

## Criticism of the LMKN-LMK Dualism in Music Royalties Management in Indonesia

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**Article history:** Received: 20 November 2025, Accepted: 30 December 2025,  
Published: 1 January 2026

**Abstract:** The management of music royalties in Indonesia through the mechanisms of the National Collective Management Institution (LMKN) and the Collective Management Institution (LMK) shows serious problems in the context of copyright protection. Normatively, Article 9 paragraph (1) of Law No. 28 of 2014 grants creators exclusive rights to enjoy the economic benefits of their creations. However, the bureaucratic practices of LMKN-LMK actually reduce the meaning of these exclusive rights and shift the orientation of protection from creators to the managing institutions. This condition creates injustice because the legal system prioritizes institutional legitimacy over fulfilling the economic rights of creators.

**Purpose:** The purpose of this study is to reconstruct the legal model for managing music royalties so that it returns to the core of copyright, namely justice for creators.

**Design/Methodology/Approach:** This study is a normative legal study using a legislative approach, a conceptual approach, and a comparative approach.

**Findings:** The results of the study indicate that the management model in Indonesia needs to be reformed through a revision of Law No. 28 of 2014 by eliminating the dualism of LMKN-LMK, strengthening an independent institution that is strictly supervised, and implementing technology-based digital transparency such as blockchain.

**Originality/value:** The main finding is that the current legal system renders royalties an administrative-

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repressive instrument, rather than an instrument of distributive justice. Therefore, a legal reconstruction is needed that prioritizes transparency, accountability, and strengthens the position of creators as the primary subjects of copyright protection. This way, royalty distribution can function fairly, proportionally, and align with the principles of distributive justice.

**Keywords:** copyright; music royalties; LMKN; LMK

**Paper Type:** Research-Article

### **Introduction**

Copyright as a form of immaterial property rights is a constitutional right guaranteed in Article 28C paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Article 28C, paragraph (1) of the UUD NRI 1945 affirms the right of every person to develop themselves by fulfilling their basic needs, including obtaining benefits from science, technology, art, and culture. Meanwhile, Article 28D paragraph (1) of the UUD NRI 1945 provides a guarantee of fair legal certainty. These two norms place copyright as a private right and as a basic right guaranteed by the state. This means that the state is obliged to provide fair and certain legal protection for creators, copyright holders, and owners of related rights (Desmayanti 2013).

Law Number 28 of 2014 concerning Copyright (Law No. 28 of 2014) further regulates the construction of copyright, specifically Article 8 of Law No. 28 of 2014 which states that economic rights are the exclusive rights of creators or copyright holders to obtain economic benefits from their creations (Plumbantoruan, saidin, Runtung 2024). The phrase “exclusive rights” conceptually implies that creators have full authority to determine how their creations are used, especially in commercial matters. However, the construction of this norm is actually suppressed through a collective licensing system that positions the Collective Management Institution (LMK) and the National

Collective Management Institution (LMKN) as mandatory intermediaries in the collection and distribution of royalties. Article 23 paragraph (5) and Article 87 paragraph (1) of Law No. 28 of 2014 emphasizes that commercial use of creations may be carried out without direct permission from the creator as long as the user pays compensation to the creator through the LMK. This mechanism is emphasized in Government Regulation No. 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties (PP No. 56 of 2021), specifically Article 12 paragraphs (1) and (2) of PP No. 56 of 2021, which emphasizes the authority of the LMKN to collect royalties from both creators who are members of the LMK and those who are not (Aliansyah 2022).

This reality creates a paradox. On the one hand, Law No. 28 of 2014 affirms the exclusive rights of creators, but on the other hand, creators lose their autonomy in directly determining the economic use of their creations. The collective licensing system, which is normatively intended to facilitate the distribution of royalties, actually creates problems of legal certainty and justice, especially when the practice of collecting royalties creates overlapping authority between LMK and LMKN. The case of playing songs at the Mie Gacoan restaurant and the practice of song covers involving a Supreme Court decision demonstrates the conflict between legal norms and the reality of practice on the ground (Wahyuni 2025). In this case, the legal issues that must be studied are: first, how are the exclusive rights of creators regulated in Law No. 28 of 2014 and PP No. 56 of 2021; second, whether the existence of LMKN and LMK is in line with the principles of legal certainty, justice, and benefit as mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; and third, how is the reconceptualization of music royalty management that can provide fairer, more transparent, and more accountable legal protection for creators. In this case, the legal issues that must be studied are: first, how are the exclusive

rights of creators regulated in Law No. 28 of 2014 and PP No. 56 of 2021; second, whether the existence of LMKN and LMK is in line with the principles of legal certainty, justice, and benefit as mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; and third, how to reconceptualize music royalty management that can provide fairer, more transparent, and more accountable legal protection for creators.

### **Methods**

The research method used in this research is the normative legal research method with a conceptual, legislative and comparative legal approach. Normative legal research was chosen because the main problem lies in the disharmony and dualism of institutional arrangements for music royalty management in Law No. 28 of 2014, so the analysis is focused on applicable norms. A legislative approach is used to examine the articles in Law No. 28 of 2014, including provisions regarding LMKN and LMK, and to relate them to constitutional principles. A conceptual approach is used to analyze the *raison d'être* of copyright as an instrument for protecting the moral and economic rights of creators, by utilizing Aristotle's theory of distributive justice and Gustav Radbruch's legal theory. Meanwhile, a comparative legal approach is carried out through studies of the United States, Japan, and the European Union, to find alternative solutions relevant to Indonesia.

### **Discussion and Findings**

#### **Regulation of Songwriters' Economic Rights**

The economic rights of songwriters in legal construction are based on Law No. 28 of 2014. Article 8 of Law No. 28 of 2014 emphasizes that economic rights are the exclusive rights of creators or copyright holders to obtain economic benefits from their creations. This norm positions songwriters as legal subjects who have full authority over the commercial exploitation of works, either directly or through granting permission to other parties (Iman, Priyanta 2023). This exclusive right is absolute in

the sense that only the creator or rights holder has the right to determine the form and scope of use of his creation, so that other parties who use it without permission can be classified as violating the law (Plumbantoruan, Saidin, Runtung 2024).

Article 9 paragraph (1) of Law No. 28 of 2014 details the scope of these economic rights, including the right to announce, reproduce, distribute, rent, and grant licenses. In songs or music, announcement and duplication are the most vital domains because both are directly related to the form of commercialization of the work. The right of announcement, as regulated in Article 9 paragraph (1) letter a of Law No. 28 of 2014, covers every act of listening to or showing the creation to the public through any media. Meanwhile, the right of duplication (letter b) covers duplication in physical or digital form, including on online platforms. Therefore, the exclusive rights of songwriters create a real legal relationship with users, both individuals and legal entities who utilize the creation for economic purposes.

Article 40 paragraph (1) letter d of Law No. 28 of 2014 explicitly states that songs and/or music, with or without lyrics, are objects of copyright protection. This provision places songs in a position as protected creations as artistic expressions and as economic instruments. Thus, the economic rights of songwriters are based on the doctrine of *droit d'auteur* which recognizes the creator as the first and primary holder of exclusive rights, while simultaneously demonstrating the Indonesian legal system's acceptance of copyright protection from a civil law system perspective. Article 40 paragraph (1) letter d of Law No. 28 of 2014 explicitly states that songs and/or music, with or without lyrics, are objects of copyright protection. This provision places songs in a position as protected creations as artistic expressions and as economic instruments. Thus, the economic rights of songwriters are based on the doctrine of *droit d'auteur*, which recognizes the creator as the first and primary holder of exclusive rights, while

simultaneously demonstrating the Indonesian legal system's acceptance of copyright protection from a civil law system perspective.

However, this normative construction raises serious issues when confronted with the collective management system through LMK and LMKN as stipulated in Article 87 of Law No. 28 of 2014 in conjunction with Government Regulation No. 56 of 2021. Songwriters theoretically have full rights to negotiate the use of their creations, but in practice, these rights are limited by the requirement to use collective mechanisms. This creates a normative conflict: if economic rights are exclusive and absolute, then state intervention through LMKN in collecting royalties, even from non-LMK-member creators, can be considered to reduce the essence of "exclusivity" itself (Pramanto 2022). This paradox shows the conflict between the protection of individual creators' rights and the goal of collective regulation for the sake of efficient royalty distribution (Vira Nur Maharani 2024).

The declarative principle in Indonesian copyright law is explicitly affirmed in Article 1 number 1 of Law No. 28 of 2014, which defines copyright as the exclusive right of the creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with statutory provisions. This means that copyright is not a constitutive right that arises due to registration, but rather a declarative right that arises from the time the work is created (Wibowo 2024). This confirms that the state only plays a role in providing legal recognition, not in giving birth to the rights themselves. This confirms that the state only plays a role in providing legal recognition, not in giving birth to the rights themselves.

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The legal implication of this declarative principle is that the economic rights as referred to in Article 8 and Article 9 of Law No. 28 of 2014 are directly attached to the songwriter from the moment the work is realized, whether in the form of notation or sound recording. Therefore, any form of use by another party without permission from the time the work is realized can be qualified as copyright infringement, regardless of whether or not there is an official registration. This principle also eliminates the loophole for third parties to claim the work simply because they registered it first, because the rights are born automatically to the original creator.

However, this declarative principle poses a problem when confronted with collective management practices through LMK and LMKN. If copyright is created automatically without registration, then the creator's obligation to submit to the collective mechanism seems to make the declarative exclusive right conditional. In other words, the creator does obtain the right

automatically, but in the practice of economic distribution, that right must be "re-administered" by the collective institution. This situation creates an ambivalent norm, because on the one hand, the law guarantees automatic rights without administrative procedures, but on the other hand, the state forces new proceduralization through collective mechanisms.

Such a construction raises serious questions regarding the consistency of the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 NRI Constitution. If the creator's economic rights are guaranteed from the moment the creation is realized, then any form of intervention that conditions the use of economic rights through a collective system has the potential to reduce the essence of the declarative principle itself. Such a construction raises serious questions regarding the consistency of the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 NRI Constitution. If the creator's economic rights are guaranteed from the moment the creation is realized, then any form of intervention that conditions the use of economic rights through a collective system has the potential to reduce the essence of the declarative principle itself (Arifardhani 2019). This opens up room for criticism that the rules regarding copyright have not fully placed songwriters in a central position as the main legal subjects, but instead make them subordinate in an institutional system that has the potential to create an unfair distribution of economic benefits.

A paradox arises when the exclusive rights of songwriters, which are conceptually absolute rights, must be subject to a collective licensing system. Article 4 of Law No. 28 of 2014 states that copyright is an exclusive right, which in civil law means giving the owner full power to determine the use, transfer, or prohibition of his creation. This exclusive right is even emphasized in Article 9 paragraph (1) of Law No. 28 of 2014, which gives the creator full authority to announce, reproduce, and

exploit their creation in any form. Conceptually, this “exclusive” position reflects the nature of *erga omnes*, namely, it applies to anyone who wants to use the work without the creator’s permission.

The collective licensing system stipulated in Articles 87 to 94 of Law No. 28 of 2014 actually limits this absolute freedom by requiring creators or copyright holders to channel their economic rights through LMKs under the coordination of LMKN. Therefore, creators are no longer fully free to arrange licensing agreements individually, but must comply with state standards. This creates a paradox: exclusive rights that were originally absolute are transformed into qualified rights because their use is subject to collective procedures.

This paradox becomes even more apparent when viewed from the perspective of Article 8 of Law No. 28 of 2014, which affirms that economic rights are rights that are automatically inherent to creators. If these rights are declaratively established upon creation, then any form of restriction that forces creators to go through collective bureaucracy can be interpreted as a restriction on the exclusive rights themselves. In fact, theoretically, restrictions on human rights can only be implemented through laws that meet the principle of proportionality and constitutional objectives as stipulated in Article 28J of the 1945 Constitution of the Republic of Indonesia. The question is, does a mandatory collective licensing system truly align with the principle of proportionality, or does it actually diminish the essence of the creator's absolute rights?

Herein lies the contradiction: copyright is constructed as an absolute exclusive right, yet simultaneously enshrined in a binding collective management regime. This situation raises a question of justice, as creators seemingly lose the contractual autonomy that underpins the very essence of exclusive rights. Furthermore, state intervention through the LMK and LMKN has

the potential to generate state interventionism, not only administrative but also substantive, in the economic relations between creators and users. This situation raises a dogmatic question: can copyright still be viewed as an absolute right, or has it transformed into a regulated right subject to state institutional design?

#### **Position and Authority of LMKN and LMK**

LMK in Article 1, number 22 of Law No. 28 of 2014 defines it as "a non-profit legal entity that is authorized by creators, copyright holders, and/or owners of related rights to manage their economic rights in the form of collecting and distributing royalties." This formulation has two important meanings (Sudjana 2020). First, the affirmation of LMK's status as a legal entity means it is a legal subject with the capacity to act in both private and public law. This legal entity status allows LMK to enter into contracts, collect payments, sue, and be financially accountable institutionally. Second, its "non-profit" nature emphasizes that LMK's purpose is collective service for the benefit of creators or copyright holders (Ananda 2018). However, this "non-profit" qualification does not eliminate the possibility of receiving administrative fees, thus opening up room for debate regarding the fairness of the practice of deducting royalties.

In terms of authority, the power granted by the creator to the LMK is essentially a form of fiduciary transfer of rights, namely the transfer of certain authority without eliminating substantive ownership of copyright. In this case, the LMK does not have exclusive rights itself, but only mandated rights to represent the creator in exercising certain economic rights. Thus, the LMK acts as a collective agent that channels the creator's individual rights into a collective system. This mechanism can be seen as an institutionalized contractual restriction, where rights that were originally absolute and personal are managed centrally for effective enforcement. In terms of authority, the power granted by

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The position of LMK is further strengthened in Articles 87 to 94 of Law No. 28 of 2014, which require users to pay royalties through LMK, rather than directly to creators. This norm has dual legal consequences: on the one hand, it strengthens the position of LMK as the only legitimate entry point for certain economic rights transactions, but on the other hand, it limits the contractual freedom of creators to enter into direct agreements. This means that, although Articles 8 and 9 of Law No. 28 of 2014 affirm the exclusive rights of creators, the regulations regarding LMK design a regulatory framework that subjects these rights to collective governance.

The existence of LMK can be justified from the perspective of efficiency of enforcement, because individual creators can't collect royalties from thousands or even millions of users. However, from the perspective of the rule of law and constitutional rights, the existence of LMK has the potential to create accountability problems. To what extent can this non-profit legal entity be supervised in managing royalty funds? Moreover, Law No. 28 of 2014 does not specify strict transparency standards, but rather leaves it to administrative mechanisms. This raises serious questions about the consistency between the position of LMK as a "collective mandate" and the principle of contractual justice guaranteed by Article 1338 of the Civil Code, as well as the

principle of legal certainty in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, LMK is a locus where private rights and public regulation interact, and often even clash. The existence of LMK can be justified from the perspective of efficiency of enforcement, because individual creators can't collect royalties from thousands or even millions of users. However, from the perspective of the rule of law and constitutional rights, the existence of LMK has the potential to create accountability problems. To what extent can this non-profit legal entity be supervised in managing royalty funds? Moreover, Law No. 28 of 2014 does not specify strict transparency standards, but rather leaves it to administrative mechanisms. This raises serious questions about the consistency between the position of LMK as a "collective mandate" and the principle of contractual justice guaranteed by Article 1338 of the Civil Code, as well as the principle of legal certainty in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, LMK is a locus where private rights and public regulation interact, and often even clash.

The LMK does not stand alone; there is also the LKMN. The LKMN, as defined in Article 1, number 11 of Government Regulation No. 56 of 2021, is an independent government-assisted institution, not funded by the State Budget (APBN), and responsible for managing the national royalty system. The LKMN's position differs ontologically from that of the LMK. While the LMK is based on the principle of representation from creators and/or copyright holders, the LKMN is based on the attribution of authority from the state through statutory regulations. In other words, the LMK obtains authority through a private mandate (civil power of attorney), while the LKMN obtains authority through a public mandate (administrative attribution).

From an administrative law perspective, the LMKN can be positioned as a quasi-state body that carries out coordinative and normative functions over the LMK. This is emphasized in Article 89 of Law No. 28 of 2014, which assigns the LMKN the task of collecting and distributing royalties based on the interests of creators and related rights holders. Although formally the LMKN is not funded by the state budget, its authority is a public authority because it is derived from state attribution norms, so that, substantively, it has the character of a regulatory body. This is the paradox. The LMKN is not a state institution in the constitutional sense, but carries out public functions that should be identical to the state's administrative authority.

The legal implication of this position is the emergence of semi-public governance within the copyright regime. LMKN is authorized to set standards, draft technical regulations, and determine the amount of royalties through mechanisms outlined in the national royalty information system (SIRNAS). Therefore, LMKN acts as a meta-regulator that limits the autonomy of LMK. However, when examined from the perspective of copyright as an exclusive right protected by the constitution (Article 28C paragraph (1) in conjunction with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia), LMKN intervention has the potential to create a conflict of interest. Creators, as owners of exclusive rights, ultimately do not have full freedom in determining the distribution mechanism for royalties, as they are subject to national standards managed by LMKN.

The nature of the LMKN as a non-APBN auxiliary institution raises accountability issues. While classical state institutions are subject to constitutional accountability mechanisms (whether through the DPR, the BPK, or other supervisory institutions), the LMKN is in a hybrid position, as it carries out public functions but is not included in the orbit of state financial oversight. This has the potential to create an

accountability gap, which can weaken the principle of checks and balances and potentially violate the principle of transparency as stipulated in Article 5, letter g of Law Number 30 of 2014 concerning Government Administration. Thus, the existence of the LMKN confirms that in the construction of norms on the economic rights of songwriters, the state consciously positions itself as the central regulator through a collective mechanism, which in theory can be seen as a legitimate limitation of exclusive rights, but in practice has the potential to shift the economic sovereignty of the composer into the structural control of a hybrid institution.

The overlapping authority between the LMKN and LMK regarding the economic rights of songwriters is rooted in a blurred conceptual distinction between private and public functions. LMK, which, based on Article 1, number 22 of Law No. 28 of 2014, is a non-profit legal entity acting under the authority of the creator/copyright holder, should carry out a purely representative function in the private sphere. However, at the same time, LMKN, through the attribution of authority in Government Regulation No. 56 of 2021, functions to collect, collect, and distribute royalties nationally. This means that the representative function inherent in LMK is actually limited by LMKN's coordinative-regulatory function. This situation creates jurisdictional overlap between two legal regimes: private law represented by LMK and public law institutionalized through LMKN.

The existence of the LMKN, which serves a dual function as both regulator and executor, has the potential to give rise to *ultra vires* practices. As a regulator, the LMKN sets tariff standards, distribution mechanisms, and oversees LMK. However, as an executor, the LMKN also carries out operational functions such as managing the national royalty information system. This dual function contradicts the principle of separation

of powers and the principle of checks and balances, as the institution authorized to create regulations also has the authority to implement and supervise them. This means that the LMKN could potentially act beyond the attribution granted by Government Regulation No. 56 of 2021, as the regulation does not grant rule-making authority at the level of general and abstract norms, but only technical administrative authority.

The lack of clarity in the division of authority clearly creates inconsistencies with the principle of legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which demands that every citizen receive certain, fair, and equal legal protection. The legal certainty referred to is not only in the form of normative certainty, but also institutional certainty. If songwriters do not clearly know whether their economic rights are managed directly by the LMK or must submit to the LMKN mechanism, then this creates legal uncertainty that erodes constitutional protection of copyright as an exclusive right. In fact, if the LMKN carries out regulatory functions that should be the domain of higher-level legislation, then theoretically this can be qualified as invalid delegated legislation, thus strengthening the suspicion of *ultra vires* practices.

#### **Institutional Monopoly and Accountability of LMKN in Royalty Distribution**

The LMKN was initially intended to ensure legal certainty, efficiency, and fairness in protecting creators' economic rights. However, in practice, the governance model implemented, particularly through the blanket licensing system, has created serious problems both in terms of the concept of creators' exclusive rights and the principle of public accountability. The mechanism that should protect creators from exploitation instead creates space for institutional monopolies, reduces freedom of contract, and creates vulnerability to opaque practices. This

situation raises a fundamental question: to what extent is the LMKN capable of carrying out its function as a fair, transparent, and accountable manager of creators' economic rights, without being trapped in a monopolistic position of authority?

The blanket licensing system implemented by the LMKN in its royalty collection mechanism actually creates serious problems from a copyright perspective (Rabbani, 2020). Article 9, paragraph (1) of Law No. 28 of 2014 affirms that creators or copyright holders have exclusive rights to announce or reproduce their creations and to grant permission for this. These exclusive rights are absolute rights that are inherently personal, so that creators have the freedom to determine the licensing model, rates, and license recipients. The implementation of blanket licensing by LMKN, which establishes a uniform collective licensing scheme without providing space for creators to conduct individual negotiations, actually reduces the meaning of exclusive rights protected by law (Rabbani, 2020).

Blanket licensing subordinates creators, as their economic rights are commodified into collective rights subject to the authority of the LMKN. This mechanism does provide administrative efficiency and certainty for commercial users, but from a rights theory perspective, it negates the principle of freedom of contract, a fundamental principle of civil law (Article 1338 of the Civil Code). When creators are no longer free to choose to grant licenses directly or determine the economic terms of their work, these exclusive rights transform into pseudo-rights that are managed by force.

This situation also raises constitutional issues, considering that Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to develop themselves through the fulfillment of their basic needs, including the right to obtain benefits from creative works. If the blanket licensing mechanism closes the space for creators to enjoy

the full economic value of their work according to their contractual choices, then there is an implicit denial of this constitutional guarantee. Furthermore, this model has the potential to give rise to institutional monopolistic practices, because only LMKN is authorized to collect and distribute royalties through a uniform licensing system. This is problematic when linked to the principle of non-discrimination in Article 3 of Law No. 28 of 2014, which requires equal treatment for every creator without exception.

The blanket licensing mechanism implemented by LMKN fundamentally favors the interests of commercial users over those of creators, the primary subjects of copyright protection. Ignoring creators' exclusive rights to determine their own licensing model not only creates contractual injustice but also sets a negative precedent for the copyright system by eroding the principle of exclusive rights, which is paramount in protecting intellectual property rights.

The blanket licensing mechanism implemented by LMKN is basically more in favor of the interests of commercial users than the interests of creators as the main subjects of copyright legal protection. The disregard for the creator's exclusive rights to the impossibility of creators to demand royalties directly from users of copyrighted works creates a serious contradiction with the concept of exclusive rights as regulated in Article 4 in conjunction with Article 9 paragraph (1) of Law No. 28 of 2014. Exclusive rights are defined as rights that are only intended for creators or copyright holders to enjoy the economic benefits of their creations, so that, according to norms, creators have the right to determine the method, form, and mechanism for withdrawing these economic benefits. On the other hand, mechanisms that cut off the possibility of direct claims by creators contradict the principle of protection of authors' rights as regulated in Article 11 of the WIPO Copyright Treaty (WCT), which emphasizes the obligation of

member states to provide legal means for creators to claim their economic rights. Indonesia as a party to WIPO since 1997 should build a legal regime that is consistent with the international instrument, instead of closing the direct path for creators to claim their rights. Determining the licensing model itself not only creates contractual injustice, but also creates a bad precedent for the copyright system because it erodes the principle of exclusive rights which is the most important thing in protecting intellectual property rights.

Not to mention the problem of low transparency and accountability in the distribution of royalties in terms of protecting the economic rights of creators. Article 54 paragraph (3) of Law No. 28 of 2014 mandates that LMKCN is obliged to carry out royalty management in a transparent and accountable manner. However, the practice that occurs shows that the distribution of royalties is often unclear in its calculations, not published openly, and creates a disparity between the amount of royalties collected from users and the amount received by creators. This raises indications of violations of the principle of good governance in the implementation of public authority, which in administrative law is inherent in every body or institution given a public function, including LMKCN.

Unclear royalty calculation and distribution mechanisms. Creators, as holders of economic rights, do not receive clear guarantees regarding the amount of economic benefits they should receive. Furthermore, this condition also obscures the application of the principle of justice that should be the basis for managing creative economic resources. The absence of transparency in royalty distribution has the potential to violate Article 1338 of the Civil Code concerning *pacta sunt servanda*, because the legal relationship between creators and LMKCN is implicitly a binding relationship that requires implementation in good faith. Furthermore, the problematic accountability of royalty

distribution can be read as a violation of the principle of public accountability in Article 3 of Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion, and Nepotism (KKN). LMKN, which is given the state mandate to manage creators' economic rights, essentially carries out a public function, so that every aspect of royalty collection and distribution must be subject to the principles of information transparency, oversight, and accountability. Without this, LMKN's position has the potential to fall into a position of arbitrary power that is contrary to the spirit of the rule of law.

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The legal instrument that should protect creators' economic rights has instead turned into a repressive tool against users who are actually in a position of lack of knowledge. Article 113 paragraph (3) of Law No. 28 of 2014 does provide a criminal threat

to anyone who intentionally and without the right to violate the economic rights of creators. However, the application of this article without prior socialization and education creates injustice, because users, in this case, business actors, are forced to comply with the obligation to pay royalties without knowing the applicable standards, mechanisms, or calculation basis. Creators essentially carry out a public function, so that every aspect of the collection and distribution of royalties must be subject to the principles of information transparency, supervision, and accountability. Without this, the position of LMKN has the potential to fall into a position of arbitrary power that is contrary to the spirit of the rule of law.

From the perspective of the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code, the implementation of criminal sanctions must be based on clear rules, not open to multiple interpretations, and accompanied by a transparent implementation mechanism. Weak socialization causes the norms in Law No. 28 of 2014 to have the potential to be applied through abuse of power by LMKN, so that business actors are placed in a position vulnerable to criminalization. This situation is essentially contrary to the principle of legal protection which should protect everyone from arbitrary actions.

Such practices also violate the principle of proportionality in criminal law. Royalties are a civil obligation of an economic nature, but they are then forced into the criminal law regime without a clear distinction between administrative violations, contractual breaches, and criminal acts. This creates overcriminalization that contradicts the doctrine of *ultimum remedium*, which places criminal law as a last resort, not the primary instrument, in upholding the economic rights of creators.

Ultimately, the problematic blanket licensing system implemented by LMKN demonstrates a conflict between the goals of institutional efficiency and respect for creators' exclusive rights.

Rather than providing legal protection and certainty, this mechanism has the potential to create institutional monopolies, unclear royalty distribution, and disproportionate criminalization of users.

### **Critique of LMKN Monopoly through Comparison of Royalty Management Models in Several Countries**

In the United States, the royalty collection mechanism is carried out through a plural collective management organizations (CMOs) model such as the American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). (Ade Syaifullah Fattah 2025) Both operate based on contractual law, where the relationship between creators, users, and management institutions is based on the principle of freedom of contract as guaranteed by the Contract Clause of the United States Constitution (Article I, Section 10). This means that creators have the choice to join ASCAP/BMI or not, and users have the freedom to choose a license from one or more of these institutions. This model provides greater flexibility than a single system such as in Indonesia through LMKN. Creators do not lose their exclusive rights as stated in the Copyright Act of 1976 (17 U.S.C.), which still recognizes the creator's right to determine how their work is used and how its license is distributed. ASCAP and BMI act only as collective agents who obtain power through agreements, not as entities with public legal authority to compel creators to surrender their economic rights.

This plural system prevents monopolies in copyright management, which, when linked to the principles of competition law in the United States, are subject to antitrust law oversight, specifically the Sherman Antitrust Act. ASCAP and BMI themselves are under a consent decree with the Department of Justice (DOJ) that ensures the licensing mechanism remains transparent, non-discriminatory, and does not violate the principles of fair competition (Timberg 1954). This mechanism

serves as a form of check and balance in copyright management, so that there is no unilateral domination by one institution that could potentially harm creators or users.

In contrast to the pluralistic model in the United States, Japan implements a monopoly system in royalty management through the Japanese Society for the Rights of Authors, Composers and Publishers (JASRAC). JASRAC is the only music copyright management body authorized by the state under the Copyright Act of Japan (Part III, Articles 67-69), which stipulates that collective copyright management must be carried out by a legal entity licensed by the Commissioner of the Agency for Cultural Affairs. Thus, JASRAC holds a monopolistic position legitimized by Japanese positive law. However, this monopoly is not absolute and unsupervised. In fact, the Japanese legal system places JASRAC under strict regulations, particularly through the Antimonopoly Act (Shōhisha Kōsei Torihiki Hō, 1947) enforced by the Japan Fair Trade Commission (JFTC). (Pierre Kobel, Pranvera Këllezi 2021) Since the court ruling in the JASRAC case (Tokyo High Court, 2008), the court has emphasized that even though JASRAC has a monopolistic position, its activities must still be subject to the principle of fair competition. Therefore, JASRAC's monopoly is considered legally valid as long as it does not result in abuse of dominant position.

From a contractual legal perspective, JASRAC obtains its authority not through state delegation, as with LMKN in Indonesia, but through a voluntary entrustment agreement between creators and JASRAC. Creators voluntarily surrender their economic rights to be managed, while the state only acts as a regulator, ensuring that the monopoly does not deviate from the principles of fairness and transparency. In this case, there is a balance between public interest (users' ease of obtaining centralized licenses) and private interest (creators' exclusive rights remain recognized and guaranteed by civil contracts).

In the European region, music royalty management is comprehensively regulated through Directive 2014/26/EU on Collective Rights Management (CRM Directive), which substantially emphasizes aspects of accountability, transparency, and protection of creators' interests (Arezzo, 2013). This European Union legal instrument binds all member states to harmonize the governance of collective management organizations (CMOs) to comply with the principles of good governance. Articles 18–22 of the CRM Directive explicitly stipulate the obligation to disclose annual reports, external audits, and disclose details of royalty distribution, including the amount of administrative costs and the allocation method used. Thus, creators have the right to clearly understand how royalties collected from users are allocated, thus preventing the moral hazard practices that often arise in monopolistic regimes.

Articles 36–40 of the CRM Directive introduce a multi-territorial licensing mechanism for online music copyright. This allows CMOs to provide cross-border licensing with uniform standards, reducing legal fragmentation and increasing transaction efficiency. From a legal protection perspective, this mechanism also enhances legal certainty for commercial users, as they are no longer trapped in the complexities of different jurisdictions. This principle aligns with Article 17 of the Charter of Fundamental Rights of the European Union, which guarantees intellectual property rights as part of fundamental rights that must be protected.

The relevance of these comparative models for Indonesia lies in the urgency of establishing a checks and balances mechanism between LMKN and LMK as representatives of the interests of creators. In the existing design, Articles 87–95 of Law No. 28 of 2014 only position LMKN as a state-created body with the authority to collect, manage, and distribute royalties, while LMK is merely positioned as an operational institution subject to

the LMKN structure. This model results in a concentration of power in LMKN without any oversight mechanism from LMK as a direct representative of copyright holders. This concentration of authority without a balancing mechanism opens up space for abuse of power that contradicts the principle of the rule of law.

LMKN should not be positioned as an "authoritative" entity that monopolizes the authority to collect royalties, but rather as a regulatory body that oversees so that LMK can carry out its copyright protection mandate accountably. This is in line with the principle of protecting the economic rights of creators guaranteed by Articles 8 and 9 of Law No. 28 of 2014, which emphasizes that copyright is exclusively attached to the creator and/or copyright holder. Thus, the institutional structure that places LMKN as the center of power actually creates a paradox, the state institution that should be a supervisor instead becomes a manager, thus violating the basic principle of conflict of interest.

When compared with the European model (CRM Directive 2014/26/EU) which requires internal transparency, or the Japanese model (JASRAC) which is strictly supervised by the Fair Trade Commission, or the United States model (ASCAP/BMI) which is based on pluralistic contractualism, it is clear that Indonesia experiences a deficit in balancing mechanisms. The absence of checks and balances between LMKN-LMK creates an accountability gap situation that is detrimental to creators, because there is no guarantee that the distribution of royalties is in accordance with the principle of justice as mandated by Article 2 of Law No. 28 of 2014. Therefore, the relevance of this legal comparison requires a reconstruction of regulations, where LMKN is placed as a supervisor with the obligation of public transparency, while LMK is given an autonomous role in managing the economic rights of creators.

### **Legal Reconstruction of Music Royalty Management in Indonesia**

The legal reconstruction of music royalty management in Indonesia requires a repositioning of the institutions that have so far given rise to the problem of dualism between LMKN and LMK. The regulatory model, as stipulated in Articles 87–95 of Law No. 28 of 2014, has created a dual structure that creates uncertainty of authority and weak accountability in royalty distribution. This system contradicts the principle of *lex certa* in law, because there is an overlapping role, because LMKN is on the one hand positioned as a “central manager,” but LMK also carries out similar functions, thus raising the question of who actually holds full authority. Therefore, the revision of Law No. 28 of 2014 must be directed at eliminating the dualism between LMKN and LMK and replacing it with a single independent institution that has the character of a public independent body, not a government-dependent body. This institution should be established with an explicit mandate from the law, equipped with internal and external accountability mechanisms, and subject to the principle of public information transparency as guaranteed by Article 28F of the 1945 Constitution of the Republic of Indonesia and Law No. 14 of 2008 concerning Public Information Disclosure.

The implementation of limited direct licensing for major creators, such as musicians with established global commercial networks, can be an instrument to provide economic autonomy. Article 9 of Law No. 28 of 2014 clearly grants creators the exclusive right to publish and reproduce their works. Therefore, granting the direct licensing option is a concrete form of respect for this exclusive right, although it remains under state supervision to prevent undermining collective governance for small creators. This model aligns with the doctrine of freedom of contract in Article 1338 of the Civil Code, which provides parties with the freedom to enter into agreements, as long as they do not conflict with the law, public order, or morality.

The implementation of a digital transparency system through a blockchain-based royalty-tracking system should be viewed as a new legal instrument to ensure accountability. Blockchain provides an immutable ledger that allows every royalty transaction to be permanently recorded, verified by the parties, and cannot be manipulated. The use of this technological instrument is in line with the principles of legal certainty (Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia), justice in distribution (Article 2 of Law No. 28 of 2014), and the principles of openness and accountability in the management of legal resources. Royalty management should be re-oriented to the *raison d'être* of copyright itself, namely the protection of the moral and economic rights of creators as a form of appreciation for their intellectual works. Copyright, as affirmed in Article 4 of Law No. 28 of 2014, provides moral rights that are inherently eternal and cannot be removed, while Article 8 of Law No. 28 of 2014 provides exclusive economic rights for creators. Philosophically, royalty regulations must be oriented towards distributive justice for creators. From a justice perspective, Aristotle emphasized the principle of distributive justice, namely, proportional distribution according to contribution. This aligns with Article 2 of Law No. 28 of 2014, which affirms the principle of justice as a fundamental principle. However, in practice, the overlap between LMKN and LMK has created distortions, shifting the focus to institutional battles over who has greater authority, rather than ensuring that creators receive their economic rights fairly.

Royalty management with a fair orientation requires strengthening the principle of benefit for creators first. This means that the management institution should not be viewed as an end in itself, but rather merely as an instrument to ensure that the exclusive rights of creators are protected and distributed fairly. From the perspective of Gustav Radbruch's legal theory, the law

must fulfill three basic values: justice, legal certainty, and utility (Kristhy, Hamdani, Siamiko 2023). If royalty governance only emphasizes administrative certainty or institutional interests alone, but fails to provide justice for creators, then the law loses its moral legitimacy.

Legal reconstruction must emphasize that royalty management is a direct derivation of the creator's exclusive rights as stipulated in Article 9 of Law No. 28 of 2014. Therefore, every institutional design and technical mechanism must be tested on parameters, whether it truly provides real benefits to the creator. If not, then the regulation is philosophically contrary to the *raison d'être* of copyright, which was born from the beginning to protect human creativity, not to perpetuate institutional bureaucracy.

### **Conclusion**

The relationship mechanism between LMKN and LMK in managing music royalties has been proven to reduce the meaning of the creator's exclusive rights as guaranteed by Article 9 paragraph (1) of Law No. 28 of 2014. Rights that should be fully attached to the creator are instead subordinated in a bureaucratic structure that places the managing institution as the dominant actor. The existing legal system emphasizes administrative aspects and procedural compliance, but fails to ensure the principle of justice for the creator as the main subject. As a result, the creator's economic rights that should be exclusive have turned into rights that are rigidly mediated by institutions, thus creating uncertainty and potential injustice. From the perspective of distributive justice theory, this condition makes royalty management no longer an instrument of protection, but rather a form of structural repression against creators. Therefore, legal reform is inevitable with the aim of reaffirming the orientation of copyright as protection for creators, not merely institutional legitimacy. Legal reconstruction that prioritizes transparency, accountability, and a technology-based distribution model is needed so that royalties can function

as an instrument of distributive justice, ensuring that every creator receives their economic rights fairly, proportionally, and without excessive bureaucratic intervention.

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