

DUTIES AND AUTHORITIES OF THE COLLECTIVE MANAGEMENT INSTITUTE (LMK) AS THE ROYALTY MANAGEMENT INSTITUTION FOR SONG AND MUSIC INCLUDED IN DIGITAL MUSIC SERVICES

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Songs and music are one of the works protected by Law No.28 of 2014 concerning Copyright. Digitalization makes it easier for people to enjoy songs anywhere using digital music services. Copyright and Related Rights holders are entitled to economic rights in the form of royalties. UUHC requires the establishment of a Collective Management Institute (LMK) to help creators, copyright holders, or related rights owners get royalties for their work.

The problem raised in this study is how the duties and authorities of LMK in managing royalties for songs and music that are loaded in digital music services?

This research uses a normative juridical approach, secondary data types, data collection techniques using literature study with data analysis techniques that are qualitative.

LMK has the duty and authority to manage the economic rights of creators in the form of collecting and distributing royalties. The absence of regulations and tariffs means that the royalties that are obtained by the creators are still relatively small considering that the calculation of royalties is determined by the number of streams made by the user.

It is hoped that LMK will improve the existing music database in Indonesia, then determine the appropriate rate for a royalty from songs played on digital music services, as is done by the United States.

Keywords : Copyright, Song and Music, Digital Music Services, Collective Management Institutions

A. Background

The development of science and technology has given birth to people who are more creative and innovative. This creativity includes in the fields of art, literature, and science. With the human ability to give birth to creativity, now appears the provision of protection and appreciation for success in giving birth to that creativity. One of the implications of information technology that is currently of concern is its effect on the existence of Intellectual Property Rights (hereinafter referred to as HKI). [1]

The Indonesian government since 1982 has issued a Law on copyright, namely Law Number 6 of 1982 which has undergone several revisions through Law Number 7 of 1987 and Law Number 12 of 1997 and Law Number 19 of 2002. All of this is to protect copyright works in the fields of science, art and literature (scientific, literary and artistic works). Then the last one is Law No. 28 of 2014 concerning Copyright (hereinafter referred to as UUHC).

Article 1 point 1 of the UUHC states that copyright is the exclusive right of an author 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.

One of the works protected by the UUHC is a song or music creation as regulated in article 40 letter d. A song or music work is a complete creation consisting of elements of a song or melody, lyrics or lyrics and arrangements, including the notation, in the sense that the song or music is a unitary copyrighted work.

Entering the last half of the 2010 decade, Indonesian music listeners were spoiled by the bustle of digital music services and streaming. Many streaming service providers are starting to provide their services in Indonesia, one of which is Spotify. Spotify is a digital music, podcast, and video streaming service that gives you access to millions of songs and other content from artists around the world. Spotify is available on a wide variety of devices, including computers, cell phones, tablets, speakers, TVs, and cars, and you can easily switch from one device to another. [2]

The simplicity and practicality of digital music services allow this digital music shop to be pocketed

by anyone who has a cellphone. Another advantage of the streaming service is its extensive catalog, from mainstream musicians and bands to albums only 1,000 heads have listened to. The presence of this music service has clearly become a kind of alternative storefront in selling Indonesian musicians' music albums amid the disappearance of physical albums. [3] Apart from these advantages there are also disadvantages for creators where it cannot be denied that the royalties received from this music streaming service cannot be said to be large. Royalties received by artists also depend on their popularity. The distribution also depends on company regulations. The average royalty calculation for various digital music services is US \$ 0.0111 per song played.

In early 2018 music streaming service provider Spotify was sued by the label Wixen Music Publishing Inc for using thousands of songs without permission and did not compensate the music publisher. There are several singers whose songs are used without permission on Spotify that belong to Tom Perry with the songs Free Fallin, the Doors' Light My Fire, Weezer's (Girl We Got a) Good Thing, to Stevie Nicks. It was stated that the value of Wixen's lawsuit against Spotify reached US \$ 1.6 billion or around Rp. 21.6 trillion. [5]

Since a long time ago, the issue of royalties has been a problem for creators or holders of copyright and related rights in the music industry in Indonesia. If the composer of the song or music does not have access to all the uses of his song creation after the sound recording, then the copyright owner does not automatically receive economic compensation from people who use the song or music for commercial purposes. Departing from these problems, it takes the role of a Collective Management Institute or known internationally by several names, such as the Collective Management Organization (CMO), the Performing Right Society (PRS), and the Collecting Society (CS).

Article 1 point 22 UUHC stipulates that the Collective Management Institute (LMK) is an institution in the form of a non-profit legal entity, which is authorized by the creator, copyright holder and / or related rights owner to manage their economic rights in the form of collecting and distributing royalties.

In an article written by Endro Priherdityo (CNN Indonesia) with the title "Unraveling the Ruwet of the Problem of Royalty in Copyright", one of the speakers, composer Addie MS, explained that one of the main problems in royalty in Indonesia is that there are differences in standards for determining the percentage of royalties and also lack of transparency of the LMK. Because these LMKs operate

independently and have their own standards, this causes the percentage of royalties received is not uniform and there is no transparency in the management of these royalties.

B. Formulation of the Problem

The problem raised in this study is how the duties and authorities of LMK in managing royalties for songs and music that are loaded in digital music services?

C. Research Methods

The research method used in this research is normative juridical research, namely by analyzing legal principles which refer to the prevailing positive norms or rules. Sources of legal materials are primary legal materials consisting of statutory regulations and other regulations relating to the discussion of problems, and secondary legal materials which are non-official publications as reference for literature.

D. Research Result

Copyright is a special right for creators and recipients of the right to publish or reproduce their works or to give permission for that without reducing restrictions according to the prevailing laws and regulations. The special rights of an author means that no other person may exercise that right or other people except with the author's permission. [6] According to the UUHC, a creator is a person or several people who individually or collectively produce a unique and personal creation.

Song and music is one of the works protected by the UUHC as stated in Article 40 letter d of the UUHC. Song or music in this law is defined as a complete work even though it consists of elements of a song or melody, lyrics or lyrics, and the arrangement includes notation. What is meant by intact is that the song or music is a single copyright work. "

A song and music creation has economic rights inherent in it, namely the right to obtain economic benefits over intellectual property. It says economic rights because intellectual property rights are objects that can be valued in money. Economic rights to songs and music contained in digital music services should also be taken into account because IPRs can be used / utilized by other parties in profitable industry or trade.

Creators or copyright holders cannot always exploit their work on their own, creators or copyright holders have limitations to turn their works into money. A creator needs the role of another party, and for that the creator will transfer all or part of his economic rights to another party. In connection with

the transfer of economic rights to the creator or copyright holder, what is called a license appears.

A license according to Article 1 point 20 of the UUHC is a written permission granted by a copyright holder or a related right owner to another party to exercise economic rights over their work or related rights products with certain conditions. Together with the granting of the license, this is usually followed by the payment of royalties to the copyright holder of the song. Royalty is a reward for exploiting the economic rights of a work or related rights product received by the creator or the owner of the related rights.

Digital royalties (which are generated from the modern digital music industry) consist of Streaming Mechanical Royalties. [7] Streaming is a meaning of "currently playing". If a creator distributes music to digital shops, it is likely that the creator chose some interactive or non-interactive streaming services such as Spotify, Rhapsody or Rdio.

Since a long time ago, the royalty issue has been a problem for creators or holders of copyright and related rights in the music industry in Indonesia. If the composer of a song or music simply does not have access to all uses of his song creation after the sound recording, then the copyright owner automatically does not receive economic compensation from people who use the song or music for commercial purposes. Departing from these problems, the role of a Collective Management Institute is needed.

The existence of a Collective Management Institution (LMK) is regulated in the LMK regulated in Chapter XII article 87 to article 93 of Law No. 28 of 2014. Article 1 point 22 states that the Collective Management Institution (LMK) is an institution in the form of a non-profit legal entity, which is authorized by the creator, copyright holder and / or related rights owner to manage their economic rights in the form of collecting and distributing royalties. .

The legal relationship between LMK and songwriters, song copyright holders and related rights, namely granting power of power from songwriters and copyright holders to LMK to withdraw, collect and distribute royalties related to the commercial use of songwriters, the legal basis is an agreement. Common in contract law in Indonesia, the realm is civil.

In making a written agreement (contract) the parties are free to determine the contents of the contract, based on article 1338 Paragraph (1) of the Civil Code, it can be seen that a legally made contract is valid as a law for those who make it. Article 1338 of the Civil Code reflects the existence of the principle of freedom of contract. The parties agree to regulate certain clauses in the agreement, the basis is the agreement of the parties or the agreement of individuals who bind themselves, that means in the

agreement that the parties agree on at least in the civil relationship it has been reflected in the existence of the principle of freedom of contract and principle of consensualism.

All LMKs that carry out mutual cooperation between countries are under the auspices of one or more parent organizations of royalty collection in the world, namely the International Confederation of Societies of Authors and Composers (CISAC) based in Paris, the International Federation of Reproduction Rights Organizations (IFPRO), and the Bureau International des Societies Gerant les Droits D'Enregistrement et les Reproduction Mecanique (BIEM). Of the three largest royalty collecting parent organizations, CISAC is the largest organization and has a broader role. CISAC plays a role in increasing recognition and protection of creators' rights. CISAC was founded in 1926 and is a non-governmental and non-profit organization.

The details of royalties distributed to Indonesian and foreign songwriters are in accordance with internationally agreed regulations as a member of The International Confederation of Authors and Composers Societies (CISAC), namely the collection results (income from users) minus LMK operating costs by 30% and the remaining 70% is entirely distributed to Indonesian and foreign songwriters, as rights for songwriters.

In the era of globalization, the pluralism of the legal model that is emulated by Indonesia is a natural thing, especially in the field of economic law which is most influenced by the common law legal system. [8] There are various functions and purposes of comparative law:

- 1) Comparative law as an academic discipline;
- 2) Comparative law as an aid to legislation and legal change;
- 3) Comparative law as a construction tool;
- 4) Comparative law as a means of understanding legal rules;
- 5) Comparative law as a contribution to systematic unification and harmonization of laws [9]

In order to make Indonesian copyright law more effective, especially for the LMK, a comparison of the law with countries that have successfully implemented it is necessary, that is, as has been done by the United States.

The United States has regulations regarding digital works as outlined in the Digital Millennium Copyright Act (DMCA). The DMCA is a product of the United States Act issued and signed by Congress and President Bill Clinton in October 1998. [10]

In his DMCA ratification speech, Clinton stated "This law will expand the protection of

copyright in the digital age and maintain fair use and limits of responsibility for communication service providers" [11] Currently the DMCA is used as the legal basis for regulating copyright on digital works.

The United States has established regulations regarding music royalty rates for music streaming services that are issued by the Copyright Royalty Board or the Copyright and Royalty Board. In fact, the rate has increased from 10.5% to 15.1% in 2018. Music royalty rates for music streaming services currently in effect in Indonesia are based on the policies of each digital music service company.

Wahana Musik Indonesia (WAMI) is a business entity engaged in the Collective Management Organization (CMO) or Collective Management Institution that manages the exploitation of song copyright works, especially for royalties on performing rights.

In managing royalties for songs and music published in digital music services, WAMI is only tasked with claiming the Announcement Rights royalty for the Digital Music Service and distributing it to authors registered with WAMI. The mechanism for distributing royalties, which is based on reports on the use of songs from various digital music services sent to WAMI, will be validated and claims to the digital music service based on the song data registered by the members. After the royalties are paid by the digital music service per 6 months, WAMI will distribute the royalties after deducting operational costs to creators whose songs are used by digital music services. [13]

Based on the description above, the duties of LMK in managing royalties for songs and music contained in digital music services are as follows:

1. Its position is to represent the creators in bargaining or binding cooperation with the copyright user (user). The user in question is a digital music service company
2. Help oversee the use of song and music copyright works published in an unlicensed digital music service
3. Ensure that any exploitation of song and music by other parties is always based on a license to use songs or music

In accordance with this contribution, LMK has the authority and responsibility to:

1. Providing a license to use songs or music to users (users) in this case is a digital music service company.
2. Request a list of songs used by the licensee
3. Collect royalties from the user (user)

4. Distribute royalties to songwriters which he gets based on a fair system

In carrying out its duties of collecting and distributing royalties for the use of songs or music by digital music services, LMK in this case must carry it out based on standard operating procedures that have been established by each LMK. The existing LMK is expected to synergize with each other in setting rates and the mechanism for distributing royalties for songs and music included in digital music services, then the creators can feel relieved to get certainty and justice for their aspirations.

E. Conclusions and Recommendations

a. Conclusion

LMK has the duty and authority to manage the economic rights of creators in the form of collecting and distributing royalties as stated in article 89 of the UUHC based on the power of LMK members. With this provision, LMK can also manage royalties for songs and music contained in digital music services, such as that carried out by LMK Wahana Musik Indonesia. In the absence of regulations and tariffs, the income of Indonesian musicians is still small considering that the royalty calculation is determined by the number of streams performed by users.

b. Suggestion

It is hoped that LMKN will improve the existing music database in Indonesia, then determine the appropriate rate for a royalty from a song played on digital music services, as is done by the United States. The Copyright Royalties Council under the US Library of Congress established a new formula for calculating how much digital music company revenue should be shared with songwriters and record companies than they used to calculate in license fees.

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