



THE NATIONAL COLLECTIVE MANAGEMENT INSTITUTE (LMKN) AS AN APPRAISER OF ECONOMIC VALUE IN THE BINDING OF MUSIC AND SONG COPYRIGHTS AS OBJECTS OF FIDUCIARY GUARANTEES

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ABSTRACT

One of the creations protected by copyright is songs and/or music. Legal protection for them is a necessity in order to create a conducive climate to the development of music industry in Indonesia. In order to facilitate song and/or music writers with better control over their works, they can appoint representatives to regulate the management of their royalty, in this case LMKN (The National Collective Management Institute). Law number 28 of 2014 concerning copyrights regulates that copyright can be used as an object of fiduciary guarantee. However, its use is still hampered by the fact that the economic value of music and song copyrights cannot be determined easily, especially if it is used for fiduciary guarantee. Most banks do not accept it for loan collateral. The objective of this research was to analyze the roles of LMKN as the determiner of the economic values of song and music copyrights for the purpose of binding them for objects of fiduciary guarantee. This normative study uses statutory approach, conceptual approach, analytical approach, and futuristic approach. The determination of the economic values of song and music copyrights can be done by LMKN, a one-stop service institution that collects the royalty of music and song in Indonesia. The National Collective Management Institute (hereinafter briefly referred to as LMKN) as an institution that can provide an appraiser of the economic value of Music and Song Copyrights. The use of SILM (a music and song information system and data center) can help the estimation of music and song's economic value based on the royalty accepted by the art's creator or copyright holder. The amount of royalty can determine the binding of music and song copyrights for the objects of fiduciary guarantee.

Keywords: Appraiser; Copyright, Economic Value; Fiduciary Guarantee; LMKN

1. INTRODUCTION

Intellectual property right has become an important point of interest. Intellectual works do contribute to people's progress, including in economy. Therefore, inventors and creators deserve appreciation for their works. Creations produced from any intellectual work, including those in the fields of art and culture, are intellectual property rights. Therefore, Indonesia must assert the positions of intellectual property, one of which is by ascertaining the copyright of music and song in order to provide strong protection for intellectual works. This effort will support people's economy and wellbeing¹. Creative economy can serve as one of the pillars of Indonesia's economy, so the development of information and communication technology has become one of the variables for Copyright Law. The development of copyright indeed can play a strategic role, but it can also be used for legal infringement in the area².

The progress in creative economy is an advantage for Indonesia and several other countries because

- 1 Edward James Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu Dan/Atau Musik," *Jurnal Ilmiah Kebijakan Hukum* 14, No. 3 (2020):553-578 <https://doi.org/10.30641/kebijakan.2020.v14>.
- 2 Sudjana, "Progresivitas Perlindungan Terhadap Pencipta Dalam Mendorong Ekonomi Kreatif Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, No. 2 (2020):183-200.

advancement in the improvement of information technology requires amendments of regulation, since copyrights can upgrade the growth of national creative economy. Regulations about copyright must be able to provide protections for creative economy so that it can optimally contribute to the national economy.³

Copyright protection in Indonesia is regulated by Law number 28 of 2014 concerning copyright. For the rest of the article, this law will be referred to as copyright law. According to Article 1 number 1 of copyright law, "Copyright is an exclusive right belonging to creators that arises automatically based on the declarative principles after a creation is manifested into a real form without reducing any restriction according to the provision of legislation".

According to the perspective of intellectual property, creative products such as music and song are categorized into the work of arts. Consequently from the dimension of intellectual property right, it is mandatory that they can be protected based on copyrights. Copyright is an exclusive right granted by the state, where in copyright there are moral rights and economic rights. Law number 28 of 2014 concerning copyright is a new chapter in the development of music and song creative industry in Indonesia. The enactment of the law at least can help the attainment of two interests, usefulness and legal certainty. The article 16 section 3 of this law stipulates the use of copyrights as the objects of fiduciary guarantee.

Copyright, following the enactment of the new Copyright Law, can be used as a collateral. Since artists cannot use their works as collaterals to take loans from bank, many of them have complained because they feel that their creations are not sufficiently appreciated. If they cannot use their work as a value, it is difficult for them to develop. It is widely believed by people that collaterals must be tangible objects such as land. In fact, the use of intangible objects as collaterals have been long stipulated by laws in other countries.

National economic development can be related and is really closely related with protection to intellectual rights. Developed countries, such as the United States, Singapore, and Thailand, receive much from intellectual property products. The economic gains are obtainable because intellectual properties can be sold, licensed, and used as loan collaterals. In addition, it has also been proven that music and song copyrights can be used for commercial purposes and for obtaining loans. They are actually one of the main and essential factors for economic growth.

Copyright is one of many intellectual property rights, the protection for which is regulated by Law number 28 of 2014 concerning copyright, which hereinafter is referred to as Copyright Law. One of the creations protected by copyright is song and/or music. Song and/or music works according to "Article 40 (d) can be defined as a whole creation that only contains elements of song, melody, poem, lyric, including arrangement and notation, in the sense that the song and/or music is a unity of creative work".⁴

Music and song are the result of mind and soul work of humans that produce beautiful melodies and tone harmonies. Writing songs or music is not easy as it requires finesse and imagination in order to produce musical artworks that can be enjoyed by many people if the song and/or music are to be marketed.⁵

Song and/or music have been developing, and they have entered all aspects of life. They are played in television broadcasting, radio broadcasting, clubs, restaurants, cafes, karaoke, ring back tones, hotels, recreational centers, concert, etc. They have developed into an industry that provides for their creators. Therefore, their moral interest and economic interest must be protected for the sake of the creators. Since music and/or song are achievements that consume the times, places, energy, and money of the creators, the owner of the creative work must get economic benefits. In this regard, Indonesian government must ensure the creators legal protection.⁶ The state's protection for copyright is manifested into measures such as giving the rights for

3 Penjelasan Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta Lembaran Negara Republik Indonesia Nomor 266, Tambahan Lembaran Negara Republik Indonesia Nomor 5599;

4 Muslim Nugraha dkk, "Perlindungan Hukum Terhadap Hak Cipta Multimedia Dari Pembajakan Yang Terdapat Pada Video Blogging (Vlog) Melalui Media Berbasis Online," *Jurnal Lex Latta* 3, No. 1 (2021):76.

5 Nurwati Adi Juardi, "Efektifitas Lembaga Manajemen Kolektif Dalam Memungut Royalti Karya Cipta Musik Dan Lagu Pada Pelaku Bisnis Karaoke Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.," *Jurnal Hukum De'rechtsstaat*. Volume 4, No.2:130.

6 Dasananto Anggoro, "Pembangunan Sistem Pengelolaan Royalti Penting Untuk Kesejahteraan Musisi, Diskusi Teknis Lembaga Manajemen Kolektif Bidang Musik Dan Lagu" (2022).

registration, which is termed as “recording” of works. The process includes the registration of song and/or music under the name of the creators in order to safeguard their rights. Provisions regarding copyright registration are in accordance with Article 66 UUHC so as to provide legal certainty for copyrighted works. Here creators are entitled for moral and economic rights from all of their works that are announced, replayed, or copied by other people. The purpose of this recording is to facilitate verification should copyright violation takes place because songs that are not registered are difficult to be proven.⁷

The objective of the song and/or music registration deals with the licensing to other parties for certain purposes, and the granting of the license shall be followed by the payment of royalty for the creators as meant by Article 9 Section 1 of Copyright Law of 2014. Royalty is defined as a financial reward for the use of the economic rights of creations or products of the said rights received by the creator or the owner of the said rights as regulated in Article 1 Number 21 of Copyright Law of 2014. In Indonesia, the collection of royalty from the creation of song and/or music has not been optimal. This is evidenced by the fact that, according to the data of the Directorate General of Intellectual Property Right (DJKI), the potential of domestic royalty revenue is IDR 300 billion, but the collected amount was only IDR 70 billion.⁸

The collection of royalty in Indonesia only reached less than a half from the actual potential, and that has become the main problems for creators and for copyright protection in Indonesia. In collecting royalty from their song and/or music works, creators will find difficulties if they have to do it by themselves because the extensive use of their works and their highly-limited capacity to monitor the use of works. Therefore, in order to facilitate them to monitor the use of works, they appoint a representative take care of the collection and distribution of royalty, i.e. LMK (Collective Management B).⁹

The tasks of LMK are collecting, accumulating, and distributing royalty from the use of song and/or music works. Copyright Law of 2014 still enables and allows parties to establish their own LMK if they can meet the establishment requirements. However, the collection of royalty through LMK might be overlapping and make the users of song and/or music works have difficulties in fulfilling their obligations, which in the end reduces creators’ royalty revenue. Therefore, on 20 January 2015, Indonesian government officially established the National Collective Management Institute (LMKN) as an institution that administers anything related to royalty as mandated by Copyright Law of 2014. LMKN has become the only institute with the authority of collecting, accumulating, and distributing royalty form commercial users as the initial step for creating professional, transparent, fair, and efficient royalty management.

Article 16 Section 3 of Law Number 28 of 2014 concerning copyright stipulates that copyright is a movable and intangible object that can be used as fiduciary guarantee. This means that financial institutions, both banks and non-banks, shall receive copyrights for loan collaterals. The principle of copyrights as guarantee object is Law Number 28 of 2014 which is inseparable from law of nature theory, which appreciates each and every yield from human mind. The economic rights adhered to copyright, particularly song and music, contain a consequence that it cannot be transferred to other parties. Therefore, it can be said that it serves as a game changer because it brings a huge change in the economic rights of creators since this term is not regulated in the previous copyright law.

Copyrights as material rights in the legal system of objects are classified as intangible asset. However, the collateral binding does not meet the requirements for mastery of collateral objects for the pawn recipient if it is done with a pledge. This right is due to the fact that the copyright has not been able to meet the requirements for submitting the pawn object. Copyright cannot fulfill similarities with other immaterial objects such as credit rights and securities but has differences in the delivery procedure. Securities and credit rights can be submitted with endorsements and cesies so that the binding can be carried out with a pawn guarantee

7 Sentosa Sembiring, *Prosedur Dan Tata Cara Memperoleh Hak Kekayaan Intelektual Di Bidang Hak Cipta Dan Merek* (Bandung: Buku, 2002).20

8 Antonio Rajoli Ginting, “Peran Lembaga Manajemen Kolektif Nasional Dalam Perkembangan Aplikasi Musik Streaming (The Role of National Collective Management Institutions in The Rise of Music Streaming Applications) Pusat Pengkajian Dan Pengembangan Hukum Dan Hak Asasi Manusia Kement” Vol. 13, No. 3: 394.

9 hukum online, “Apakah-Lembaga Manajemen-Kolektif-Dibenarkan-Secara-Hukum,” [hukumonline.com](http://www.hukumonline.com), n.d., <http://www.hukumonline.com/klinik/detail/ulasan/c1594>. Diakses tanggal 1 Januari 2023, Pukul 10 .00 wib.

institution. However, the submission of copyrights, especially music and songs, is not enough to be done by simply submitting records of creation, but requires another legal action, through the Directorate General of Intellectual Property Rights. Likewise, the validity of the application for registration of copyright transfer has a close relationship with the business of the creator or copyright holder. Therefore, a guarantee institution that can be linked to copyright, especially music and song copyrights, uses a fiduciary guarantee institution.

Objects that can be used as fiduciary guarantees, of course, must have a value that can be measured as collateral for repayment of the debtor's debt. In the case of music and song copyrights as objects of fiduciary guarantees it is difficult to measure the value of these rights, because what is guaranteed is intellectual property rights. This causes the need for a third party as an appropriate guarantee from an Appraisal Institute for music and song copyrights to become collateral. The National Collective Management Institute (LMKN) is one of the institutions that can provide an appraisal/assessment of the economic value of music and song copyrights.

In approving loans, banks uphold the principle of carefulness and trust, and one of the factors to be analyzed is collateral. According to the 5 Cs, which consist of character, capacity, condition of economic, capital, and collateral; banks believe that collateral is the last resort. Collateral serves key functions when a debtor experiences a default. Another principle to be analyzed is 5 Ps, which consist of party, purpose, payment, profitability, and protection. In this matter banks emphasize protection, which is the guarantee from their debtors, in order to anticipate unwanted possible future outcomes. The last principle obeyed by banks is 3 Rs, which consist of returns, repayment, and risk. Here banks also analyze the ability of debtors to bear risks from events that take place beyond the predictions of both creditor and debtor.

On the basis of in-depth analyses on debtor's goodwill, capacity, and ability, banks must believe that their counterparts will repay their debts or return the paid financing according to the contract. Therefore, conservative banks interpret that certainty in debt payment is acquired from guarantee.¹⁰ The necessity to have objects as collaterals for credit using the carefulness principle is regulated by the Regulation of Bank Indonesia. The regulation is sourced from Law Number 10 of 1998, which proves the importance of guarantee institutions in the approval of bank loans.

In reality, up to this day no financial institution runs the regulation. This is certainly related to the applicability of bank's carefulness principle, in which banks must assure themselves that the money lent to artisans will be returned. It is commonly believed that banks will grant loans to applicants should the latter party provide sufficient assets to ensure the performance of their loan.

Stipulations regulated in Article 16 Section 3 are related with, and inseparable from, other regulations. The statutory provisions related with this matter is fiduciary guarantee law and banking law. Financial institutions in Indonesia are still hampered by problems in their functions. The hindrances are related to the following.

1. The economic value of song and/or music copyright
Copyright includes intangible objects where economic value is not easily measured like other movable objects.
2. The ownership of a copyright (as Indonesia adheres declarative, not constitutive, principle)
Copyright ownership which adheres to a declarative system makes the copyright must be recorded in advance so that it can be used as an object of fiduciary guarantee

The hindrances arise because policies that have been made are not integrated into institutes that particularly regulate copyrights as fiduciary guarantee. This condition poses quite a big risk for banks if they are about to receive copyrights as collaterals. Copyright is an intangible object that, until now, has not been strictly regulated in terms methods that can be used to estimate and interpret its economic value. The scientific writing of Nurwati et al. concerning the model for the development of fiduciary guarantees for song and musical work copyright owners discusses the implementation and the development of music and song intellectual properties as well as their execution process. The differentiating concept offered by this research is that LMKN serves as

¹⁰ Heru Soeprapto, "Masalah Eksekusi Jaminan Fidusia dan Implikasi Lembaga Fidusia Dalam Praktik Perbankan", *Jurnal Hukum Bisnis*, Vol. 26 No. 1, 2007:50.

the economic value determiner of music and song copyright binding for objects of fiduciary guarantee.

Based on the background above, the problem of this research is formulated whether the National Collective Management Institute (LMKN) can be an appraiser of economic value in the binding of music and song copyrights as objects of fiduciary guarantees

2. METHOD

The method of approach used in this research is normative juridical, namely the approach carried out through statutory regulations. The specification of the research is descriptive analysis, namely explaining the relationship between music and song copyright variables as immaterial material guarantees with LMKN as an institution for appraisal the economic value of music copyrights, then analyzed using legal principles, legal interpretations and legal constructions. The method of qualitative analysis of the legal norms that are the object of discussion.

3. FINDINGS AND DISCUSSION

Economic development as part of national development is one of the efforts to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This is done by maintaining and continuing sustainable development.¹¹

The national economic development is closely related and is determined by protection of intellectual property. In developed countries, for instance, has benefited from economic gains generated from the products of intellectual property¹². The gains are possible to obtain because intellectual properties can be sold, licensed, and used as loan collaterals. It has been proven that the use of intellectual property assets for commercial purposes and debt guarantee is a key and crucial point for economic growth

Article 4 of Law number 28 of 2015 concerning copyrights asserts that copyrights are exclusive rights comprised of moral and economic rights. The moral right provides creators with the right to safeguard and control the exploitation on their creation; for example, the creators have the right to ask his name to be mentioned, i.e. right of paternity. Based on the moral right, a creator can forbid people to make changes and additions on his creation, or treat his work inappropriately according to the values and principles of right of integrity.¹³ The economic right in copyright is an exclusive right to take benefits from a creation.¹⁴ The economic benefit will be obtained when the holder of a copyright grants a license¹⁵ or a written consent to carry out economic rights given by the copyright holder and related right owners to carry out economic rights from his creation or related products to other people by enjoying a royalty¹⁶ or rewards from the use of the economic right of a creation or the product related to the right received by the creator or the owner of the related right.

The issuance of Law number 28 of 2014 concerning copyright not only provides legal protection for creators but also regulates that copyright can be used as an object of fiduciary guarantee. This is an indication that copyrights nowadays are beneficial for creators because they can be used as collaterals to get loans. The regulations concerning the use of copyrights as the objects of fiduciary guarantee are mentioned in Article 16 section 3 of copyright law. This means that creators can access loans by guaranteeing their works through fiduciary guarantee. The use of copyright as loan collaterals started in 1997 when David Bowie sold his ten-year future royalty right for his musical composition and voice recording (known as Bowie Bonds) to get USD 55 million¹⁷. This case shows that copyright can be admitted as the object of guarantee.

11 Nurwati, Martin Roestamy, Adi Sulistiyono, “Model Pengembangan Jaminan Fidusia Bagi Pemilik Hak Cipta Karya Musik Dan Lagu Sebagai Objek Jaminan Untuk Mendapatkan Kredit Perbankan Di Indonesia,” *JURNAL SOSIAL HUMANIORA* 11, No. 2 (2020): 191.

12 Tomi Utomo Suryo, *Hak Kekayaan Intelektual di Era Global*, Yogyakarta, Graha Ilmu, 2010:41

13 Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*, Depok Rajawali Pers, 2017:13

14 Pasal 8 *Undang-undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta*.

15 Pasal 20 *Undang-undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta*.

16 Pasal 21 *Undang-undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta*.

17 Iswi Hariyani, Cita Yustisia Serfiani dan R. Serfianto D Purnomo, *Hak Kekayaan Intelektual sebagai Jaminan Kredit*, Yogyakarta, Penerbit ANDI, 2018:9.

One of the immaterial objects that can be used as loan collaterals are intellectual properties. The characteristics of these objects are having economical values in the sense that, when a debtor cannot repay their debt, the object can be used to cover it. Intellectual properties that can be used as dent collaterals are those that have economic values, have been registered in the Directorate General of Intellectual Property, and are still within the protection period due to the economic value of the properties. The guarantee institutions that have the biggest possibility of being charged with intellectual property as an object of debt collateral is fiduciary guarantee institutes since the object of guarantee is movable object that is able to be transferred.¹⁸

Copyright, particularly song and music copyrights, in material law system is categorized as movable intangible objects. However, its guarantee binding does not meet the requirement of the control over collaterals for the receiver if it is used under pledge contracts because copyright does not qualify for the requirements of pledge object submission. Copyright cannot be equalized with other immaterial objects such as receivable right or securities, but it is different in its handover procedure. Securities and receivable rights can be transferred through endorsement and assignment, so their binding can be done through pledge warranty. However, the transfer of copyright, particularly song and music copyright, cannot be simply done by transferring work records. It requires another legal action, that is through the Directorate General of Intellectual Property Right. Further, the validity of the application for copyright transfer is closely related with the work of the creator or copyright holder. Therefore, the warranting institute that is linked with copyright is the fiduciary guarantee institute.

One of the special rights attached to intellectual property right, including song and music copyright is economic value, that is the right to acquire economic benefits from intellectual property. It is termed as economic right because intellectual property right is an object that can be valued monetarily.¹⁹

Law Number 28 of 2014 concerning copyright has stipulated a new condition that adds economic values to a copyright, in that copyright as a movable and intangible object can be used as the a object of fiduciary guarantee.²⁰ Copyright as a material right in the legal system is categorized as movable intangible object, but its guarantee binding does not meet the requirement of the control over collaterals for the receiver if it is used under pledge contracts.²¹

Nevertheless, the condition regulated by the law above is still far from clear, especially for the loan provider as they are difficult to determine the collateral's economic value since copyright is an intangible asset.²² In the assessment of collateral's economic value, it is common that financial institutions (creditors) use the services of appraisers. They are a third party and professionals in financial sector. They provide professional consideration about the economic values of objects that later on will be burdened with guarantee institutions.

The material value of immovable objects in forms of receivables is equal with the amount of the receivables. The values will be mentioned in the appraisal report and later used by loan-providing financial institutions or creditors as the basis for determining the amount of loan they are about to approve.

In distributing loans, bank managers need to comply with the Loan and Financing Guidelines specifically applicable in their companies. Nowadays, the obligation of making guidelines for loans and financing is regulated in OJK's regulation number 42/POJK.03/2017 regarding the obligation to apply loan and financing policies for commercial banks.²³ The third Article of this regulation states that the guidelines for making policies in bank loans and financing are as follows.

- 1) Carefulness principle in loan and financing;

18 Sudjana, "Hak Cipta Sebagai Jaminan Kebendaan Bergerak dikaitkan dengan Pengembangan Objek Jaminan Fidusia," *Mimbar Hukum* 24, No. 3, 2012:406-407, <http://doi.org/10.22146/jmh.16118>

19 Abdul Kadir Muhamad, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, 2007:21.

20 Sudjana, "Hak Cipta Sebagai Jamiman Kebendaan Bergerak Dikaitkan Dengan Objek Pengembangan Fidusia," *Mimbar Hukum* Vol.24, no. Nomor 3 (2012):407.

21 Nurwati, Adi Sulistiyono, and Martin Roestamy, "Model Pengembangan Jaminan Fidusia Bagi Pemilik Hak Cipta Karya Musik Dan Lagu Sebagai Objek Jaminan Untuk Mendapatkan Kredit Perbankan Di Indonesia," *JURNAL SOSIAL HUMANIORA* 11, No. 2 (2020), <https://doi.org/10.30997/jsh.v11i2.3123>.

22 Lisvery, "Aktiva Tak Berwujud" (Jakarta: D FE UIepartemen Akutansi, 2004).

23 Iswi Hariyani, Cita Yustisia Serfiyani dan R. Serfianto D Purnomo, *Op Cit*: 62

- 2) Organization and management of loan and financing;
- 3) Agreement policies of loan or financing;
- 4) Documentation and administration of loan financing; and
- 5) Settlement of non-performing loan or financing.

The carefulness principles in banks are stated in the Article 2 of banking law. One of the examples of the carefulness principles applied by banks is reflected in Article 8 of the law that, in approving loans, commercial banks must have some confidence on their clients based on in-depth analyses, goodwill, ability, and capacity that they are able to repay the loan according to the agreement. Therefore, banks always implement the Five C's of Credit Analysis.

The functions of credit collateral are explained by Bahsan as follows.²⁴

- 1) Credit guarantee as a credit repayment safety measure
Banks as business entities that provide loans for debtors are required to make efforts to ensure that the disbursed funds are returned. Partially unpaid loans, or fully, are losses for banks. The function of credit collaterals to secure credit repayment will only be in effect when the loans are declared as non-performing ones. As long as the loans are repaid, the collateral will not be monetized for the debt.
- 2) Credit guarantee as a motivator for debtors
The binding of credit guarantees, which are in forms of debtor's assets, by the bank will make the debtors afraid of losing them. This will make them do their best to pay their debt so that their assets used as the collaterals will not be sold by the bank. Usually, according to the regulations applicable internally in the bank, the value of the collaterals is higher than the amount of the loan.
- 3) Functions related to the enforcement of banking regulations
The relationship between credit collaterals and banking regulations issued by Bank Indonesia is another function of credit guarantee that supports the necessity of complete loan collateral appraisal by the bank, ensuring the worthiness and valuableness of the guarantee.

One of the banking activities highly preferred by people nowadays is loans that are used to fulfill their needs, which are varied in objectives. The loans are approved upon the availability of collaterals or guarantees provided by the debtors to ensure the full repayment of the debts, in addition to providing the bank with confidence in them. Bank as one of the financial institutions must be able to accommodate people's demand, in this case the provision of loans. As there are more and more forms of loan application with different types of collaterals, banks must carefully consider objects offered as collaterals, ensuring that they have met the terms and condition as well as included in the categories made by the bank.

Objects that can be used for collaterals in loan agreements are not limited to movable and material ones; those that are movable but immaterial can be sued as alternatives for guarantee. This is caused by the rapid development of economy with the support from advancement in technology and education. Those developments are conducive for the growth of creative community.

According to Article 15 of the Regulation of Bank Indonesia of 2012 concerning commercial banks' asset quality assessment, acceptable collaterals are:

- a. securities and stocks that are actively traded in the Indonesia Stock Exchange or that have investment ranks and bound under pledges,
- b. land, building, and residence bound under mortgage rights,
- c. machinery that is in a unity with land that is bound under mortgage rights,
- d. aircraft or seacraft with the size of more than twenty cubic meters that is bound under mortgage right,
- e. motor vehicle and supply that are bound under fiduciary contract, and/or
- f. warehouse receipt that is bound under guarantee over warehouse receipt.

Certificates of Intellectual property right has not been included as collaterals referred by the authority of

²⁴ M. Bahsan, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Jakarta, Rajawali, Pers, 2015:102-106

Bank Indonesia. In addition, there is no guidelines that can be used by public appraisers to estimate the right's economic value. Therefore, there is no financial institutions that take copyright as collaterals.

Indonesia can learn from the US in this matter. The Copyright Law of the United States, in Title 17, regulates that one of the ways of copyright transfer is through mortgage. Its government has established Royalty Judges, a special institution that determines royalty fee value and regulates any matters related to the rights and obligations of parties related with the use of copyright and penalties for any incompliances.

In Indonesia, a similar body has been regulated by the new Copyright Law, i.e. LMKN (National Collective Management Body). This institution is a non-profit legal entity that is given by creators, copyright holder, and/or copyright owner the power to manage their economic rights through the collection and distribution of royalty. In order to provide protection and legal certainty for the economic rights of song and music creators, copyright holders, and related copyright owners, a transparent, quality, and accurate royalty management mechanism that uses information technology is required. Royalty management function is also run by LMKN based on laws that facilitate the representativeness and interest of creators and related copyright owners in the collection, accumulation, and distribution of royalty from people that commercially use the right.

LMKN as an integrated one-stop service institution collects and distributes royalty to provide legal certainty for creators, copyright holders, and related copyright owners. The Bali Declaration contains an agreement that LMKN is the only body that holds the authority to collect, accumulate, and distribute royalty from any commercial usage. This one-stop service royalty collection is the first step for a professional, transparent, fair, and efficient management of music royalty.²⁵

The agreement that LMKN is a one-stop service royalty-collecting-and-distributing institution can help or motivate creators, copyright holders, and related copyright owners to remain productive. This is achievable due to the presence of legal certainties in the protection for creative works when they are used for commercial purposes and legal certainties in the amount of royalty to be received upon the said usage. LMKN can be considered as the law enforcer in song and music royalty since it protects the rights of creators, copyright holders, and related copyright owners and educates the works' users so that they have the awareness toward their obligation to pay royalty whose amount corresponds to the business and events that uses song and music commercially.

The Copyright Law number 28 of 2014 regulates the mechanisms for the distribution of royalty from music and song through LMK (Collective Management Institute) and LMKN (National Collective Management Institute). However, their existence as meant by Law number 28 of 2014 has crated legal complexity as Article 89 mentions the following.

1. For the management of royalty from song and/or music copyright, two National Collective Management Institutes shall be established; each of which represents the interests of (a) creators and (b) owners of related rights.
2. Collective Management Institutes as meant by section 1 have the authority to collect, accumulate, and distribute royalty from users who are commercial in nature.

The roles of LMKN for the interest of song and music creators are:²⁶

- 1) representing creators in bargaining or making cooperations with users,
- 2) supervising the commercial use of song and music and preventing its unlicensed usage,
- 3) helping song and music writers protect economic values entitled to them by announcing, communicating, and presenting works, and
- 4) ensuring that the exploitation of the created song and music by other parties is based on the license for song and music usage.

The enactment of Government Regulation Number 56 of 2021 concerning Copyright Royalty

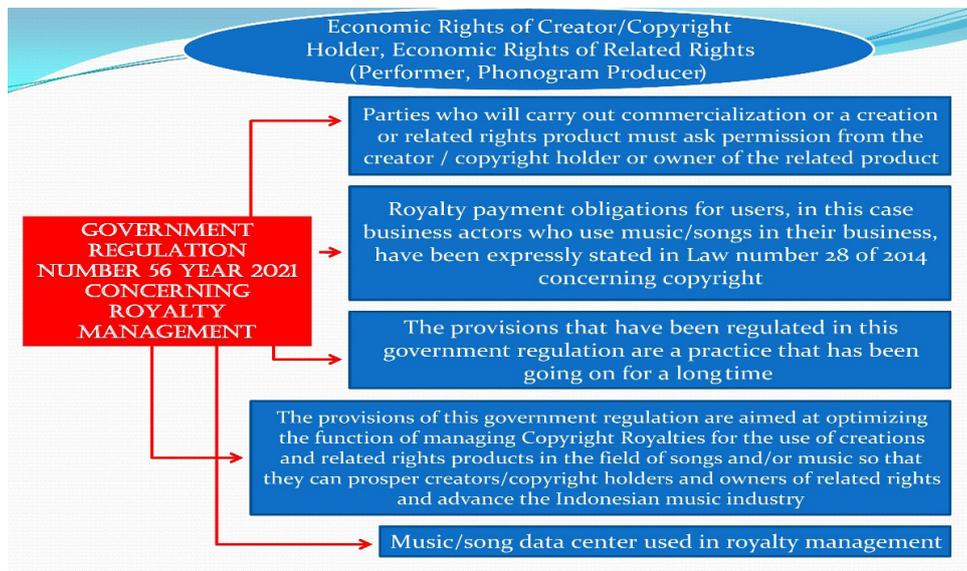
25 Edward James Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu Dan/Atau Musik (Royalty on the Management of Copyright Songs and Music)," *Jurnal Ilmiah Kebijakan Hukum* 14, No.3 Nopember (2020):553-587.

26 Adi Juardi, Nurwati, "Efektifitas Lembaga Manajemen Kolektif Dalam Memungut Royalti Karya Cipta Musik Dan Lagu Pada Pelaku Bisnis Karaoke Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.," *Jurnal Hukum De'rechtsstaat*. Vol.4, No.2 September (2018):130.

Management ensures protection and legal certainty for the economic rights of creators, copyright holders, and related copyright owners over song and music. Therefore, a transparent, quality, and accurate royalty management mechanism that applies information technology is required. Royalty management is also run by LMKN as an authoritative institution based on laws that facilitate the representativeness and the interest of creators and related copyright owners for collecting, accumulating, and distributing royalty from commercial usage by other parties.

A comprehensive royalty management needs to be supported by information technology, in this case Song and Music Data Center, which is managed by the Directorate General of Intellectual Property Right, and SILM (Song and Music Information System), which is administered by LMKN. The Song and Music Data Center is the basis for LMKN in managing royalty and for the people who use song and music commercially in obtaining information about song and music to be used for commercial purposes. The Song and Music Data Center is managed by the Directorate General of Intellectual Property Right of the Ministry of Law and Human Rights. It can be accessed by LMKN, creators, copyright holders, related copyright owners, commercial users. Royalty management is done by LMKN based on SILM and the information provided in the data center. The commercial use of song and music will be allowed after users apply for license to the creators or copyright holders through LMKN. Here SILM is an information system that is used in the distribution of song and music royalty.

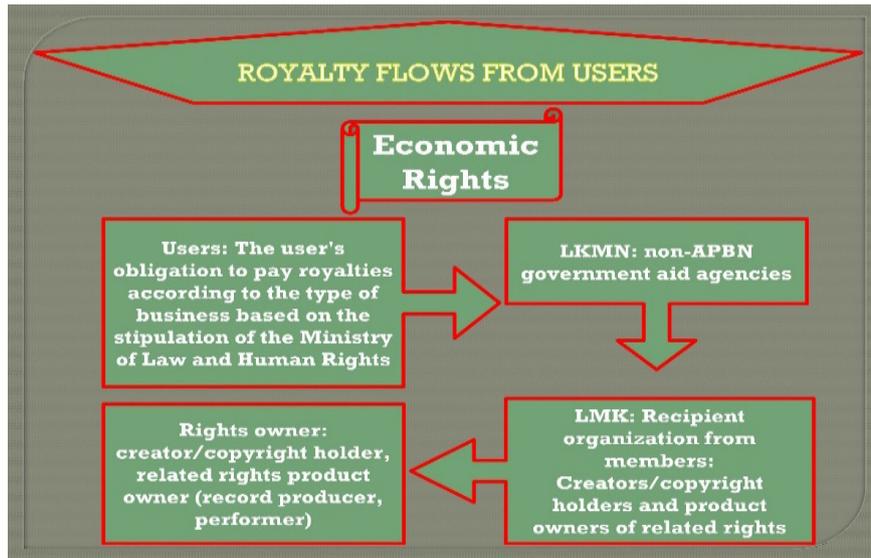
Figure 1: The basis of Government Regulation Number 56 of 2021



Source: Directorate General of Intellectual Property Right,
Ministry of Law and Human Rights of the Republic of Indonesia

Based on Figure 1, the enactment of Government Regulation Number 56 of 2021 is relevant with the mandate of Law Number 28 of 2014 concerning copyright. This law provides legal protection and certainty for the economic rights of song and music creators, copyright holders, and related copyright owners in order to improve national creativity. To ensure the legal protection and certainty for the economic rights of song and music creators, copyright holders, and related copyright owners, a transparent, quality, and accurate royalty management mechanism that uses information technology is a necessity.

Figure 2: Mechanism for Royalty Collection and Distribution

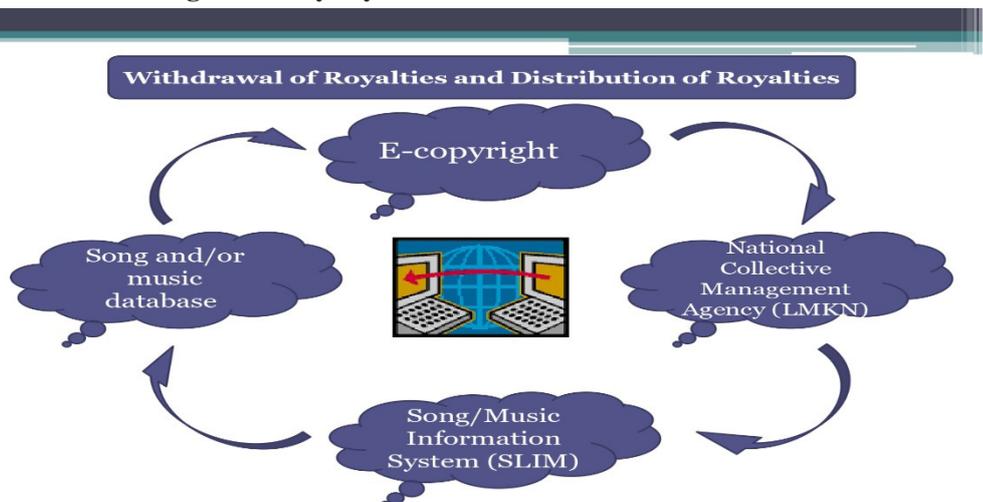


Source: Directorate General of Intellectual Property Right, Ministry of Law and Human Rights of the Republic of Indonesia

LMKN collects royalty from users for creators, copyright holders, and related copyright owners, regardless of their membership in the institution. The royalty payment procedures are as follows.

- a. Users apply licenses to copyright holders or related copyright owners through LMKN
- b. The license agreements are recorded by the Ministry of Law and Human Rights according to the provision of law
- c. Users are required to report the use of the song and music to LMKN via SILM
- d. Users pay the royalty to creators, copyright holders, and related copyright owners through LMKN
- e. LMKN accumulates the royalty and determines royalty entitled to each LMK according to the commonly acceptable practice based on fairness principle
- f. LMKN distributes the royalty based on the song and music usage reports entered in the SILM to creators, copyright holders, and related copyright owners.

Figure 3. Royalty Collection and Distribution



Source: Directorate General of Intellectual Property Right, Ministry of Law and Human Rights of the Republic of Indonesia

Based on the regulation, since the enactment of the Government Regulation, events and establishments that use song and music commercially are required to pay royalty according to their types of business and event and in the amount mentioned in the regulation. Those who are conducting events or having establishments that use song and music commercially but fail to meet their obligation will be prosecuted according to the applicable laws.

Royalty form of song and music according to Article 14 of Government Regulation Number 56 of 2021 is accumulated by LMKN and is distributed to creators, copyright holders, and related copyright owners who are the member of LMK and apportioned to operational and reserve funds. The royalty that has been accumulated by LMKN is distributed by the institution based on the reports of song and music usage recorded in SILM.

The use of song and music copyright for fiduciary guarantee in financial institutions must be specifically regulated by Bank Indonesia and OJK (Financial Service Authority of Indonesia).

The use of song and music copyright as the object of fiduciary guarantee must be supported by the roles of Copyright Asset Appraisal Institute. Banking and non-banking institutions require the legal certainty over the values of song and music copyright to be guaranteed.²⁷

Banking and non-banking institutions have no experience in appraising copyright assets, so they need help from the Copyright Asset Appraisal Institute. This body must be certified and accredited by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. This institution must be registered in Bank Indonesia whenever they are conducting valuation on copyright that is to be related with bonds of under one year. The institution must also be registered in the OJK if their valuation activity is related with the issuance of stocks or bonds of more than one year. Registration in OJK is also necessary if the institution values copyright that is going to be used as loan collaterals in banking or non-banking institutions.

Copyright as the object of fiduciary guarantee has a value that is difficult to measure, because what is guaranteed is the intellectual property rights of the creation. Here a third party is needed as an appraisal for music and song copyrights to be guaranteed. The National Collective Management Institute (LMKN) as one of the institutions that can provide this appraisal of the economic value of music and song copyrights. With the authority of LMKN as a royalty manager for music and song copyrights, LMKN can find it easier to find out economic value through the Data Center and Information System for music and songs that are integrated with the existing system at LMKN. Hence, the National Collective Management Institute in this case can act as an appraiser of the economic value of binding copyrights to music and songs as objects of fiduciary guarantees.

LMKN can measure the value of a copyright monetarily. For example, the value of a song can be measured based on how frequent a song is played and performed by other people. From here song creators and copyright holders will get benefit or royalty, should licensing agreements take place.

4. CONCLUSION

Binding of Music and Song Copyrights as intangible asset, can be used as objects of fiduciary guarantees. This is done by registering copyrights for the music and songs in order to obtain legal status for the creators of their creations before they are used as fiduciary guarantees. Difficulties in determining the value or nominal value of Music and Song Copyrights to be used as objects of fiduciary guarantees can occur, but this can be resolved by a third party as an appraisal of the economic value of these copyrights. In this case the National Collective Management Institute as one of the institutions that can provide an appraisal/assessment of the economic value of copyright. To calculate the economic value of music and song copyrights, it can be seen from how often the songs are played (performing rights), so that songwriters get royalties if there is a licensing agreement. The Authority of the National Collective Management Institute (LMKN) as a Commercial Song and/or Music Copyright Royalty Manager After Government Regulation Number 56 of 2021 concerning Song and/or Music Copyright Royalties Management can help as an appraiser of the economic value of binding music and song copyrights as the object of fiduciary guarantee, which is by providing official data on the

27 Hana Djaja Waluja, "Kepastian Hukum Terhadap Penilai Sebagai Penentu Nilai Hak Cipta Dalam Jaminan Kredit Di Indonesia," *Jurnal Hukum Statuta* Vol.1, No.1 (2021):29.

amount of royalties received by holders of Music and Song Copyrights for a certain time, to be used as one of the basic considerations for the economic value of Music and Song Copyrights as objects of fiduciary guarantees.

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