, copyright holders, LMK of Song

23 "Law No. 19 of 2016 on Amendment to Law No. 11 of 2008 on Electronics Information and Transactions" (2016)

24 Bambang Sutiyo, *Interpretasi Putusan Kontrak Bisnis dan Problematikanya di Indonesia*, (Jogjakarta: UII Press, 2017), 42

25 "Law No. 11 of 2008 on Electronics Information and Transactions" (2008) in conjunction with "Government Regulations Number 71 of 2019 on Implementation of Electronics System and Transaction" (2019)

26 "Law No. 11 of 2008 on Electronics Information and Transactions" (2008)

27 "Bank Indonesia Regulation Number 18/40/PBI/2016 on Implementation of Payment Processing Transaction" (2016)

Writers and LMKN will be stored on the SILM server. SILM is required to have and develop a safe data protection system to ensure the security of copyright data for songs and music which it manages.

Furthermore, regarding its capacity as validation tool, electronic information and electronic documents or their printed version can be valid evidence based on applicable procedural law in Indonesia. Thus, electronic information and electronic documents or their printed version in SILM applied as validation tool are also applied in procedural law of intellectual property which has free evidentiary power.<sup>28</sup>

The modern world is very dependent on information technology that can create efficiency with wide area coverage without hindered by national borders.<sup>29</sup> The presence of SILM will fulfill intellectual property philosophical protection in promoting world advancement, generating new ideas and creating favorable climate for embodiment and implementation of those ideas.<sup>30</sup>

### **Royalty Management System in the United States by using Digital Rights Management**

Technology utilization for management of song and/or music copyright can be conducted through a digital rights management. Several world class digital platforms have been utilising digital right management to be able to control intellectual property rights and content displayed on their platform.

Music industry recognizes DRM or Digital Rights Management. DRM is technology that describes and identifies digital content

28 Harjono, et. al., *Hukum Acara Penyelesaian Sengketa Kekayaan Intelektual*, (Malang: Setara Press, 2019), 29  
29 OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (intellectual Property Rights)*, (Jakarta: Rajagrafindo Persada, 2013), 519  
30 Cita Citrawinda Noerhadi, *Hak Kekayaan Intelektual dan Perkembangannya* (Jakarta: Kompas, 2021), 35

protection through intellectual property rights. In addition, DRM enforces the rules as set out through the rights holder or as explained through the law that regulates the digital content itself.<sup>31</sup>

DRM provides solution for the provider's accessibility needs towards electronic content. It also gives product protection and for the needs of company to internally distribute information via intranets and extranets.<sup>32</sup>

DRM makes consumer to easily and legally buy music and some music services that are only available in digital content, and all at once give protection to unjustified usage of copyrighted songs and music.<sup>33</sup>

United States is one of the countries with the largest music industry in the world. It is also one of the countries with longest history of intellectual property rights. United States arrange song copyrights as IPR through US Copyright Office United States of America. US Copyright Office conducts registration of song copyrights through their official website [www.copyright.gov](http://www.copyright.gov). However, US Copyright Office only conducts registration of copyrights without arranging the management of songs and music copyright or royalty of copyrighted song.

In relation with royalty management of song copyright, United States differentiate

31 Budi Agus Riswandi, *Hak Cipta di Internet Aspek Hukum dan Permasalahannya di Indonesia*, (Jogjakarta: FH UII Press, 2009), 69  
32 Abbas Foroughi, Marvin Albin and Sharlett Gillard, "Digital Rights Management: A Delicate Balance Between Protection and Accessibility", *Journal of Information Science*, 28 (5) (2002): 389-395 sebagaimana diakses pada <https://journals.sagepub.com/doi/pdf/10.1177/016555150202800504> pada tanggal 3 Januari 2022  
33 Rajiv K. Sinha, Fernando S. Machado, and Collin Sellman, "Don't Think Twice, It's All Right: Music Piracy and Pricing in a DRM-Free Environment", *Journal of Marketing*, Volume 74 Issue 2 (2010): 40-54 sebagaimana diakses pada <https://journals.sagepub.com/doi/epub/10.1509/jm.74.2.40> pada tanggal 3 Januari 2022

licence of song copyright in two management categories, namely performing rights and mechanical rights.

Performing rights are rights managed by the Performing Rights Organization (PRO). PROs that dominate performing rights management market in the United States are BMI and ASCAP. BMI claims that their organization only collects royalties from performing rights and does not collect royalties from mechanical and synchronization rights.<sup>34</sup> BMI and ASCAP respectively develop a system called Songview. This system is a comprehensive data platform that provides ownership data of performing rights in the United States and shares the administration for a most of the licensed music.<sup>35</sup> The existence of a comprehensive system makes it easier to manage and arrange the usage of song and music copyrights, in this case performing rights, which are managed by BMI and ASCAP as PRO.

Performing Rights in Indonesia is known as Announcement Rights as regulated in Article 9 of Copyright Law. Meanwhile, PRO itself is similar to CMO (Collective Management Organization) or in Indonesia called as Lembaga Manajemen Kolektif (LMK). Regarding song copyrights, there are four LMK in Indonesia. They are Wahana Musik Indonesia (WAMI), Yayasan Karya Cipta Indonesia (YKCI), Pencipta Lagu Rekaman Industri Nusantara (PELARI Nusantara) and Royalti Anugerah Indonesia (RAI). The four LMK are a non-profit legal entity that withdraws, collects and distributes royalty of songs and music copyright to the creators who become members in accordance with the mandate of Copyright Law.

34 BMI, BMI and Performing Rights [https://www.bmi.com/licensing/entry/business\\_using\\_music\\_bmi\\_and\\_performing\\_rights](https://www.bmi.com/licensing/entry/business_using_music_bmi_and_performing_rights) as accessed on January 3, 2021

35 ASCAP, Songview, as accessed on the page <https://www.ascap.com/songview> on January 3, 2021

In doing withdrawal, collection and distribution of royalty from the usage of copyrighted song/music, CMO is usually assisted by a digital management system or commonly called as Digital Rights Manager or Digital Rights Management provided by private companies. One of the companies that provides digital management service is BMAT. This company claims themselves as an innovator in digital music management, with mission to record all data related to usage and ownership of songs and music around the world.<sup>36</sup> Another private company that provides digital management service is ACR Cloud. This company claims that they have system for music monitoring or supervision for the usage of songs and music copyrights in various media. As examples, ACR Cloud has monitoring system for the usage of song copyrights on broadcasting institution, television and radio, at digital service providers (DSP), and others.<sup>37</sup>

Mechanical Rights are not specifically regulated in Indonesian law. However, in practice, mechanical rights are also known as reproduction rights or rights to multiplication. Reproduction rights are recognized and accommodated in Copyright Law. Mechanical Rights in Indonesia is not withdrawn, compiled and distributed by LMK, but by the music publisher.

Some of the major music publishers in the United States are Harry Fox Agency, Sony Music Publishing (ATV), Warner Chappel and many others. Most music publishers with large song catalogs, large number of song copyrights and capital usually choose to develop their own DRM.

Harry Fox Agency developed a system named POLI+ as an online request system

36 BMAT Music Innovators, as accessed on the page <https://www.bmat.com/cmo/> on December 31, 2021

37 ACR Cloud, Automatic Content Recognition Services for Doers, <https://www.acrcloud.com>

maintained by Harry Fox Agency to manage song information and license of creator catalogue and copyright holder of songs and music<sup>38</sup>. Harry Fox Agency claims that in their system, song writer and copyright holder have power to refuse or agree in responding to the pending license request and count the reports and royalty payments that they receive.

It shows that digitizing the royalty management system for song and music copyrights worldwide is not only adding values for parties that manage song copyright. It has also become essential needs considering the digital disruption and increasing needs of online management during COVID19 pandemic. A well-built system will not only help song and music writer to manage, administer and obtain royalty on his/her copyrighted songs and music. It will also make users easily use copyrighted songs and music for commercial as well as non-commercial purpose. A well-built system will also provide economic benefit obtained by song/music writer.

SILM is government's response for protection and management of songs and music copyright in Indonesia. It is a realization of the 1945 Constitution of the Republic of Indonesia in Article 28 (c) paragraph (1). This regulation states that it is government's obligation to fulfill citizen's rights for self development and life quality improvement by getting benefit from knowledge advancement of science and technology, as well as art and culture.

As a system which is designed, built and intended for royalty management of song and music copyrights that is reliable, accountable and trusted, SILM is a state's effort to provide legal protection for creator of songs and music

to get economic benefit on his/her creation usage.

SILM needs to be further regulated in an implementation regulation that regulates this information system in detail, completely and clearly. The implementation regulation must regulate the governance and management of SILM. This regulation is not only in accordance with regulation above it but also can accommodate the development of dynamic relation between song copyrights and technology.

## CLOSING

### Conclusion

Based on the discussion presented above, the conclusion that can be drawn is the Government Regulation Number 56 of 2021 on Royalty Management for Song and/or Music Copyrights is a breath of fresh air for song writers and parties related in commercial usage of song and/or music in Indonesia. Although song data center and/or Song and/or Music Information System (SILM) are not regulated in detail, complete and thorough, Government Regulation Number 56 of 2021 has become foundation for the development of song data center and/or Song and/or Music Information System (SILM). By conducting this regulation, SILM can manage and administer songs and music copyright along with its possible use to give maximum protection and give optimal appreciation on copyrights for songwriter and composer (creator) also for parties involved in song and music copyrights management.

United States is a country that has arrange copyright and royalty of songs and music usage. It is a country with much longer history of copyrights and much developed than Indonesia. United States differentiate royalty of songs and music copyrights into performing rights or announcement right maintained by Performing Rights Organization

<sup>38</sup> Harry Fox Agency, Publisher Online Inquiry Main Page, <https://emech.harryfox.com/CGIBIN/lansa/web?webapp=WAPOLI+webtrn=WRINIZ+ml=LANSA:XHTML+part=PRD+lang=ENG+f>



(PRO). It is an equivalent organization with Collective Management Organization (CMO) in Indonesia. In addition, United States also has mechanical rights or rights to multiplication managed by music publisher. Indonesia has similarity with the United States in management system of royalty.

### **Suggestion**

The government of Indonesia needs to make special regulation or implementation regulation related with SILM as Digital Rights Management. It is expected that this special regulation will explain in detail and thoroughly about SILM as an information system which firmly organizes information and usage of song and/or music. It is also expected that SILM can arrange music and/or song protection, sanctions for violators and all matters related to the protection of copyrighted song and/or music.

After looking at the discussion in the previous section, in protecting royalty management of copyrighted song and or music, other legal protections are needed to ensure the fulfillment of economic rights on song and/or music copyright owned by creator. This protection is in the form of synergy between regulations and the related systems of songs and music copyrights in Indonesia. Regarding the implementation of song and music copyright management between the general list of creation, the song and/or music data center and SILM, each of them must not overlap each other. They must be in synergy with each other. All of them will create a good and advanced ecosystem for song and music copyright.

The legal protections that can be done by the government to protect the economic rights on song and/or music copyrights in SILM are stated as follows:

### **1. Establishing detail, deep and thorough regulations about SILM**

SILM needs material content and details before the regulation that regulates SILM is formally made, promulgated and becomes legally binding.

As an electronic system, SILM needs to be built, developed and implemented with strict compliance towards the applicable laws.

Regarding the lack of discussion of SILM in detail, accountable and thorough, in our opinion, this could be facilitated through a specific implementation regulation that arranges SILM by paying attention to the applicable law.

### **2. Increasing cooperation between government, song writers, users and other stakeholders.**

Regarding protection of economic rights on song and/or music copyrights through SILM, it will be quite difficult if the parties related in this matter do not conduct cooperation at all. Song writer, Copyright Holder and Collective Management Organization need to be actively register and/or give power to National Collective Management Organization (LMKN). It needs to be done in order to make LMKN able to register their copyrights on SILM. Thus, they can get royalty for the usage of their copyrighted song and/or music. Government through Directorate General of Intellectual Property needs to actively socialize the issues related to copyright registration in the general list of creation which is integrated with data center of song and/or music. It will become the base for royalty distribution conducted by LMKN according to the commercial usage in SILM.

### 3. Conducting inventory and documentation of song and/or music copyrights for optimal royalty obtained by song writer.

Inventory and documentation are very important. They have been arranged in detail related to inventory and documentation procedures in the Copyright Law and PP No. 56/2021 that regulate general list of creation, song and/or music data center, and SILM.

If inventory and documentation of song and/or music copyrights are conducted correctly, it will undoubtedly bring terrific and significant impact for royalty management of copyrighted song and/or music in Indonesia. Thus, withdrawal, collection and distribution of royalty for copyrighted song and/or music in Indonesia can be conducted optimally.

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