

## **The Effectiveness of The National Collective Management Institute in Song or Music Royalty Management Based on Lawrence M. Friedman's Theory**

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### **Abstract**

*This research aims to determine the effectiveness of the National Collective Management Institute in song or music royalty management based on Lawrence M. Friedman's theory. The National Collective Management Institute is a non-State Revenue and Expenditure Budget Government Assistance Agency that is established by the Minister based on the Copyright Law having the authority to withdraw, collect, and distribute Royalties and manage the economic rights interests of Creators and/or Copyright Holders in the field of songs and/or music. The effectiveness of the National Collective Management Institute can be seen in the management of song and/or music royalties owned by the Creator and/or Copyright Holder. The Indonesian Government has issued Government Regulation Number 56 of 2021 concerning the Management of Copyright Royalties for Songs and/or Music, which aims to maximize the function of Management of Copyright Royalties for the use of Works from the Authors and/or Copyright Holders. Based on this research, Government Regulation Number 56 of 2021 concerning the Management of Copyright Royalties for Songs and/or Music, still has not received a positive response from Creators and/or Copyright Holders, due to legal awareness, and socialization related to the management of song royalties and/or music by the National Collective Management Institute is still not performed optimally by the National Collective Management Institute.*

**Keywords:** *Copyright, Royalty, Creator*

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## **INTRODUCTION**

Intellectual Property Rights (IPR) are rights that arise as a result of someone's intellectual creativity, provided that it must be expressed in a tangible form (there is a physical dimension) and there is creativity. Therefore, it cannot be just ideas, concepts, or certain facts that do not have a physical dimension. One type of intellectual property is copyright, which protects art such as songs, poetry, architecture, songwriting, and choreography in the form of videos, filmmaking, etc. Human ideas represented in various kinds of work that are beneficial to humans and necessary to maintain the functioning of the economy are considered a kind of intellectual property, according to David Bainbridge. Groups and individuals may also be granted rights to intellectual property because they produce something of value to others. Copyright is a type of intellectual property that gives the creator the exclusive right to reproduce and profit from his work. Currently, IPR is a topic that is being studied and discussed by various people and organizations. The importance of IPRs, especially in the fields of business and international trade, cannot be overstated.

In 2014, the Indonesian Government announced a law, which aimed to protect the right to distribute, sell or develop derivative products. Law No. 28 of 2014 Article 40d refers to songs and/or musical works that are solely part of a melody or song, lyrics or poetry, as well as arrangements that include notation, in the sense that a song is a creative unity. The copyright for a song or musical work belongs to the person who wrote or composed it. Apart from economic and moral rights, copyright has been an exclusive right that is granted only to the creator. Economic and moral rights to works are protected by copyright protection. Describing IPR as an economic right means describing it as something that can be bought and sold. Consequently, to

qualify for copyright protection, a work must be unique. Creations must have some type of physical manifestation to receive the legal protection afforded by the law. If a work of art is only realized in written or other material form, it does not have a copyright and therefore is not yet a work of art.

Before the creation of the Copyright Law, several institutions that had similar duties to the National Collective Management Institute were the Indonesian Recording Industry Association, the Association of Artists and Songwriters of the Republic of Indonesia, and several institutions had planned to establish a nationally integrated collection and distributor of song and/or music royalties. The establishment of the National Collective Management Institute aims to simplify the management of song and/or music royalties so that there is no double management by other institutions. It is important to evaluate the following two points before Government Regulation No. 56 of 2021 which regulates the royalties for song and music copyrights management. The Royalty Withdrawal and Distribution Implementation Coordinator and the National Collective Management Institute work together to coordinate the implementation of royalty withdrawal and distribution. Song and/or music users pay royalties to KP3R, and the distribution of royalties is carried out in stages according to institutional authority. the National Collective Management Institute distributes royalties to the Collective Management Institute, which then sends them to inventors or copyright holders on behalf of KP3R Coordination. Government Regulation Number 56 of 2021 concerning the Administration of Song and Music Copyright Royalties explains the system and rules and maximizes the use of information technology facilities for effective and efficient royalty management. these regulations. The following is an example of how this technology is becoming more popular: Data centers with e-copyrights and related e-rights will be built and made available to the public by the Directorate General of Intellectual Property, a government agency. There is also the National Collective Management Institute which is responsible for licensing, royalty administration, data collection on royalty topics, and related distribution. The Song and/or Music Information System is managed by the National Collective Management Institute. It will be easier for related parties to make royalty payments and more transparent when the Music Information System and Data Center are combined.

Therefore, good regulation is very important so that the rights of the creator of a work or composition of songs and/or music are not violated. For this reason, various laws and regulations have been established that regulate this matter, such as Law Number 28 of 2014 concerning Copyright. However, in its implementation, there are still obstacles. So, to overcome this problem, especially related to the management of song and/or music royalties, the Government established Government Regulation Number 56 of 2021. By Government Regulation Number 56 of 2021, the management of song and/or music copyright protects creators and/or copyright holders. Any consideration for the economic use of the work or product is accepted by the creator or holder of such rights. The author's Copyright and Exclusive Rights arise automatically by the Declarative Principle after the realization of the creation in concrete form without restrictions reduction according to statutory provision. The development of the creative economy which is one of the mainstays of Indonesia and various countries, and is developing in line with the rapid development of information and communication technology has become a variable in Copyright Law, this technology on the one hand has a strategic role in the development of Copyright, but on the other hand it also tools for violations in this area. In an article written by Endro Priherdityo (CNN Indonesia) with the title Unraveling the Complicated Problem of Royalties for Copyrighted Works, one of the sources, composer Addie MS, explained that one of the main problems in royalties in Indonesia is the difference in standards for determining royalty percentages and also the lack of transparency from the National Collective Management Institute because each the National Collective Management Institutes operates individually and has its

standards resulting the percentage of royalties received to be non-uniform and there is no transparency regarding the management of these royalties.

## RESEARCH METHODS

The research method used in this research is the normative juridical method. The normative juridical research method is legal research that was carried out by conducting research based on library materials also called secondary data. In this normative juridical research, the law is designed by what is written in the statutory regulations (law in books), or the law is conceptualized as a rule or norm that is a benchmark for humans to behave in their environment as deemed appropriate. About the type of research used, namely, normative juridical, the type of approach that will be used is a statutory approach. The law with norms used as the main source in research on the management of song and/or music royalties is Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties. Apart from that, a conceptual approach is also used to understand the principles of Copyright, which is an exclusive right where the Creator and/or Copyright Holder can experience the benefits of economic rights from their creation in the form of royalties collected by the National Collective Management Institute. The legal sources used in this research are divided into 3 (three), namely: 1) Primary Legal Material, which consists of legal rules, arranged based on a hierarchy starting from the 1945 Constitution and Government Regulation Number 56 of 2021 concerning Management of Copyright Royalties Songs and/or Music; 2) Secondary Legal Material, namely legal material obtained from textbooks, opinions of scholars, journals, and research results related to the provision of royalties which are managed by the National Collective Management Institute; 3) Tertiary Legal Materials, are legal materials that can provide meaningful instructions or explanations for primary and secondary legal materials such as legal dictionaries, encyclopedias, etc.

## RESULT AND DISCUSSION

### **Reasons why the Laws Governing the Administration of Song or Music Royalties are not effective**

With the issuance of Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties, it can be seen that Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties contains the obligation to pay royalties for everyone who uses songs or music commercially and or for public services. The Director General of Intellectual Property of the Ministry of Law and Human Rights, Freddy Harris, said that with the mandatory payment of song or music royalties for everyone who uses it for commercial purposes, the National Collective Management Institute is targeted to receive IDR 300 billion per year. According to him, this regulation is a strengthening of Law Number 28 of 2014 concerning Copyright (Copyright Law) in protecting the economic rights of creators/copyright holders and owners of related rights products. As stated in the provisions of Article 9, Article 23, and Article 24 of the Copyright Law, it is expressly stated that parties who wish to commercialize a work or related rights product must ask permission from the creator/copyright holder or product owner. related. This Government Regulation is here to optimize the function of managing copyright royalties for the use of works and related rights products in the field of songs and/or music. Where, in essence, this Government Regulation aims to emphasize the management of Song and/or Music

Copyright Royalties regarding the use of commercial public services in analog and digital forms.

In relation to institutions that can represent song creators and related rights holders, internationally they are known as collective administration of rights or collecting societies or institutions that collect royalties for the use of song creations by the public. The collective administration of rights or collecting society in Indonesia is known as the National Collective Management Institute, playing a very important role in implementing the use of Song and/or Music Creation by commercial businesses such as hotels, cafes, karaoke, and others. In implementing this Government Regulation, it turns out that there are still many obstacles and it cannot be implemented effectively. The factors behind the occurrence of non-compliance or ineffectiveness with laws and regulations related to the management of song or music royalties, include the fact that many creators/copyright holders still have a fairly low level of trust in the management of royalties regulated by the National Collective Management Institute, in This is due to the lack of socialization carried out by the Government regarding Government Regulation Number 56 of 2021 about Management of Song/Music Royalties. Therefore, many creators/copyright holders are still reluctant to register the songs/music they have created. In essence, registration does not only mean providing strong evidence but also creates property rights. Material rights over an object for public use occur at the time the registration is carried out, as long as the registration has not yet occurred, the right only has meaning for private parties and the public is not yet aware of the change in the legal status of the object. Recognition from the community only occurs when the property is registered. With this registration, the nature of property rights will be published and material characteristics will be attached to them, which are different from individual rights.

Apart from that, many people do not understand the management of the song/music royalty system, so in this case, many record companies often take advantage of the ignorance of songcreators in making contractual agreements. Often creators are treated unfairly by sound recording producers. Like standard clauses, agreements tend to be formulated unilaterally by the Record Producer. Creators are often conditioned to the choice of take it or leave it. The lack of further explanation, regarding the understanding of Government Regulation Number 56 of 2021 which concerns the Management of Song and/or Music Copyright Royalties, is the main factor behind non-compliance with laws and regulations related to the management of song or music royalties.

### **Government efforts to improve Legal Compliance with the Management of Song or Music Royalties to Creators and Copyright Holders**

Lawrence M. Friedman in his book entitled *The Legal System A Social Science Perspective* 1975 stated that the legal system consists of a legal structure (in the form of legal institutions), legal substance (in the form of legislation), and legal culture. These three components of the legal system can be a reference for the success or failure of law enforcement regarding non-compliance that occurs in the community with Government Regulation Number 56 of 2021 concerning the Management of Song/Music Royalties. Based on the explanation above, the first component, namely the legal structure, can be one of the factors causing this non-compliance. Many factors influence non-compliance with legal regulations, including a weak understanding of the implementation of song/music royalty management for creators or copyright holders. Therefore, it can be emphasized that law enforcement factors play an important role in the functioning of the law. The implementation of regulations regarding the management of song/music royalties is still not optimal, and this can be seen from the large number of creators or copyright holders who have not registered themselves as members of the National Collective Management Institute due to ignorance or lack of understanding Government Regulation Number 56 of 2021 Regarding Royalties of Song/Music management. Judging from the National Collective Management Institute revenue target related to the total amount of

royalties received in 2021, the amount is quite high compared to previous years, however, the amount received by the National Collective Management Institute is only less than 100 billion, thus, based on this data it can be said that confidence creators or copyright holders for the National Collective Management Institute are still relatively low.

Next, the second component is the legal substance component (legislation). According to Agung Damarsasongko, the basis for the issuance of Government Regulation 56 of 2021 is to provide legal protection and certainty for creators/copyright holders who own related rights to economic rights to songs and/or music as well as every person who makes commercial use of songs and/or music. Regulations regarding the Management of Copyright Royalties for songs/music are needed. To optimize the function of managing Copyright Royalties for the utilization of Works and Related Rights products in the field of songs and/or music by the provisions of Article 87, Article 89, and Article 90 of Law Number 28 of 2014 concerning Copyright, it is necessary to develop a system for managing copyright royalties for songs and/or music carried out by a national collective management institution that functions first, to optimize the provisions that have been regulated in government regulations and Ministerial Decrees related to the National Collective Management Institute and Royalty Tariff Determinations that have been in place so far. Secondly, to optimize the Priority of the music/song data center used in royalty management.

However, there are still weaknesses in these regulations, including the following: first, in Article 3 paragraph 2 of Government Regulation Number 56 of 2021 which states, forms of commercial public services as referred to in paragraph (1) include commercial seminars and conferences; restaurants, cafes, pubs, bars, bistros, nightclubs, and discos; music concert; airplanes, buses, trains, and ships; cinema exhibitions and bazaar; telephone waiting tone; banks and offices; shops; recreation center; television broadcasting institutions; radio broadcasting institutions; hotels, hotel rooms, and hotel facilities; and karaoke business. Based on the explanation above, it only regulates conventional commercials such as music concerts, hotels, restaurants, cafes, karaoke, television, and radio without mentioning digital content services such as Spotify and YouTube.

Second, regarding the establishment of a national song and music database as a reference for collecting and distributing royalties. So far, the biggest challenge in enforcing copyright in the music sector is the absence of a reference database for collecting and distributing royalties. Furthermore, Indonesia does not yet have a system that can detect and count commercial use of songs and music, which is necessary to ensure that the distribution of royalties to songwriters is fair. Therefore, the determination of the amount of royalty distribution for songwriters has never been clear so far because data on the number of songs and music usage has not been transparent.

Third, creators or copyright holders who have not been registered as members of the National Collective Management Institute will not receive royalties from the National Collective Management Institute, however, the National Collective Management Institute will still collect royalties from works created by the creator or copyright holder, so, this provision has the potential to injure the rights of songwriters who have not yet joined the National Collective Management Institute, where the Government must carry out outreach regarding the importance of being a National Collective Management Institute member for all songwriters in Indonesia and guarantee easy access for those who want to register.

The final component is legal culture. Legal culture is the atmosphere of social thinking and social forces that determine how the law is used, avoided, or misused. Legal culture is closely related to society's legal awareness. The higher the public's legal awareness, the better legal culture will be created and can change people's mindset regarding the law. In simple terms, the level of public compliance with the law is an indicator of the functioning of the law. In general, creators/copyright holders still have a low level of trust in the management of royalties regulated

by the National Collective Management Institute due to the lack of socialization carried out by the Government regarding Government Regulation Number 56 of 2021 concerning the Management of Song/Music Royalties. Many ways can be done to cover up problems that might arise. All problems that arise may lead to commitment in planning and implementing a policy or regulation.

First of all, it is necessary to socialize and convey good messages to the public as targets for the implementation of a policy or regulation. It is hoped that this socialization will provide knowledge and provide a clear picture of the regulations that will be implemented so that the public can form positive attitudes and behavior towards these regulations. Therefore, good communication is needed between groups, organizations, and individuals without forgetting the cultural aspects of the surrounding community, which can be conveyed either through mass media or electronic media which is conveyed clearly. After that, a joint commitment is needed to implement the regulations. It is not only the public who are the object of implementing regulations but also the participation of the government as a policy maker is required. The government must first know and implement the regulations as well as possible, in this way, it will be seen that there is seriousness in making and implementing existing policies and regulations. Apart from that, there appears to be seriousness in solving a problem, and can be a reference for other people. Therefore, it is very necessary to carry out good duties from the National Collective Management Institute officers as supervisors and enforcers of regulations. Implementation of regulations must also be implemented firmly and consistently. In conditions like this, implementing strict and consistent regulations is also one way that can provide confidence to creators or copyright holders. Integration with other agencies also has an important role in implementing and ensuring the smooth running of regulations and policies, especially in the implementation of regulations regarding Government Regulation Number 56 of 2021.

## CONCLUSION

The topic of benefits compliance, or legal compliance with certain benefits, has received a lot of attention recently. There was no socialization and/or counseling regarding Government Regulation No. 56 of 2021 to creators, copyright holders, or the general public by officials at the National Collective Management Institute/implementing officials. All issues may lead to policies or regulations being developed and implemented in the future. A policy or regulation cannot be implemented without first reaching the community and conveying an effective message. The expected results include a better understanding of the applicable restrictions, as well as a better understanding of how these regulations will be applied so that Creators and/or Copyright Holders have better attitudes and behavior towards them.

Commercial use of music in Indonesia is regulated by Law No. 28 of 2014, which regulates Copyright, to protect and clarify ownership of the rights to a particular song. To protect the economic rights of songs and/or music and those who use them commercially, copyright royalties must be controlled. For this reason, preparations need to be made. Rights Related to Goods and Services Copyright Law No. 28 of 2014 mandates the National Collective Management Institute to develop a Song and/or Music Copyright Royalty Management System to ensure compliance. There is no way to handle copyright payments for songs and/or music unless there is a government law that mandates it. As intended in Article 3 Paragraph 3, Commercial Public Service Providers are permitted to pay royalties to song and/or music producers, copyright holders, and/or owners of rights related to songs and/or music through the National Collective Management Institute that has the authority to extract songs and/or music, to collect and distribute royalties and manage the economic rights of creators and related rights

owners.

The Minister has established the National Collective Management Institute as a supporting institution that is not part of the State Revenue and Expenditure Budget by the Copyright Law. This includes the creators and rights holders of the National Collective Management Institute, which are represented by the National Collective Management Institute under Article 18 of the National Collective Management Institute Agreement. It also specifies services such as seminars and business conferences; restaurants; bars; distribution; discotheques; concerts; flight tickets; buses; trains; boats; exhibitions and bazaars. The general public is obliged to pay these royalties. Government Regulation no. 56 of 2021 contains provisions governing royalty management rights for songs and/or music to ensure that economic rights to songs and/or music are protected for creators, copyright holders, and other parties with an interest in these rights, as well as those who are commercial use of these works.

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