A Quiet Damage:

The State of Digital Music Copyright in Indonesia

KOALISI SENI

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Ministry of Culture, Sports and Tourism
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A QUIET DAMAGE: THE STATE OF DIGITAL MUSIC COPYRIGHT IN INDONESIA

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Foreword

In 2019, a fierce controversy broke out over the Music Bill, which Koalisi Seni wholly rejected. The Music Bill and its controversy indicate at least two things: the state wishes to control various aspects of our music industry, and tensions between actors in the Indonesian music industry have been brewing in recent years.

Throughout 2021–2022, many derivative regulations of the Copyright Law were ratified, indicating that copyright issues have increasingly become the government's focus. The issuance of Presidential Regulation No. 56 and Permenkumham 20/2021 was followed by Permenkumham 9/2022, which replaced the same law from the previous year of 2021. The government also promised a fiduciary guarantee in the 2022 Creative Economy Presidential Regulation, as well as drafting the Government Bill on Mechanical Licensing.

With that in mind, Koalisi Seni has been entrusted by UNESCO and KFIT to conduct research to contextualize copyright policy developments from the time it was issued until now and identify problems and action plans for each stakeholder. On the ground, conditions vary: some musicians actively advocate for fairer policies for musicians, while others are unaware of the copyright developments in question. We believe we need to close this gap in policy knowledge.

As a follow-up to this report, a formulation of modules will take place in the hope that musicians can use these modules to navigate the music industry amidst the complexity of the copyright situation. Through this, Koalisi Seni aims to empower artists at the individual level. This report is also a step for us to be more involved in the dialogue between industry players, having previously focused on

facilitating dialogue between art activists and the government. Through this program, we have expanded our scope, viewing art as a public entity and a commodity.

We hope that our programs can contribute amid the various problems that are currently plaguing our homeland.

HERU HIKAYAT
VICE CHAIRMAN OF THE ARTS COALITION

In the digital age, our music travels faster than ever, but it's a challenge to ensure that it also translates into fair remuneration for the hard work and creativity. The music streaming sector has experienced exponential growth that in 2021, streaming accounted 65% of the total global recorded music revenues. Musicians on the globe are on a quest for transparency in the digital realm, striving to unlock the mysteries of streaming royalties and ensure that they are fairly compensated for their art.

As highlighted in the UNESCO 2022 Global Report "Re|shaping policies for creativity - Addressing culture as a global public good", national digital strategies often fail to address the specific concerns and needs of the cultural and creative sectors. Since 2022, within the frame of UNESCO "Digital Creativity Lab" funded by the Government of the Republic of Korea, UNESCO supported partner countries to take appropriate policies and legislative measures to address the specific concerns and needs of the cultural and creative sectors. The project entitled "Protecting Musicians' Intellectual Property in Digital Platforms in Indonesia" by the UNESCO Jakarta Office is part of this initiative to promote more equitable and transparent cultural ecosystem in the digital environment.

In today's fast-paced digital world, where technology has transformed the way we access, consume, and share music, it is crucial that copyright policy and regulations keep pace with these changes. It is imperative that policies and regulations governing copyright in the digital music space are responsive to the evolving needs and challenges of the industry. This publication sheds light on the changing landscape of the Indonesian music industry in the digital environment and give insights on how policies and

related regulations can better address the gap. In Indonesia, the digital royalties now account of 72.5% of all distributed to authors in 2020, which is well above than the global average of 65%. This study provides a thorough analysis on main stakeholders and industry players in the sector and reviews the current status on related regulations with detailed recommendation to fill out the policy gaps. This is also in line with the UNESCO publication <PERSPECTIVES: Revenue distribution and transformation in the music streaming value chain> in 2022, which called for more targeted initiatives that are tailored to local contexts.

It is our collective responsibility to ensure that policies and regulations are robust, flexible, and inclusive, so that music can continue to thrive in the digital era, benefiting musicians, creators, and audiences alike. I hope that this publication will serve as a valuable resource for policymakers, stakeholders, and researchers in their efforts to address the challenges and opportunities of the digital music landscape in Indonesia, and contribute to the promotion of fair remuneration, transparency, and diversity of content in the digital music ecosystem. As an active member of the Intergovernmental Committee of the UNESCO 2005 Convention, we hope that Indonesia will widely share its experience to inspire others to follow suit.

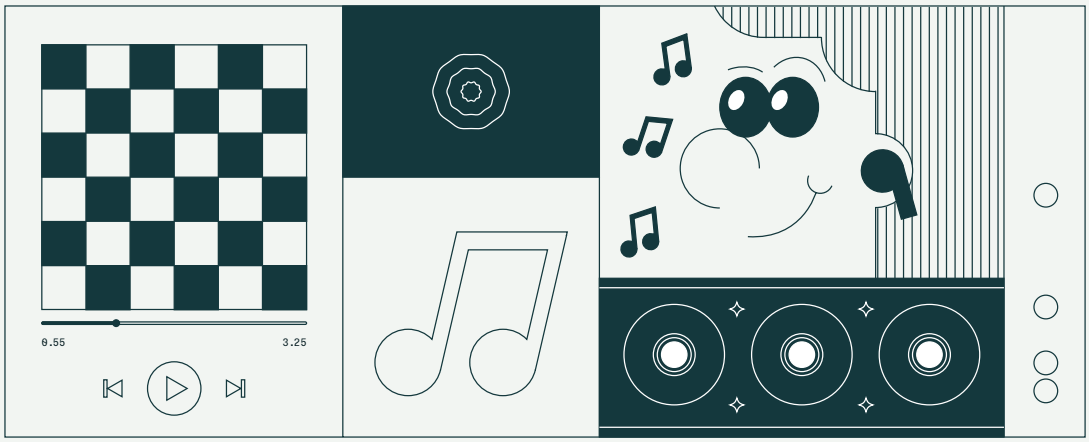
TOUSSAINT TIENDREBEOGO

SECRETARY OF THE UNESCO 2005 CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

(A)

Introduction

Indonesia's digital music consumption in 2022 rose significantly. According to Kemp (2022), quoting Statista, in February 2022, Indonesia's digital music consumption reached 221 million US dollars, an increase of 20.1% from the previous year. This number is calculated based on downloads and subscription services. Music listening is also a popular activity; the same data notes that the average Indonesian listens to music via streaming platforms for 1 hour and 40 minutes per day, out of an average internet usage of 8 hours and 36 minutes per day. In addition, 56.7% of respondents use the internet to listen to music. Meanwhile, the 2020 financial report of the National Collective Management Organization (LMKN) states that the digital royalties successfully distributed to authors were IDR 27,335,670,229 from the total author distribution of IDR 37,692,289,633—an increase from 2019, namely IDR 22,816,007,281 from the total author distribution of IDR 54,678,398,587 (LMKN 2020). This figure shows that the percentage of digital royalties, out of all distributed to authors, almost doubled from 41.7% in 2019 to 72.5% in 2020.



How those figures are presented needs to be viewed through a more critical lens. On the surface, it represents an industry optimism about the potential of Indonesia's digital music market. Like many other developing countries, it has a large population concentrated in urban areas where internet access is much better than in rural areas. Moreover, during the pandemic, people cannot enjoy live music performances in public places; hence, many music consumption patterns have shifted to digital. Therefore, the potential of the digital music market should increase drastically. This positions Indonesia as a very lucrative market for digital music business investors at home and abroad, supporting the country's economy.

However, behind the bombastic numbers about the potential of Indonesia's digital music market, a policy infrastructure that does not favor musicians risks making the position of authors and performers more vulnerable. First, Indonesia's Law Number 28 of 2014 on Copyright (UUHC 2014) does not explicitly regulate digital music. The law only regulates copyright protection with a general scope, which accommodates art forms other than music. Therefore, the definition of rights and parties is too broad to apply to the specific workings of the digital music industry. Although UUHC 2014 is very focused on regulating the music sector, in the end, both in its elaboration, implementation, and the development of various derivative regulations, the logic of UUHC 2014 is still based on physical-analog music. The new digital realm is perceived as an additional territory where rights, restrictions, and enforcement processes for infringement or disputes are treated the same way as in the physical realm. Creations and related (neighboring rights products are very much focused on analog formats. The 2014 UUHC has not considered, for example, how the government can effectively investigate and deal with infringements in streaming services overseas. More importantly, the existing regulation of the digital realm in copyright policy has not balanced the function of rewarding authors with the function of disseminating creations as a prerequisite for creativity and innovation. Policies still tend to see the development of digital technology as a threat to piracy that will hinder creation.

Consequently, the policy seems relatively slow in addressing digitalization as one of the keys to ensuring

transparency and fairness in the royalty management system for authors and performers.

Secondly, the new 2014 UUHC derivative regulation regulates performance royalties, with tariff setting in the physical space, which is held in the Decree of the Minister of Law and Human Rights HKI.02.OT.03.01-02 Year 2016 on the Ratification of Royalty Tariffs for Users Who Perform Commercial Utilization of Creation and/or Music and Song Related Rights Products ("Kepmenkumham 2016"). Meanwhile, Government Regulation Number 56 of 2021 ("PP 56") and Minister of Law and Human Rights Regulation Number 9 of 2022 ("Permenkumham 2022") regulate the governance of royalty collection and distribution through collective management organizations (LMK) and LMKN. However, in practice, Indonesia's LMK and LMKN are only authorized to manage royalties for performance rights and making available rights (communication rights), so the regulations automatically only have coverage for these two royalty components. In contrast, mechanical royalty rates are released to the market through relatively loose licensing rules. Ironically, the sanction against unauthorized copying is the most severe sanction in the 2014 UUHC.

The management of royalties by LMK and LMKN in the 2014 UUHC requires musicians to become members of LMK to get royalties for performance and communications. This royalty will automatically be deducted at a maximum of 20 percent, regardless of whether the musician decides to become a member of the LMK.

Furthermore, since LMKN only collects a portion of the song royalty component, the LMKN report described in the first paragraph still needs to depict the actuality and reality of Indonesia's digital music revenue. The report only presents the number of performance royalties for authors that Wahana Musik Indonesia (WAMI) managed to attract as a representation of the LMK. The royalties are the rights of WAMI members and members of the two other Authors' LMKs, KCI and RAI, who entrusted the calculation method to WAMI. In addition, a more detailed description of the data processing method was not published, nor was the number of royalties that were not successfully distributed. Furthermore, LMKN has reportedly yet

to succeed in collecting royalties to the fullest compared to similar institutions in Malaysia, which are recorded to have managed to collect a total of 350 billion rupiahs per year (Anam 2021). In fact, according to Statista, Malaysia's total music revenue in 2021 was only US$25.14 million, less than 1/10th of Indonesia's digital music revenue in the same year (Statista 2022a; Statista 2022b).

The formation of copyright policy was influenced by the piracy rhetoric shaped by the domestic music industry and international trade agreements. The supporting data used is industry data, as policy formation does not strongly influence state officials' electability. Therefore, policies are shaped by industry interests, not political power. This situation is referred to by Culpepper in Farrand (2014) as "quiet politics." Consequently, music copyright protection in Indonesia focuses on the authorship function (with a combination of authors' rights and utilitarian schools) instead of the dissemination function (public access to works). The 2014 UUHC and its derivatives identify moral and economic rights in rewarding authors. Moral rights recognize the author of the work.

Meanwhile, economic rights are based on the principle that an author is entitled to economic rewards or incentives from works enjoyed by the public. In the development of copyright law in Indonesia, economic rights have been elaborated in greater detail, with a broader range of actions and an increasingly abstract definition of "public"; initially, it only included reproduction rights, which later evolved into performance rights, and now increasingly into communication rights. The communication rights aspect complicates the dissemination function as the tendency is to interpret the protection of these rights as restricting access to the work.

With communication rights granted to the author/copyright holder/recording company (referred to in the UUHC 2014 as "phonogram producer"), all songs/music uploaded on the internet is categorized as commercial. As a result, the action may be considered infringing without considering the uploader's intentions. Identification can only work if the dissemination function is fulfilled and vice versa (Foong 2019). In line with the development of rights, sanctions are also made more detailed and burdensome, with legal handling mechanisms that do not consider the

speed of information exchange in the digital realm. Foong (2019) argued, “stagnant dissemination markets only benefit incumbent disseminators; they do not benefit authors and certainly do not benefit the consumers of copyright content” (p. 8). In a digital music ecosystem that prioritizes access, the dissemination function must be considered to ensure the sustainability of a copyright system that supports creation and innovation.

In its development, the shift in music commodification patterns from the ownership of physical and digital copies to providing access to copies (making available) gave rise to new actors such as aggregators, Digital Service Providers (DSPs), IP-based record labels, and publishers. The relationship between musicians and new players in the industry has grown increasingly complex, with conflicting interests. The new relationships created between these new actors are not entirely identified in copyright policy which has historically responded to pressure from record labels over the threat of piracy. Mechanical royalty rates are considered a private domain too complex to intervene. Musicians are forced to navigate themselves and their musical careers amid market mechanisms that only give them choices: bad or worse. This policy, which tends to be unfavorable, positions musicians as the most disadvantaged party. The state should intervene to protect the most vulnerable parties in the industry.

In this “quiet politics,” the principle of respect for authors needs to be further interrogated, whether it has been of real benefit to authors and performers or to copyright holders or related rights owners who stand between musicians and their listeners.

The important question is no longer how existing policies adequately protect the practices of the digital music industry but how policies can encourage innovative practices and systems in the digital realm that are more favorable to musicians.

With the saturation of data that reflects the industry's optimism and the lack of data that favors authors and performers, musicians have lost the ammunition to articulate their interests. Meanwhile, various new players have emerged amid a policy vacuum regarding digital music and are working on their strategies. However, this situation could be even more detrimental to musicians if policies still fail to see the digital realm as a new arena for power struggles that ignore the principles of artistic freedom and digital rights.

As a broad initial study of the state of digital music copyright policy, we combine literature review, interviews, and group discussions first to rethink digital music copyright in terms of digital rights, then identify key actors in the digital music industry, and finally analyze digital copyright-related policies formed in the arena of "quiet politics". The policy analysis explores who and what circumstances influenced the formation of copyright policy throughout history, the extent to which music digitization is understood and identified in the policy, and the extent to which the rights and interests of musicians are protected.

(B)

Placing Digital Music Copyright Policy within the Digital Rights Framework

As part of intellectual property (IP), copyright policy focuses on recognizing authors and economically rewarding those creations. In Indonesia, as in other parts of the world, digital copyright is an extension of conventional copyright protection that stems from reproduction/ mechanical rights. Performance and making available rights emerged due to technological developments that changed how we listen to music. “Digital” is simply considered a new format of creation. The new relations that emerge as a consequence of digitalization and the new actors that emerge from them are not identified. It should be noted that digitalization is broader than just digitization. It is a new way of production to consumption and the consequent changes in social relations (Prause 2021). Furthermore, Indonesia does not have specific rules regarding digital music copyright. This narrow perspective on what is “digital” creates new ambiguities on the scope and owners/rights holders. In addition, law enforcement is tough to implement. Meanwhile, the non-transparent governance of royalty collection, collection, and distribution have not been addressed.

The debate on digital music copyright should not only be discussed as part of intellectual properties, but also as part of digital rights. Unfortunately, the development of the discourse on digital rights rarely includes the economic rights dimension. Similarly, in Indonesia, digital rights seem to be a separate area from IP. For example, when talking about digital rights, activists tend to refer to the legal instruments governing information and electronic transactions in Law No. 11/2008 on Electronic Information and Transactions amended through Law No. 19/2016, or Minister of Communication and Information Regulation No. 10/2021 governing private sector Electronic System Providers (PSE).

However, aspects of economic rights are included in the realm of digital rights as part of conventional rights. Jun-E (2019) put forward a conceptual framework of digital rights based on his research on Southeast Asian countries. Adapting the seven digital rights themes summarized by Gill et al (2015) from various international treaties as well as focused discussions with digital rights experts and activists in Southeast Asia, Jun-E formulated four digital rights spheres, namely: (1) Conventional rights applied to digital spaces; (2) Data-centred rights; (3) Rights to access digital spaces and services; (4) Rights to participate in the governance of digital spaces. Furthermore, in these four formulations, there are two different ways of interpreting “digital.” The

first is that “digital” is a different space from analog, so adapting human rights from physical space to digital space is the basis of digital rights. Secondly, “digital” is a data representation of a physical entity, so the basis of digital rights is how those data should be treated.

While Jun-Es discussion does not cover digital intellectual property, we can place digital copyright policy within the above conceptual framework to envision a more comprehensive protection framework. Digital copyright policy in Indonesia has not comprehensively accommodated the other three areas of rights. Copyright not only has the function of identifying the author but also public access to the work (Foong 2019). According to Foong (2019), dissemination is a prerequisite for achieving author identification.

By borrowing Jun-E’s conceptual framework, digital copyright policy can be envisioned as not just a matter of rewarding authors (domain 1) and access to works (domain 3), but also how far the public can be involved in shaping policies regarding the governance of digital space (domain 4). Domains 3 and 4 are the least visible areas of digital copyright policy and its formation process.

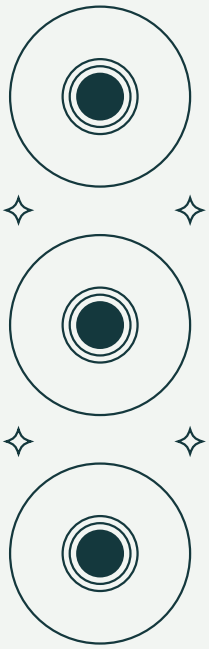
Before analyzing the laws and regulations governing digital music copyright one by one, the next chapter will describe the key actors in Indonesia’s digital music industry.

Digital Music Industry Players in Indonesia

Record Label

According to Songtrust (2016), a record label is generally the party paying for recording, mixing, and mastering songs. In many cases, labels also provide feedback during the process. In addition, the label does distribution, promotion, and marketing, from making music videos to planning album releases and tours. Since the record label finances the production process of the song until it becomes a master, they become the owner of the master recording, who is entitled to the economic rights of the master.

In practice, both authors and performers can have their own record labels. A 360 contract sometimes binds musicians and record labels. This means that the label profits from all sales of products involving the musician's work and the musician's persona, such as advertisements, books, movies, and merchandise.



Indonesian laws and regulations give great privileges to record labels. In Law Number 28 of 2014 on Copyright, record labels fall under the definition of "Producer of Phonograms." A Phonogram Producer is understood to be "a person or legal entity who first records and has the responsibility to carry out sound recording or sound recording, either performance recording or other sound recording." As per the legal arrangement, the Phonogram Producer is one of the beneficiaries of the relevant rights. This right is an economic right, including the right to reproduce phonograms, distribute phonograms and/or copies thereof, rent copies to the public, and make

phonograms available with or without cable. The exclusive right of Phonogram Producers to perform (announce) and make available new phonograms is explicit in the 2014 Copyright Act.

In the provisions of the previous Copyright Act, Law No.19/2002, this right was only referred to as the right to creation. Article 27 of the 2014 Copyright Act also confirms that “all Phonograms made available for public access with or without cable shall be deemed to be Phonograms for which a Performance has been made for commercial purposes,” thus entitling Phonogram Producers to “reasonable remuneration.” The amount of this reward is not explicitly determined in the 2014 Copyright Act. Still, it is explained in the explanation of this Law as “a reward that has been determined by the legal norms set by the Collective Management Organization.” Furthermore, Article 28 states that the Phonogram Producer must pay the Performer ½ of the revenue. Unfortunately, this article is preceded by the clause “unless otherwise agreed,” so the purpose of this article’s protection of performers is not absolute.

Under the 2014 Copyright Act, the economic rights of Phonogram Producers are valid for 50 years from the time the phonogram is performed. Phonogram Producers are also obligated to return all copyrights to the Author if a music/song purchased breaks before the 2014 Copyright Act came into effect. This right of reversion for authors takes effect when the letter of intent reaches its 25-year term. This provision then underlies the record label Musica Studios’ judicial review lawsuit to the Constitutional Court in late 2021 (MKRI 2020).

Record labels in Indonesia have evolved with various business forms and services. The line between major and indie has become increasingly blurred. To be sure, some labels do have more influence over shaping music industry policy and governance than others. Some labels also provide more financial support and scope of services to musicians than others. Such labels are internationally called major labels or “the big three,” which consist of Universal Music Group, Warner Music Group, and Sony Music. For example, the power of influence of these three labels could delay Spotify from operating in the United States and further affect Spotify’s business model in the world (Eriksson et al., 2019). These three labels

also operate in Indonesia under Universal Music Indonesia, Warner Music Indonesia, and Sony Music Indonesia. Major labels usually work within a large corporate umbrella, which includes several music publishing companies, distributors, and physical copy manufacturers.

Meanwhile, national-level record labels also significantly influence industry policy and governance in Indonesia and provide financial support and a wide range of services for their musicians. Some of them are Musica Studios, Trinity Optima Production, Aquarius Musikindo, and Nagaswara. Before Musica, the most influential record label in Indonesia was Remaco, founded in 1954. The journey of record companies in shaping the rhetoric of piracy to push for the issuance of Copyright Law will be discussed in the next chapter.

As technology evolves, record labels are increasingly diversifying with various strategies. In the 90s and early 2000s, record labels outside the major labels categorized themselves as “indie” or “independent labels.” They operate at a local level, often with specific music curation and target markets and relatively more minor capital. Some did not survive, such as Aksara Records, which was quite successful in the early 2000s. However, many are still in operation today. The service coverage is also sometimes relatively minimal. For example, Demajors has two types of services, distribution, and master licensing. In the distribution system, Demajors will only function as a distributor, helping to circulate the master copies without any promotional efforts.

Meanwhile, in the master licensing cooperation, Demajors will assist with media promotion and take up to 30% of the profits from music sales (Wiraspati 2013). Another strategy was developed with exclusive sales to fast food restaurants, such as Music Factory Indonesia selling music at Kentucky Fried Chicken outlets.

On the other hand, some record labels focus on releasing digital music or netlabels. In Indonesia, netlabels have also created their own communities and unions, such as the Indonesian Netaudio Forum (INF 2012) and the Indonesian Netlabel Union. In the Indonesian Netaudio Forum directory, some of the netlabels in Indonesia that existed in 2012 were Yes No Wave Music, Hujan! Records, Audiocopy Militia, and so on. Most netlabels are based in Java and were established in the late 2000s. Some netlabels do not follow copyright law but distribute through Creative Common licenses (Suherman 2014). Netlabels are formed for various purposes, from cutting the music industry's distribution channels and archiving digital music to marketing bedroom musicians.

It seems that musicians realize the potential for great profits if they have full rights to the recording master (phonogram), so more and more musicians are then establishing their labels, for example, Ahmad Dhani with Republik Cinta Records, Nadin Amizah and her family who founded the Sorai music label, Tulus with TulusCompany, Yura Yunita with Ayura, Isyana Sarasvati with Redrose Records, or Vidi Aldiano with VA Records (IDNTimes, 2022; Sorai, 2022). In addition, some musicians also become producers on record labels, such as Raisa and Dipha Barus in the Juni Records (Juni 2022).

The music production business looks very dynamic as the digitization of music has simplified the process of music production and distribution. The music market is increasingly saturated with newcomers, so the competition between musicians is getting tougher. This is recognized by the label industry and those who wish to establish similar businesses. The business strategies taken include transforming the label business into an intellectual property (IP)-based company or a diversification strategy by adding additional services oriented towards digital content.

The Sun-Eater Coven carries out this strategy. In this business model, royalties on music are no longer the primary source of revenue. Revenue is developed by monetizing musician personas through brands, both as individuals and groups. In addition, Sun Eater has reduced the amount of time musicians have to perform on the offline stage but has expanded digital content, which is not only limited to music performances but also podcasts and short series. Monetizing musician personas as brands also allows Sun Eater to develop its talents into comic characters, short stories, and brands of food products. Listeners/fans of Sun Eater musicians are targeted to become digital content viewers, ad viewers, and merchandise buyers all at once. At the same time, Sun Eater Coven is also implementing data-driven sales and performance. Data and analytics, where stock and show scale decisions are made based on real-time listener data.

Digitalization has also remained the same market dominance of major labels. With a business diversification strategy, Trinity Optima Production will become a national label with the largest digital income in 2021 (Rahayu 2022). Trinity's market share is almost 20% among other national record labels. Since 2005, Rahayu quoted from Trinity Optima Production CEO Yonathan Nugroho, Trinity was the first company to develop a 360-degree business model, which includes artist management, aggregator, movie production with Maxstream's Over-the-Top (OTT) platform, and venture. Trinity also has several sub-labels, namely 3D Entertainment, which focuses on dangdut music,

and Acuan Entertainment, which takes care of musicians who cover songs. Trinity also established Trinity Optima Plus as the KI manager for its artists. Sixty percent of Trinity's revenue still comes from record labels through radio, YouTube, soap opera soundtracks, and other sources that use Trinity's music.

The increase in national major label revenue is also in line with the global "big three" label revenue increase. Universal Music Group experienced a 21 percent increase in the third quarter of 2021 compared to the same period in the previous year (Rastya 2021). Rastya noted that this increase was influenced by revenue from music streaming services, especially Spotify.

From the results of Koalisi Seni's interviews with several sources, with the presence of Digital Service Providers (DSPs) as the leading players in the digital music market, several major labels now have a target to expand their music catalog to negotiate a higher royalty rate distribution to DSPs. The recruitment of newcomer musicians by major labels is no longer something special. In expanding music catalogs and negotiating royalty rates, aggregators become an integral party.

Aggregator

The development of technology and digitized music distribution has accelerated the growth of music aggregators. An aggregator is a popular term for a digital music distributor. The role of an aggregator is to help authors or copyright holders distribute music to DSPs. What distinguishes regular music distributors and aggregators is that the former distribute music in physical formats, such as CDs, cassettes, and vinyl records, while the latter exclusively distributes music in digital formats. Usually, aggregators also use royalty/revenue-calculating applications from songs distributed to all partner DSPs. The report is shared with musicians so that they can monitor their royalty flows regularly. In addition, musicians have access to the dashboard of the counter application. In addition, the aggregator also ensures that the uploaded music format complies with the

requirements and needs of each DSP, for example, whether the metadata information is sufficient, the master sound quality is good, or the song artwork file size is appropriate. Some aggregators also use specialized software that checks that the song to be distributed is original, meaning it is not a copy of another piece or has been uploaded by someone else.

The role of aggregators is vital in the digital music ecosystem because of the need for efficiency in both musicians/record labels and DSPs. DSPs don't have the resources to administer license agreements to tens of thousands of musicians one by one. Therefore, it would be easier if DSPs teamed up with an aggregator partner and let the aggregator handle separate licenses with each musician or representative who is a user of the aggregator's services. Generally, DSPs have a list of aggregators they trust to be their partners. Partnerships are established by considering the aggregator's resources, technological capacity, and reputation.

Many global and national aggregators operate in Indonesia. Global aggregators, such as Believe, have tiered service options ranging from self-service (authors register works independently) to premium services that provide additional services such as

pitching to DSPs, consultants for song marketing, and music video distribution. For Believe's self-service, users usually pay for the service upfront, and there is no profit sharing. For higher tiers, profit sharing is applied at different percentages of mechanical royalties according to the agreement with the user. Meanwhile, SoundOn, an aggregator owned by ByteDance, the multinational company that owns Resso and TikTok, also promises 100% royalties to users who distribute music on Resso and TikTok, with some exceptions for record labels with catalogs above 500. All distribution services in SoundOn are also free of charge (SoundOn 2022).

Besides Believe and SoundOn, other foreign aggregators still operating in Indonesia include Collab Asia. Collab Asia is a Chinese company with an extensive distribution network like SoundOn covering Indonesia, Asia, and China. Unlike SoundOn, Collab Asia is a digital media company focusing on distributing video and music content generally produced by music influencers. This means it offers YouTube DSP-oriented services of YouTube video account management and foreign content localization within its operations in Asia and China. (CollabAsia 2022)

Apart from foreign aggregators, there are also domestic players. These players have a variety of business forms, services, and networks. As an example of a business diversification strategy, Tanoe family-owned media giant MNC Media established Starhits, a digital media company that can distribute music video content to various MNC-owned channels. Starhits also has its own content ID. This gives authors who use Starhits services a wide distribution channel (Starhits 2022)

In addition, there are also Digital Maya Chain and Indonesia Digital Entertainment ("IDE"). In running their business, these two companies not only act as a means of music distribution but also manage the physical and non-physical assets owned by authors and mentorship programs. These additional services show that the aggregator is now not only a party that distributes music but also plays a role in developing musicians' talent and income (DRM 2022; IDE 2022). In addition to consulting services, domestic aggregators such as Musicblast and

Netrilis often provide technical services to improve content quality, such as online production, mixing, and mastering tools. This kind of service shows that aggregators have a role similar to record labels. Aggregators can be involved in the entire content production process, from production to post-production. What is different is that the aggregator does not own the master but can take a share of the royalties for duplicating the master (mechanical royalties).

Unfortunately, the new relationships that arise with aggregators are not explicitly identified in the legislation. As a music distributor, the agreement with the aggregator will enter into a loosely regulated master copy distribution rights management license agreement with many “unless otherwise agreed” and “based on reasonable practice” exclusion clauses. Thus, profit-sharing agreements between aggregators and musicians/users vary widely.

Domestically, there are also what they call the sub-aggregators. According to its characteristics, a sub-aggregator is an aggregator that utilizes another aggregator’s technology to distribute music from its users but enters into a separate agreement. Usually, this is because the sub-aggregator does not have the resources to develop technology that meets the DSP’s needs or has not met the DSP’s other prerequisites to becoming an authorized partner. This business practice is prevalent outside major cities. According to Koalisi Seni’s interview with the aggregator Music Blast, the emergence of sub-aggregators was driven by several factors. First, a lack of information on the

flow of royalty collection and distribution in all regions of Indonesia. This is why authors trust the sub-aggregators located in their home region more. Typically, a musician pockets 80% of the royalty revenue, the sub-aggregator takes 10% of the song/music royalty profit, while the other 10% is shared with the technology-owning aggregator.

Second, the language barrier and the aggregator payment system made through credit cards. Many musicians do not have credit cards to pay for aggregator services. Therefore, aggregators or sub-aggregators that provide bank transfer payment systems and Indonesian language services are preferred.

Publisher

The Music Publishers Association defines music publishing as a business that takes care of the development, protection, and royalty valuation of musical compositions (Pastukhov 2019). The music publishing business was born from buying and selling sheet music used in live performances. When the recording industry was born, the profession evolved into a business that charged fees to parties and businesses that used songs commercially (Asmoro 2012). Music publishing services help musicians take care of copyright administration so that musicians can focus on their work. According to Article 9 of the 2014 Copyright Act, publishing is one of the economic rights owned by the author/copyright holder. This right can be transferred through a license as stipulated in Article 81 of the 2014 Copyright Act.

Unlike record labels entitled to mechanical royalties, the royalties shared with publishers are synchronization royalties.

The publisher’s scope of work includes not only copyright administration but also the promotion of song usage. In copyright administrative matters, publishers register the works of songwriters and composers with all appropriate collecting organizations (e.g., the Directorate of Copyright and LMK in Indonesia). Upon

using the song, publishers make royalty payments to songwriters and composers in connection with the use of their music.

In their promotional efforts, publishers seek to license the use of music, both directly in individual and unique use cases (e.g., synchronization deals). This is done by promoting composers and songwriters and their music to singers, broadcasters, record companies, and others who use it commercially. Publishers will generally grant licenses to song users to publish, reproduce, modify, and translate songs/music physically and digitally (APMINDO 2022a).

In addition to the above two functions, publishers oversee the unauthorized use of musical compositions. In this case, the publisher's oversight mechanism may include monitoring, and tracking the usage of the music they manage, ensuring that proper payments are made for all licensed usage, and taking appropriate action against anyone using the music without the required license.

By the above job functions, publishers are also required to adapt to technological changes. Therefore, improvements must also be made to information technology systems related to the distribution and supervision of the works represented. For example, the association of publishers in Indonesia (APMINDO) has currently adopted the Music Publishing Information System (MPIS) and the Composer And Author Revenue Information System (CARIS) (APMINDO 2022b). With

this, authors and composers can check and distribute royalties in real time, and royalty data will be more organized and timely.

Digital Service Providers (DSP)

According to Accenture (2018), DSP can be defined as a technology that facilitates the exchange of information, products, or services between producers and consumers. DSP connects people, things, and actions to provide data-driven intelligence. In the context of digital music, DSPs are found in streaming platforms and digital music stores.

The history of DSP begins with the change of song format to MP3, reducing the song file size. In the late 1990s and early 2000s, when the MP3 format became widespread, peer-to-peer (p2p) platforms such as Napster and Limewire and online forums such as Indowebster allowed people to share and download music for free, which became popular in Indonesia. In the MP3 era that lasted until the early 2000s, it was common to find electronics stores that provided services to copy large amounts of MP3-formatted music onto flash drives and cell phone memory, similar to what happened in the cassette era. While cassette tapes can only store one album (10-16 songs), flash drives can store hundreds of songs in MP3 format. After that, technology began to evolve to the possibility of selling music works that were previously circulated physically to digital versions.

1. Streaming platform

Streaming platforms are the ‘legal solution’ to the p2p sharing model of music listening. This platform provides access to digital content (including music) through streaming. To gain access, listeners can subscribe or access it for free with ads (often called freemium services).

In the 2014 Copyright Act, streaming platforms are not explicitly regulated in the definition in Article 1. In the industry, the sale of access to songs by streaming platforms is categorized as duplicating, performing, and communicating. As such, streaming platforms fall under the broad definition of “trading venue.” The 2014 Copyright Act makes the manager of the place of business responsible if goods resulting from copyright infringement are sold on its premises. Article 10 prohibits places of the trade from letting and/or selling goods resulting from copyright infringement. Article 114 imposes a fine of a maximum of one hundred million rupiahs in the event of copyright infringement in the “place” it manages.

Streaming platforms do not sell copies of music for listeners to own, although some platforms have additional features to download music files on a limited basis. According to Eriksson et al. (2019), in their research on Spotify, streaming platforms are changing how people sell music in the digital realm. More than just a distributor that gives access to copies of music, streaming platforms like Spotify commoditize the music listening experience. Because it sells experience, an important method in music streaming platforms is the “curatorial algorithm,” which combines machine algorithms with human curation systems. We adapted this term from the term “editorial algorithm,” proposed by Schwartz, R, Naaman, and Teodoro (2015) in analyzing news editorial decision-making based on algorithmic data.

In the “curatorial algorithm,” the role of music editors/curators on each platform is to organize the presentation of content to be relevant to the interests of platform users so that the platform is increasingly accessible. These songs will be collected in some special playlists. User interests can be calculated through frequently accessed music genres, song and user origin, weather, day, and mood. With the human curation touch still present, getting on the playlist is a plus for musicians who put their music on streaming platforms. The pitching session is an opportunity for musicians to introduce their songs to the platform’s team of curators. For aggregators, the pitching opportunity becomes a service that has a higher selling point.

In providing and recording the utilization of economic rights of works, streaming platforms will usually come into contact with record companies, aggregators, publishers, and LMK partners. Collaboration with record labels can be done directly or through aggregators and publishers. According to a source who works at DSP, labels can also work directly with DSP without going through an aggregator.

In terms of the type of content provider, streaming platforms are divided into two types: user-generated content (UGC) and license-based content.

Users can directly upload content to UGC streaming platforms such as YouTube and TikTok. The platform has a unique mechanism to detect the copyright holder of the content or work utilized in the user-uploaded content. This mechanism further ensures that each song/music content playback is recorded in the name of the authorized beneficiary. In Indonesia, the consumption of UGC platforms dominates the digital music market. According to Kemp (2022), YouTube is the second most accessed website by Indonesians. In April 2022, Statista, a record 139 million Indonesians, used YouTube. YouTube is a vital music listening platform in Indonesia as the top keywords that Indonesians search for on YouTube are directly related to music, viz: songs (first), DJs (second), and karaoke (fourth) (Kemp 2022).

In contrast, for license-based content streaming platforms, users cannot directly upload content. The content on this platform is uploaded by service providers or content licensees such as aggregators or record labels. Examples of license-based content streaming platforms are Spotify, Resso, and Joox. Besides audio content, over-the-top (OTT) platforms provide Video On Demand (VOD), such as Netflix, HBO Go, Disney Hotstar, Amazon Prime, Mola, Vidoo, Klikfilm, and so on.

The percentage of royalty sharing with DSP is done by the blanket licensing system. A blanket license entitles the licensee to the licensor's entire catalog. In Indonesia, this method is applied to the performance royalty component and is negotiated with the LMK and publisher. In the United States, this system is also carried out for the mechanical royalty component of the US Mechanical LMK (Huffman 2020). Streaming platforms can be accessed through two methods, subscription or freemium. The different types of methods will determine how much of the performance royalty component is shared between the LMK and the publisher (see royalty sharing percentage in the "Collective Management Organizations" section).

Meanwhile, the division of the mechanical royalty component is based on more factors, including agreements with individual aggregators and record labels and each platform's corporate policies. We could not obtain data that would concretely illustrate this division in Indonesia. However, Huffman's (2020) research in the United

States highlighted a court case between Spotify and Sony Music which revealed that Spotify made an upfront agreement with Sony to acquire Sony's entire catalog for millions of dollars in 2011. This amount is determined before Spotify earns any royalties and is deducted from Spotify's gross revenue. The agreement also states that Spotify is entitled to 60% of royalties generated from streaming revenue on Sony's music catalog and freemium users and subscribers.

Each streaming platform has its policy for determining its per-stream rate. These rates are often challenging to determine so that all musicians can check their royalty income regularly reported by aggregators, publishers, and LMKs. Spotify, for example, has a different formula from other music streaming businesses, such as Pandora and Apple Music, that use a fixed price for a single stream. Spotify considers factors such as the listener's location and individual artist royalty rates. In 2017, Spotify claimed it paid artists an average of US$0.0033 - 0054 per stream (Dellatto 2022).

Unlike Spotify, YouTube users must access the claim & monetize feature if they want to monetize uploaded content. The feature can only be obtained if the user has a thousand subscribers on his channel and 10,000 to open the merchandising feature. (YouTube 2022). The claim & monetize feature will scan the content to get an ID. In this scanning process, the rights owner of the song/ music in the content is identified.

In 2022, Spotify was established in Jakarta as a company. Previously, Spotify established the Spotify Asia Pacific office in Singapore as the base for its Southeast Asia operations. Despite having a fixed form of business, the Government welcomed Spotify's arrival in partnership with Indosat Ooredoo in Indonesia in early 2016. At the time, Minister of Communication and Information Rudiantara firmly said that Spotify did not need to create a permanent establishment ("BUT") because it was already working with Indosat Ooredoo (Jamaluddin 2016).

The debate regarding PSE (Spotify) being able to operate in Indonesia continued to move until Indonesia was hit by COVID-19. During the pandemic, the Indonesian government desired to tax DSPs established in Indonesia (Dirhantoro 2020). Tax issues aside, this means that until this year, authors who have issues with their Spotify account or content within Spotify can only be redirected to digital methods to access help with their content. This is because Indonesian legal obligations do not bind a company that is not established in Indonesia as a permanent establishment regarding the company. This is undoubtedly disproportionate to Spotify's role in the digital music ecosystem, which is so important in the context of work distribution and royalties.

In 2022, blockchain technology for streaming platforms started to gain popularity with the emergence of Audius, Emanate, and Zora. NFT-based streaming platforms like Audius seek to eliminate the intermediaries that conventional streaming platforms like Spotify and YouTube (Creighton & Thomas 2022). With a decentralized blockchain system, NFT-based streaming platforms allow musicians more control and information over the songs they distribute. Song owners can even make their songs available for free.

2. Digital store

Digital stores in this study are platforms or websites selling music in digital format. Different from streaming platforms, digital stores sell digital copies of music. To listen to music, consumers of digital stores must first download it and can store it on their personal hard drives. Because it is saved, the song can be played without having to connect to the internet again. This is certainly different from streaming platforms that only sell access to play songs in streaming form. Songs can only be listened to through streaming platforms if the listener has an internet connection.

Like streaming platforms, digital stores in the 2014 Copyright Act are not defined in detail but fall under the definition of “trading place.” Since the function of a digital store is to duplicate, publish, and communicate songs, it is also bound by all the provisions related to these actions.

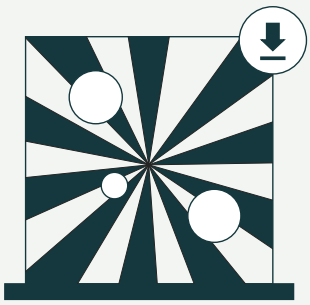
The once-popular digital store iTunes, first appeared in Indonesia amidst the rise of p2p sharing and MP3 content businesses in the country. In the early 2000s, it was common to find electronics stores that provided the service of copying large amounts of MP3-formatted music onto flash drives. Due to the high price, iTunes is still less popular in Indonesia than p2p sharing and song content services. New buyers can listen to music by purchasing EPs or Albums on iTunes through Apple-issued devices. (Hill 2013).

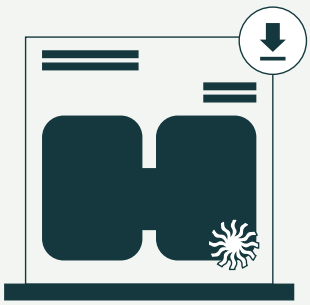
In addition to iTunes, Bandcamp is an alternative digital store to MySpace, where listeners can directly engage with and support musicians’ work. The founder of Band Camp believes that the commoditization of music needs to put musicians at the top of the priority list, “music is not content to advertise or sell subscription plans, as streaming platforms do” (Ravens 2020). Bandcamp persists with the digital store model, where copies of songs can be owned. (Bandcamp 2022).

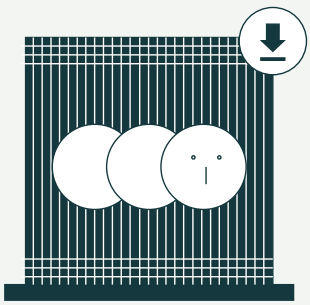
Bandcamp also makes it easier for listeners to support their favorite musicians directly. As a community business, Bandcamp has a fair trade policy where

82% of its profits will be given directly to the artists under Bandcamp. Nonetheless, platforms such as these survive not only through digital music sales but also through sales of physical products (merchandising).

This is also happening domestically with the digital store The Store Front, which adopts a similar principle to Bandcamp. The platform was born out of musicians' concerns about mass streaming platforms that do not pay royalties and do not provide welfare for musicians.







By taking 10% of sales revenue, the Store Front becomes more attractive to up-and-coming musicians or musicians with a relatively small fanbase. The Store Front gives the choice of whether or not the musician wants to release exclusively. It could be a single EP, LP, physical release, or merchandise. Unlike streaming platforms, the digital music sold by the Store Front is obtained through a download system. After the transaction, the user receives a zip file containing a song that can be listened to indefinitely, with no restrictions on the number and type of devices.

Musicians who sell at The Store Front earn significant profits, with the highest amount reaching over 16 million rupiahs for one band in one year (Defashah et al., 2021). The biggest-earning musicians succeeded through a year-long exclusive release strategy. This means music is entirely unavailable on any other service except the Store Front. This means that the economic

chain for musicians in this sphere is shorter, and less layered, although the turnover and volume of money are much smaller. In 2021, Storefront was used by 55,954 users, mainly in Jakarta, Bandung, and other cities on the island of Java (Defashah et al., 2021).

Collective Management Organization (LMK)

In Indonesia, the need to establish a collective to charge, collect and distribute royalties to copyright holders only emerged in the late 1980s. Based on this need, KI H. Enteng Tanamal and Candra Darusman traveled to the Netherlands in 1989 to conduct a comparative study with the collecting society there, Buma Stemra (KS 2013; Darusman 2017). The first Indonesian Collective Management Institution was born in 1990, Yayasan Karya Cipta Indonesia (YKCI), and collaborated with the International Confederation of Societies of Authors and Composers (CISAC) in becoming an international affiliate of CISAC in managing royalties in Indonesia. YKCI was formed due to Indonesia's obligation to comply with the bilateral agreement with Japan, the Indonesia-Japan Economic Partnership Agreement (Aditya 2007). The relationship with Japan began with the Indonesian Pop Song Festival, which sent the winner to represent Indonesia at the Tokyo World Pop Song Festival, thus opening a relationship with the Japanese LMK, JASRAC (Darusman 2017, p.137). YKCI operated based on a memorandum of understanding with the Ministry of Trade and Industry at that time because Law No.19/2002 had not accommodated the authority of the LMK in collecting and distributing royalties (Aditya 2007).

More than 20 years since the first LMK operated to manage royalties, the rules on LMK only appeared in the 2014 Copyright Act. Under the Act, a Collective Management Organization is a non-profit legal entity authorized by authors, copyright holders, and/or related rights owners to manage their economic rights by collecting and distributing royalties. By the provisions contained in Article 87 of the 2014 Copyright Act, authors, copyright holders, and/or owners of related rights must become members of the LMK in order to claim royalties

from parties that utilize copyright.

In addition to regulations for copyright owners, Article 88 of the 2014 Copyright Act also lists several conditions that must be met to operate as an LMK, namely: be a non-profit legal entity, can collect royalties, and have at least 200 authorizers for Author LMKs and 50 authorizers for Related Rights Owner LMKs. LMK has various obligations that must be fulfilled towards the public, namely, carrying out financial audits that must be published at least twice a year. In addition, an LMK can only use approximately 20% of the total royalty income as operational costs. Every year, the Minister will evaluate the LMK, and it can potentially lose its operational license if it cannot do its job properly. Without such permission, LMK is prohibited from charging, collecting, and distributing royalties.

In addition to this provision, Indonesia also regulates the existence of LMK in more detail through Minister of Law and Human Rights Regulation Number 36 of 2018 concerning Procedures for the Application and Issuance of Operational Licenses and Evaluation of Collective Management Organizations. The regulation requires a field inspection process to ensure applicants can carry out their duties. In addition, LMKs must disclose data to the public regarding the amount distributed, the recipients, and user data per type of commercial-based public service. In addition, there are stricter provisions related to the administrative and operational requirements of LMKs, such as the use of funds, revocation of rights, and administrative

requirements to obtain an operating license.

As of today, there are 11 LMKs officially operating in Indonesia. For classification purposes, LMKs are divided into Authors and Related Rights Owners LMKs. Authors LMK consists of Wahana Musik Indonesia (WAMI), Royalty Anugerah Indonesia (RAI), Karya Cipta Indonesia (KCI) and PELARI. Meanwhile, the number of Related Rights Owners LMKs is greater, namely Anugerah Royalti Dangdut Indonesia (ARDI), Indonesian Music License Center (SELMI), Star Music Indonesia (SMI), Protection of the Rights of Indonesian Recorded Singers and Musicians (PAPPRI), Anugerah Musik Indonesia (ARMINDO), and Professional Singers of Eastern Indonesia (PROINTIM) (LMKN 2022).

In collecting digital royalties, WAMI states that the fraction of the rate and its distribution follow industry practices in other countries based on agreements with other LMKs and publishers. This tariff is not explicitly regulated in the laws and regulations. The performance royalty rate for streamed music/song for the author is 12%, and that of downloaded songs is 8%. Of each of these percentages, ⅔ is withdrawn by WAMI if the song is played from a freemium/ad-based account. As for paid accounts(subscription), WAMI charges ⅓. The rest is a share for the publisher. For Over-the-Top (OTT) platforms, the rate is 2.5% and is split between WAMI and the publisher.

Based on legal developments in Indonesia, the function of collecting royalties has moved to the National Collective Management Organizations (LMKN). However, WAMI and SELMI are representatives of the Author's LMK and Related Rights Owner's LMK, who are temporarily authorized to carry out the role of LMKN to collect royalties.

National Collective Management Organization (LMKN)

LMKN was formed to solve complaints from several business place managers about double royalty withdrawals made by several links at once. According

to an IP expert, Prof. Agus Sardjono, in the online seminar “Questioning the national Collective Management Institution” organized by the Indonesian Center for Legislative Drafting, at the initiative of PAPPRI, in the range of 2012-2013, a meeting was held between LMKs which led to an agreement on the establishment of a one-stop royalty management system (ICLD 2021). In the discussion, the initial form proposed for LMKN was a legal federation whose members came from existing LMKs. This federation must be authorized to represent the owner or right holder for collection purposes.

This federation-like idea was later contained in the 2014 Copyright Act. Article 89 of the 2014 Copyright Act provides for the establishment of two national Collective Management Organizations (national LMK) for the benefit of authors and the benefit of owners of related rights. Both LMKs have the right to collect, collect and distribute royalties from commercial users. In addition, these two bodies also have the right to determine the amount of royalty each LMK Individual is entitled to, which is further regulated through a Ministerial Regulation. In other words, the national LMK regulated in 2014 Copyright Act is a consortium of various existing LMKs.

The concept of LMKN (big N to signify LMKN as an independent organization) was first outlined in the Minister of Law and Human Rights Regulation Number 36 of 2018 concerning Procedures for Application and Issuance of Operational Licenses and Evaluation of Collective Management Organizations. In the regulation, LMKN is defined as a non-APBN government auxiliary institution that gets the attribution authority from the Copyright Law to attract, collect and distribute royalties and manage the interests of the economic rights of authors and owners of related rights in the field of songs and/or music. This regulation is also the basis for regulating the duties and functions of the LMKN, including the duties, composition of commissioners, term of office, and the collection and distribution of royalties. In addition, the evaluation, financial, and audit mechanisms are regulated like LMK. The Bali Declaration also supports this regulation agreed upon between the Directorate General of Intellectual Property and representatives of 8 LMKs, namely KCI, WAMI, RAI, SELMI, PAPPRI, ARDI, ARMINDO, and SMI, where a one-door royalty collection system is considered to

be the future in Indonesia (DJKI 2019).

After its first setup in 2018, LMKN underwent several concept changes. LMKn changed to LMKN in Government Regulation Number 56 the Year 2021 on the Management of Royalty for Copyright of Songs and/or Music (“PP 56”). PP 56 of 2021 also provides clearer regulations on the division of the work of LMK and LMKN. In addition, this PP also orders the establishment of a song and music system (SILM) and a cooperation mechanism between LMKN and third parties to build and develop the system. Some experts have commented that the commissioner’s nomenclature deviates from the central concept. Chairman of the AMPLI Supervisory Board Panji Prasetyo stated that the central concept in question is one where the LMKN is formed in the form of a federation with representatives from each LMK in its governing body. The same thing was voiced by a Professor of IP from the University of Indonesia, Prof. Agus Sardjono (ICLD 2021; Malawi 2022).

In PP No. 56/2021, LMKN is designated as a state auxiliary organ. In this case, LMKN does not obtain authority from the right owner but rather an authority from the minister. In this form, IP expert Dian Puji Simatupang stated that there are problems in the form of the LMKN as a government institution because its funding sources come from non-APBN (ICLD 2021). In this case, the royalty rate should not require ministerial authorization because the financial governance is private. In this case, LMKN should stand as a civil legal entity, not a government agency.

Furthermore, the musicians commented on the concept of a daily executive and the lack of transparency regarding the third party recruited in the LMKN daily executive plan. (Prasetyo 2022) In response to these criticisms, the Government issued Minister of Law and Human Rights Regulation No. 9 of 2022 concerning the Implementation of Government Regulation No. 56 of 2021 concerning the Management of Royalties for Song and/or Music Copyright (Permenkumham 2022). In the 2022 Permenkumham regulation, the structure of commissioners and daily administrators changes. In the previous structure, third parties were appointed daily administrators of the LMKN. In Permenkumham 2022, LMKN is generally a representative of LMK, consisting of a balanced combination of

artists, LMK representatives, and parties appointed by the government.

Permenkumham 2022 regulates the structure of Authors' and Related Rights Owners' LMKN, the structure of commissioners and daily executives, procedures for appointment, replacement, dismissal, and royalty distribution system with the current LMKN model. To prevent abuse of authority, this regulation stipulates that LMKN will be evaluated by the minister and a supervisory team consisting of elements from the Ministry of Law and Human Rights, non-LMKN LMK members, and experts in the field of songs and music. The supervisory team is established by ministerial decree.

With the issuance of Permenkumham 2022, LMKN commissioners for the 2022-2025 period were inaugurated. The LMKN commissioners are now a combination of government representatives appointed by the Government and representatives of the Copyright and Related Rights LMK.

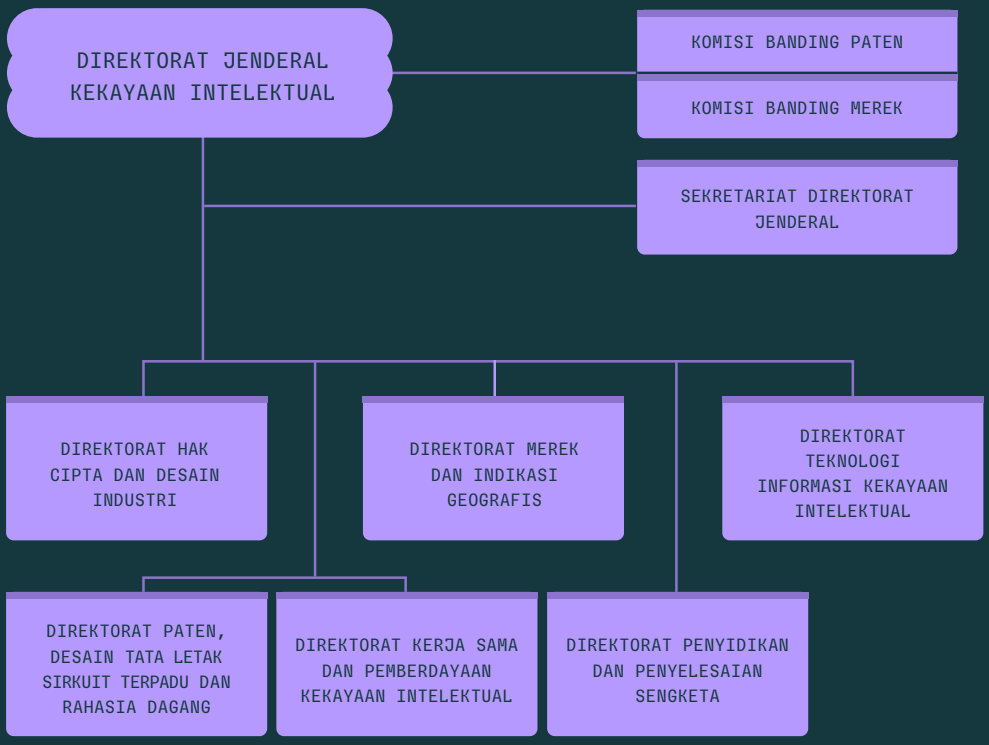
Government

1. Ministry of Law and Human Rights

The legal protection of intellectual property after independence in Indonesia began in 1987 with the issuance of Law Number 7 of 1987 concerning Copyright (1987 Copyright Act). One year after the law was passed, Presidential Decree No. 32 of 1988 became the legal basis for the establishment of the Directorate General of Copyright, Patents, and Trademarks (DG HCPM) to take over the functions and duties of the directorate, which was previously an echelon II unit within the Directorate General of Law and Legislation, Ministry of Law and Human Rights.

Since then, the institutional structure of state agencies tasked with Intellectual Property ("IP") enforcement has continued to evolve. Until now, IP matters have been broken down according to the type of IP. IP affairs are organized

under the management of the Directorate General of Intellectual Property. This is regulated by Minister of Law and Human Rights Regulation No. 29/2015 on the Organization and Work Procedure of the Ministry of Law and Human Rights of the Republic of Indonesia (“Permenkumham No. 29/2015”).



SOURCE: DJKI WEBSITE, 2022

Under Permenkumham No.29/2015, the Directorate of Copyright and Industrial Design is under the authority of the Directorate General of Intellectual Property. The Directorate of Copyright and Industrial Design has several authorities facilitating copyright governance. First, this Directorate is

the party that prepares the formation of policies in the field of application, publication, examination, certification, documentation, and legal services of copyright and related rights products. This is done to ensure that the copyright system in Indonesia is equipped with regulations that govern the beginning to the end of the process.

Second, the implementation of optical disk recommendations and supervision of LMK. This process is done to ensure that the optical disk business does not increase piracy and that the LMK continues to distribute royalties per the institution's function.

Third, providing technical guidance and supervision in application, publication, examination, certification, documentation, and legal services of copyright, related product rights, and industrial design. This task is done with the logic that not all copyright registrants have a qualified understanding of copyright. With an uneven understanding of copyright, there is a concern that these parties are in danger of being exploited by irresponsible parties. For this reason, technical guidance and supervision is an obligation that this directorate must undertake.

Fourth, the implementation of evaluation and reporting in the application, publication, examination, certification, documentation, and legal services for copyright, related product rights, and industrial design. This is arranged so that the process arranged in point 1 can continue to run optimally. Finally, to carry out administrative and household affairs of the Directorate of Copyright and Industrial Design so that the Directorate can run smoothly.

In the context of digital copyright, this Directorate is vital in implementing legal services for copyright protection per the 2014 Copyright Act. The Directorate also issued a Procedure & Imposition of Tariffs on Copyright services through Permenkumham Number 20 of 2020. At the end of the copyright protection legal service process, this directorate includes the obligation to provide copyright registration services by laws and regulations, license agreement registration services regulated through Permenkumham 36/2019, and manage

the general register of creations regulated in PP 16/2020.

In addition to matters concerning copyright administration, the Directorate also plays an active role in providing recommendations in the regulation and supervision of collective management organizations (“LMKs”) as per point two of the directorate’s work. This element can also be seen through several policies of the Ministry of Law and Human Rights, which are not limited to Regulation of the Minister of Law and Human Rights No. 20 of 2021 concerning Regulations on the Implementation of Government Regulation No. 56 of 2021 concerning Management of Royalties for Copyright of Songs and/or music, Regulation of the Minister of Law and Human Rights No. 36 of 2018 concerning Procedures for Application and Issuance of Operational Licenses and Evaluation of LMK, to Decree of the Minister of Law and Human Rights No. HKI 2. OT. 3.1.2 Year 2016 on the Ratification of Royalty Rates for Users who Perform Commercial Utilization of Creation and/or Related Rights Products of Music and Songs, which regulates the rates for commercial use of songs in public places.

In managing copyright in the digital music era, the Ministry of Law and Human Rights is not alone in becoming a regulator. The Ministry of Communications and Information Technology also plays a similar role, especially in DSP regulations. The role will be discussed in the next section.

2. Ministry of Communication and Information Technology

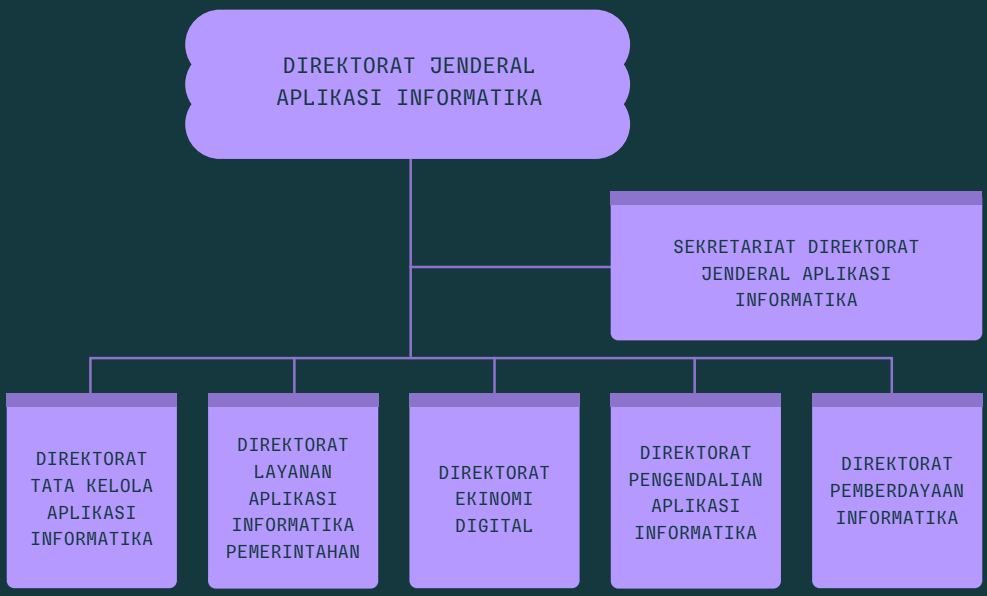
The development of digital technology in the early 2000s required the state to accommodate digital communication services. This has led to changes in the institutional structure of the Ministry of Communication and Information Technology (MOCI). Under Presidential Decree No. 10/2005, the government integrated the Ministry of Communications and Information, the National Information Institute, and the Directorate General of Posts and Telecommunications. By the following concept, MOCI’s function changes to ensure national information disclosure and access to information.

At the end of 2009, the Ministry of Communications and Informatics was split into the Ministry of Communications and Informatics. Meanwhile, the Directorate General ("DG") and Telecommunications was split into the Directorate General of Post and Information Technology Resources, the Directorate General of Post and Information Technology Resources, and the Directorate General of Telematics was renamed the Directorate General of Information Technology Applications. The latter is the DG responsible for Informatics Applications and Digital Economy activities.

The Directorate General of Informatics Applications (DG Aptika) was established by the mandate of the Minister of Communication and Informatics Regulation No. 6/2018 on the Organization and Work Procedures of the Ministry of Communication and Informatics. DG Aptika has the task of organizing the formulation and implementation of policies in the field of informatics application governance.

The structure of the Directorate General of Informatics Applications consists of the following:

DIREKTORAT JENDERAL APLIKASI INFORMATIKA



SOURCE: DITJEN APTIKA KOMINFO, 2022

In digital music copyright, these five DGs are essential in regulating Electronic System Providers (PSEs), including various online music listening services, or DSPs. Article 55 of the 2014 Copyright Act stipulates that the government authorizes the Ministry of Communication and Information through the Ministry of Law and Human Rights to close all or part of the content indicated to infringe copyright and related rights. In addition to shutting down content, Article 56 of the 2014 Copyright Act also authorizes the Ministry of Communication and Information to close down the overall access to PSE services from users.

In closing the content, the Ministry of Law and Human Rights has a joint ministerial regulation, namely Ministry of Law and Human Rights Regulation No. 14 of 2015 and Ministry of Communication and Information Regulation No. 26 of 2015 on the Implementation of Closing Content and/or Access Rights of Users of Copyright Infringement and or Related Rights in Electronic Systems ("Joint Ministerial Regulation"). In the joint ministerial regulation, the Directorate General of Informatics Applications is the intended party in closing content and/or access rights within 2 x 24 hours after obtaining a court decision. In order to reopen such content, Article 18 of the joint ministerial regulation requires this party to submit an application to the DJKI.

In addition to closing PSE content and access due to copyright infringement, the Ministry of Communication and Information can close access to PSEs that do not register their companies with the government. This provision is stipulated in Permenkominfo No. 36/2014. Furthermore, this regulation also authorizes Kemenkominfo to block access to content, applications, and other software deemed "negative" based on complaints. This shows that the MOCI holds great power over public access to digital services, including DSPs operating in Indonesia.

Stakeholder Organization

The dynamic music industry has the potential to create new problems that lead to conflicts of interest. Various musicians' associations have grown to increase the bargaining power of musicians. In Indonesia, music performers' associations consist of professional associations, music unions, and company associations.

1. Professional Association

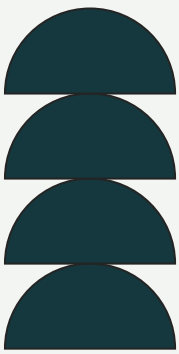
Professional associations and unions differ in the organization's position and goals. Professional associations place themselves on an equal footing with the state and other industry professionals. They are generally based on a code of ethics and champion the interests of a particular music profession. For example, Persatuan Artis Melayu Dangdut Indonesia (PAMMI) has programs that support Malay dangdut in Indonesia, such as a national song competition to find new talents in Malay dangdut (PAMMI 2022). Meanwhile, Aliansi Pencipta Lagu dan Musik Indonesia (AMPLI) advocates for a more transparent and fair royalty system for songwriters.AMPLI 2022). AMPLI was formed after the issuance of PP 56 and Permenkumham No.20/2021, which regulates the governance of song/ music royalties. Examples of professional associations include Persatuan Artis Melayu Dangdut Indonesia (PAMMI) as an example of a professional association among genres, Persatuan Artis, Pencipta Lagu dan Pemusik Republik Indonesia (PAPPRI), Komunitas Pencipta Lagu Indonesia (KOMPLANESIA) and Aliansi Pencipta Lagu dan Musik Indonesia (AMPLI) for fellow professions.

In its development, several associations of musicians in Indonesia created their LMKs that were tailored to the interests of their members or had close ties with specific professional associations. This includes. With the figure of Rhoma Irama, RAI manages royalties for Malay dangdut music, which still has a relationship with PAMMI. In addition, the Association of Artists, Songwriters, and Musicians of the Republic of Indonesia (PAPPRI) also began its status as an association of musicians. It formed an LMK that is still active today, namely WAMI.

2. Music Workers Union

Unlike professional associations, unions are composed explicitly of workers with the target of employer advocacy. The union's goal is to improve the welfare of members through fairer remuneration, social security, and training.

In Indonesia, seven music unions joined the Federation of Indonesian Music Unions (FESMI) (FESMI 2022). As a federation, FESMI is a non-profit organization that fights to protect the social and economic rights of HORECA (Hotel, Restaurant, and Cafe) musicians and collaborates with various music workers' unions in various provinces in Indonesia. FESMI's work program to support the vision above includes organizing career support training such as branding, public speaking, and socialization of intellectual property rights (FESMI 2022). In addition, another program that FESMI has done is to provide automatic BPJS Employment membership to its members (FESMI 2021a). FESMI is also one of the bodies that rejected the judicial review filed by Musica to revoke articles 18 and 30 of the 2014 Copyright Act regarding the right of reversion and to extend the exploitation of phonograms from 50 to 70 years (FESMI 2021b).



3. Company Associations

In addition to professional associations and music unions, company associations as industry players can also be found in Indonesia. Company

associations consist of various lines of business, namely, first, company associations. In Indonesia, record companies are organized into ASIRI (Indonesian Recording Industry Association). ASIRI has members from various labels in Indonesia, such as national labels consisting of Musica Studios, Nagaswara Records, and Trinity Optima Production, to international labels consisting of Universal Music Indonesia, Warner Music Indonesia, and Sony Music Indonesia. ASIRI conducts business consultations and anti-piracy programs. In addition, ASIRI, as an association, is the only organization that publishes the International Standard Recording Code (ISRC) with the Indonesian country code. ISRC is an internationally recognized mechanism for identifying sound and video recordings. ISRC is key to digital music royalty management (Netrilis 2020).

In the music industry in Indonesia, ASIRI plays an essential role in policy formation, especially in the anti-piracy movement and intellectual property rights in general. ASIRI was formed in 1978 and was welcomed by the industry. This is due to ASIRI's initiative to put a unique label on original tapes to distinguish them from pirated tapes. In addition, ASIRI was the party that promoted the protection of related rights of record companies in Indonesia and was also active in conducting anti-piracy operations during its time. The peak was in 2002 when ASIRI conducted an anti-piracy operation that sentenced 600 pirates to prison and 590 to probation (KS 2013).

The second is a music publishing company. This group also has a company association, the Indonesian Music Publishers Alliance (APMINDO). APMINDO covers 75% of all publishing businesses in Indonesia, including seven international publishers. (APMINDO 2022a) In running its program, APMINDO has several functions, namely as a communication facilitator between music publishers, a forum to discuss music challenges in Indonesia, and bridging collaboration with music users and publisher members in Indonesia. In addition, APMINDO encouraged the formation of LMK WAMI as one of the LMKs that color the Indonesian music ecosystem after KCI.

Third, Indonesia has the Association of Indonesian Music Promoters (APMI).

This association of companies is for promoters and organizers of concerts and music festivals. APMI's programs range from education for organizing concerts and music festivals with international standards, strengthening networks in finding sponsors, to working with the government for policy advocacy related to music events (APMINDO 2022a).

(D)

Progress in Digital Music Copyright Policies in the “Quiet Politics” Arena

Copyright policies in Indonesia historically have been developed under duress from the combo of domestic industry lobbying and international trade agreements. In our analysis of this phenomenon, we borrowed the concept of "quiet politics" as theorized by Culpepper and applied subsequently by Farrand (2014) in their analysis of copyright policies in the United Kingdom. The concept offers a situationer for a complex issue – e,g., the formation of copyright policies – whose political element is not considered crucial enough, which allows groups representing the industry's interests to seize huge influence in the process of creating policies (Farrand 2014). Farrand's analysis of copyright policies in the UK borrowed the "quiet politics" term from Culpepper and Foucault's concept of power. Apart from underlining the influence of industry, Farrand in great details also explained the network of power formed during the construction of policies and the opportunities for alternative nodes of power with the power to unseat the status quo to surface during the process. Farrand holds "quiet politics" not as something fixed and unchanging, but as a power with the ability to mobilize actors with scarce bargaining power in the construction of policies, such as musicians.

Farrand shows that one of the main narrative strands in the construction of music copyright policies is the danger of piracy, which is seen as a threat to national economies and to musicians' creativity. Music piracy data often accompany calls to improve policies. This narrative strand is promoted — both domestically and overseas — by music industry players who argue they stand to lose the most from acts of piracy. This is most probably the reason why the 2014 Copyright

Acts (UUHC 2014) are so heavily weighted towards the music industry even though the regulations' scope in effect is much wider. Ever since they were first formulated, copyright policies in Indonesia have heavily focused on the music industry. As much can be seen from other regulations that have been derived from the copyright laws, which are mostly concerned with royalty management and the National Collective Management Organization (LMKN). Unfortunately, these derivative regulations are still heavily problematic. Not only do they contain only rudimentary prescriptions on the fundamental functions of copyright, such as incentivization and dissemination, the policy makers are also slow to understand and respond to new developments in digital music industry and their attendant consequences for new actors and power relations that are forged in the process.

Dominant anti-piracy rhetorics have given birth to copyright policies with a paranoid attitude towards technology.

Technology is always seen as a threat that will only make acts of piracy easier to accomplish — an argument that further spurs the widening of scope and details on copyrights and even stronger sanctions. Digital technology is very narrowly defined as merely a method to prevent acts of piracy. UUHC 2014 contains a special chapter on ways to control technology. But the laws fail to mention new players in the digital music industry or the power relations that have developed between them.

State copyright policies in the end fail to provide solutions for the dilemmas faced by musicians. They fail to strengthen musicians' bargaining position even though their rights are detailed extensively in the regulations, because much of the process of copyright transfer and license agreements have been left to market mechanism. There have also been complaints that the regulations on royalty management — done through the collective management organization — still leave many loopholes aside from lacking transparency and accountability. Dispute resolutions in the laws are also seen as ineffective compared to those already applied by digital service providers (DSP).

Using "quiet politics" as one of its analytical tools, this chapter will investigate the conditions that have produced Indonesia's copyright policies from the release of the Copyright Acts in 1982 until now, and how anti-piracy policies have been legitimized by data provided by the music industry. It will also explore the extent to which policy makers have identified digital music practices and the degree of protection that they have provided for musicians in the digital age. There will also be a separate analysis on the limitations of each regulation in the Copyright Acts.

Piracy: Copyright Policies' Smoking Gun

The music industry in Indonesia grew from the widening of public access to music, which historically has always been aided and abetted by piracy.

According to KS (2013), the cassette tape industry in Indonesia began with a few record labels that specialized on copying music from vinyl records in the private collection of the label owners to cassette tapes in 1969-1970. At that time, the label owners thought that copying Western music on to cassette tapes would bring in plenty of profits. Some of the record labels indulging in this practice included Nirwana Records, BSR, Aquarius, King's Records, Atlantic Records, and Yess. The genesis of this practice of piracy was an under-the-hand service provided by shops selling radio and television sets to record songs for their customers, which was rife since 1967.

The increasing market demand for Western music was precipitated by the ending of the ban on "ngak ngik ngok" music under President Soekarno's rule. Under the next president Soeharto, Western music, rock in particular, was strategically used to sweep the sins of the military (under Soeharto's command) in the 1965-66 civilian mass killings. The Soeharto government formed the Coordinating Board of Army Strategic Reserve Art Corps (BKS Kostard), which staged live concerts in all corners of Indonesia featuring all sorts of popular bands, but especially rock. The BKS Kostard became an instrument that Soeharto's New Order government used to spin a positive image of the army in the eyes of ordinary Indonesians. It was also a show of force and a bold declaration that Indonesia was no longer anti-Western (Simanjuntak 2021).

Wider public access to foreign music was also supported by the government's media policies. The open market policies in place in the 1980s were a precursor to the government's so-called open sky policy (Rakhmani 2016) and media privatization. These policies introduced the burgeoning Indonesian middle-class to a wide variety of music and allowed them to find genres that relate to their everyday lives.

Economic conditions also have a hand in improving access to music. The growth of the middle-class in Indonesia's main island of Java in the early 1990s led to better access to TV broadcast. Residents of the island's major cities can catch foreign TV broadcast using satellite discs or through private TV channels that replay foreign music programs. Buying power in regard to music recordings has

an indirect influence on the preference for pirated music. During the 1998 monetary crisis, the price of original cassette tapes and CDs skyrocketed. Meanwhile, pirated copies of the same albums could be had for half the price (Wallach 2008).

The advance of media technology also changed the way people consume music, resulting in more piracy threats. After cassette tapes and CDs, there were DVDs, which have an even bigger storage capacity. The rise of MP3 also allowed smaller song files, which meant people no longer have to keep them in expensive hard disks with massive storage capacities. From the end of the 1990s to the early 2000s, the glory years of the MP3, digital platforms such as Napster and Limewire and forums such as Indowebster, which made it easier for people to share and download music for free, became very popular in Indonesia. In the MP3 era, which continued until the early 2000s, one could go to almost any electronics store to ask for MP3 copies of songs that could be uploaded into flash drives or into one's mobile phones, not dissimilar to what used to happen in the cassette tape era. But a single cassette tape only has enough storage capacity for an album (10-16 songs) while a flash drive can be used to store hundreds of songs in the MP3 format.

The early 2000s also marked the beginning of the Ring Back Tone (RBT) era — a format which was widely expected to offer a new source of income for musicians. But the reality was much more problematic since mobile phone stores in malls (which sold RBTs) often neglected to pay

their royalties or report to the government-approved collective management organizations of that time, the YKCI and the APMINDO (KS 2013). Presently, since internet access has greatly improved, Spotify and YouTube have become the number one options for people to listen to free music easily and legally. The non-subcription options on the two streaming services offer “free” music streaming that monetised the songs through ads and commercials placed within or in-between the music. As a product, music no longer exists as a copy owned by the listeners but through access lent by the streaming services to the listeners. This model of music consumption is often seen as presenting an even more complex set of threats for the music industry.

Changes in music production-distribution-consumption technology are always regarded as a threat by phonogram producers, but not always by music fans or musicians. After rock ‘n’ roll, the 1908s saw the rise of the metal, punk, britpop, and hiphop scenes. Many of the players in these scenes functioned independently. In practice, independent musicians or labels released and distributed music either on their own or through small-scale record labels. A musician’s main cultural capital was their extensive musical references. In this “indie” scene, musicians performed in and for communities and enriched their musical horizons by exchanging songs from their private collections, making and sharing mixtapes, and playing their mixes in popular nightspots in major cities (Wallach 2008). These activities were the lifeblood of any independent scene. Their sustainability depends largely on available resources to stage gigs, release records, and prop up the scene itself. According to Wallach (2008), during the heyday of the cassette tape era in 1997-2001 musicians regarded a pirated song or album as a sign that the work had reached a certain degree of popularity. The working class were more likely to buy pirated music. A pirated song or album meant the work had found its place in the hearts of the working class — which made up the majority of music fans in Indonesia. For many musicians, a pirated work was an effective marketing instrument. Piracy only meant losses for phonogram producers.

Copyright regulations and laws in Indonesia tend to compensate losses accrued by phonogram producers — the main providers of capital in music production.

Phonogram producers are always the first to complain when piracy happens. Piracy has always been the main rationale each time there was a revision or reformulation of the Copyright Act.

The popularity of cassette tape copies of vinyl records in 1969-1970 triggered a major reaction from Remaco, the first vinyl record pressing company in Indonesia, which began operations in 1954. Under the stewardship of Eugene Timothy, the record company launched a series of anti-piracy raids in partnership with the Indonesian police in 1971 (KS 2013). Remaco also ran advertisements proclaiming itself as the official distributor of Western records under license from a number of US and European record labels (p. 141). At the same time, record labels that produced bootleg copies of Western records refused offers to share profits with major labels Atlantic, EMI, and Warner because they felt they were not obliged to do so since Indonesia had withdrawn itself from the Berne Convention. Rampant piracy caused a massive drop in the price of official releases, up to a third. Remaco had to slash their prices to compete with pirated cassette tapes.

The Indonesian Record Industry Association (ASIRI) was founded to represent the interests of "official" record labels. The precursor to ASIRI was the Indonesian Record Industry Collective (GIRI), founded by Purnama Records, a record label that had long-running feuds with "unofficial" Western music records labels under the banner of the Indonesian National Records Association (APNI). Because GIRI was so poorly managed, its founder invited a few

other companies known for their effective organization to found the new ASIRI. The inception of ASIRI marked an important consolidation by “official” record labels to up their bargaining position when lobbying for the eradication of piracy. To this end, ASIRI launched a number of anti-piracy raids, one of them in 1987.

Eugene Timothy had a massive say during lobbying with the government for the first Copyright Act in 1982. Previously, in 1975, Timothy and a few intellectual property experts had pushed for the drafting of a Copyright Act to replace the old Dutch copyright laws, the 1912 Auteurswet (KS 2013). ASIRI recommended the inclusion of neighboring rights, or related rights. The recommendation was rejected by House of Representatives member Asrul Sani and only appeared in Copyright Act No. 7 passed in 1987, a year after the Association of Republic of Indonesia Artists, Singers, Songwriters, and Musicians (PAPPRI) was founded.

Indonesian Law No. 6/1982 on Copyright (the Copyright Act of 1982) acknowledges duplication right (mentioned in the Acts as the right to make copies) and broadcasting right (mentioned in the Acts as action to broadcast a work on radio or television). The Acts also gave a mandate for the formation of a copyrights council and regarded unofficial duplication as a criminal act. Radio and television stations were allowed to broadcast works without permission as long as they provided remuneration for the creators of the work. Nevertheless, the regulations were still not regarded as providing enough protection for the industry. There were complaints over its definition of music, which only incorporated music concerts and musical works with or without texts. The regulations were widely thought to be ineffective by industry players in reducing piracy, since government monitoring was kept at a bare minimum.

Throughout 1982-1987, piracy was seen as a major threat. In 1982, the government approved a request lodged by ASIRI and the “music industry community” to make it compulsory for every cassette tape sold in the Indonesian market to carry a value-added tax (PPN) sticker. In 1982, the Tax Directorate announced they had found many fake PPN tax stickers in circulation and recommended a revision of the sticker rule to the government to be conducted in 1984. Apart from conducting anti-piracy raids, some musicians, such as the folk pop band

Bimbo, also reported acts of piracy directly to the government. Piracy also became a formal consideration in Law No. 7/1987 on Changes to Law No. 6/1982 on Copyrights (the Copyright Act of 1987).

The 1987 Copyright Act accommodated issues that had been the source of complaints from the music industry, in particular piracy. For the first time ever, the Copyright Act identified music recording (voice or sound) as copyright-protected work. The new law also added the mechanism for investigations into copyright violations. Also, changes to article 48 in the 1982 Copyright Act stated that copyright protection for a work from a foreign country also applies here if there was a bilateral cooperation between Indonesia and the other country or if both countries are joined together as part of a multilateral agreement. This last article spelled the end for cassette tape bootlegs produced by some record labels. A year after the 1987 Copyright Act was enacted, President Soeharto signed off on a presidential regulation Keppres No. 17/1988 which offered reciprocal legal protection for the European Community on sound recordings traded exported and imported between Indonesia and the European Union. Cassette tapes sold under license from CBS, BMG, Polygram, EMI, and WEA were made available in the Indonesian market soon after this regulation was released. The 1987 Copyright Act also marked the increasing influence of international trade agreements on the formulation of copyright policies in Indonesia.

Piracy was still the number one source of complaints from record labels after 1987. One of the evidence

was the formation of the Interdepartmental Assistance Team, which launched the Inter Recording Operation in 1990 (KS 2013, p. 145-6). This was an official government response from the Coordinating Minister for Politics and Security Sudomo to the anti-piracy operations organized by Eugene Timothy. The need for a collective management agency also became another focus for the government. According to Darusman (2017), a copyright management or administration system, assisted by a collective management agency (LMK) and a copyright council that run effectively, can become a pillar of a well-functioning nationwide copyright system. After the broadcasting right is identified, the next set of problems concerned the collection of royalties and their distribution to the copyright owners. In 1990, the Indonesian Creative Work Foundation (KCI) was founded as the government's official collective management organization (Aditya 2007). During the next few years, KCI's legitimacy as LMK was rubberstamped by the government through a memorandum of understanding. As soon as KCI began operations, conflicts of interests arose between the foundation and owners of business premises that played music in their establishments. In 1994, a number of nightspot managers who refused to pay royalty to the KCI received summons from the police after being reported by the KCI (KS 2013, p. 338).

The Copyright Act were again revised in 1997 to respond once again to the issue of piracy and also to meet requirements in the international trade agreement called the Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS). Indonesia ratified TRIPS in its Law No. 7/1994 on the Ratification of Agreement Establishing The World Trade Organization. One of the consequences of ratifying TRIPS for Indonesia was rejoining the Berne Convention. In order to meet TRIPS and Berne Convention standards, Law No. 12/1997 (Copyright Act of 1997), which was a further revision of the Copyright Act of 1982 and the Copyright Act of 1987, specified more detailed protection for related rights, and provided definitions for performer, producer of sound recordings, and broadcasting institution. The 1997 Copyright Act also mentioned lease rights, though not those applied to music or songs. The Act also for the first time included regulations on licensing, but the government only has a limited role in the licensing process: registering the licenses through the Copyright Office or rejecting them if they were considered

a threat to the national economy.

Just before the new Copyright Act of 2002 was rolled out, the way people listened to music changed drastically with the rise of digital technology. As previously argued, the development of digital technology and the internet created a new paranoia over piracy. In 2001, the three common forms of conventional piracy were simple piracy, bootlegging, and counterfeiting. Bootlegging is defined as the recording and distributing of an unreleased work or show without permission from the rights owner, usually in the form of a recording from a show with an audio quality far below that of the original recording. Counterfeiting is defined as a reproduction of an original copy by a third party without permission from the rights owner with the intent to match the quality of the original as close as possible (Mellor 2021). Around this time, the dispute between KCI and owners of concert hall or karaoke bar continued to happen and would only reach its peak in mid-2000.

Law No. 19/2002 on Copyright (the Copyright Act of 2002) incorporated many new rules to respond to piracy threats carried by digital technology. The Act added articles on digital rights management, transparent copyright public records, and fines for copyright violations. Under the 1982 Copyright Act, an act of reproduction without permission was punished with a maximum fine of Rp 100 million. Under the 2002 Act, the maximum fine was raised fifty times to Rp 5 billion. As a comparison, factoring in inflation, the average price of goods in

2002 was only eight times more expensive than it was in 1982 (Webster 2002). Of particular note was the licensing rule that mentioned the state has the right to reject licenses that may cause unhealthy market competition. Apart from that, article 45 point 4 of the licensing regulation stated that “the amount of royalty due to the Right Owner by the License Holder is determined by the agreement between the two related parties according to the standards of professional organization”. The article suggested that professional organizations now play a leading role in policy making. Professional organizations involved in copyright at that time were few and far between and included PAPPRI and PAMMI. The term professional organization was also defined quite loosely. For example, the Indonesian Restaurants and Hotels Union (PHRI) and the All-Indonesia Television Association (ATVSI) were self-declared professional organizations even though they functioned more as a club for businessmen (Abdullah 2008).

In the years after 2002, players in the music industry increasingly felt they needed the presence of LMKs to become an effective and efficient collector and distributor of broadcasting royalty payments. As a consequence, the scope, accountability, and transparency of the KCI came under even more scrutiny. Music monetization through RBT in the early 2000s triggered a conflict of interests between KCI, ASIRI, and cellular service providers. The dispute stemmed from differing interpretations on RBT royalty: was it paid for duplication (mechanical reproduction) or broadcasting? (Detikinet 2006; Kurniadi 2006). The lack of transparency in KCI’s royalty distribution to the artists caused many of its members to walk out and form their own collective management organizations. In 2006, dangdut musicians who were members of PAMMI quit KCI and founded the Indonesian Music Royalty (RMI), which later on changed its name to Indonesian Royalty Endowment (RAI) (Antara 2007). The problems surfaced because the scope and responsibilities of the collective management organizations were not yet regulated by the Copyright Act. Commission A of the Central Java Regional House of Representatives even announced that the KCI was not allowed to collect royalties in the area because there was not yet a local regulation governing its function.

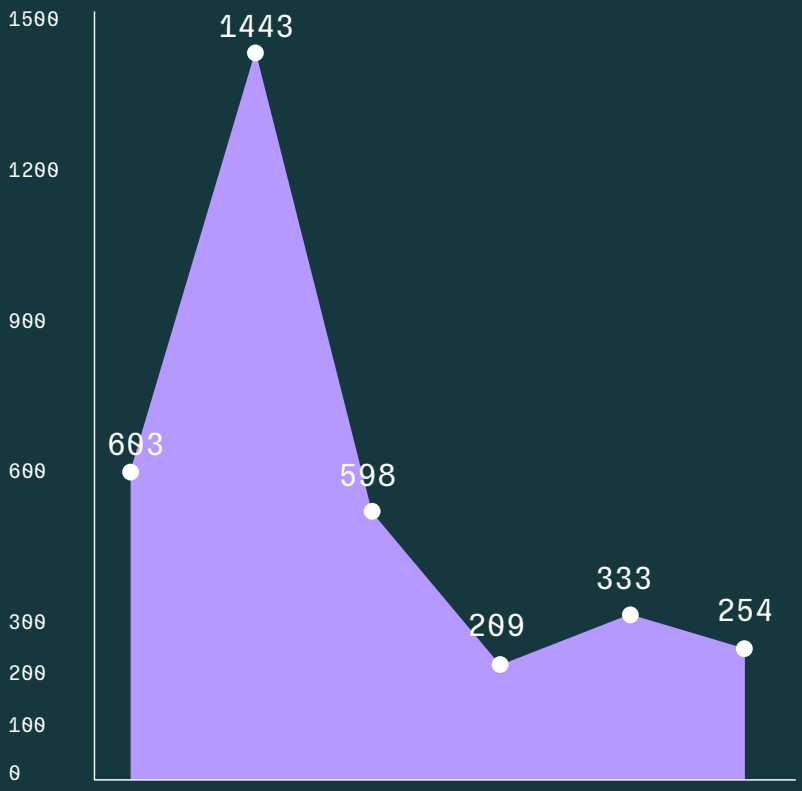
Apart from the unregulated LMK scope, the RBT dispute also reared its head

because the existing Copyright Act had not anticipated changes in audio technology format that would soon influence a song's royalty components. Even though the Act had accommodated a number of digital formats, its logic still showed a bias for the analog. Song sale was still defined as the reproduction of a song copy. Meanwhile, the right to charge broadcasting royalties from song sales on digital platforms was not yet regulated because LMK did not have a strong enough legal base. The tendencies for physical bias in the Copyright Act also appeared in the 2014 version, which will be discussed in another chapter.

Meanwhile, the development of RBT and digital music shops created more and a greater variety of collective management organizations. The Indonesian Music Agency (WAMI) was founded on 15 September 2006 by the Indonesian Music Publishers Alliance (APMINDO). APMINDO counted among its members some of the largest recording labels in Indonesia, including Musica Studio, Nagaswara, Trinity Optima Production, Warner Music, Sony Music Publishing, and Aquarius Musikindo. The Performer's Right Society of Indonesia (PRISINDO) was founded in 2009. In 2012, WAMI officially joined the International Confederation of Societies of Authors and Composers (CISAC).

Problems over collective management organizations and piracy issues kept being the clarion call for music industry associations. According to KS (2013), APMINDO released data that showed music piracy in Indonesia was the third largest in the world in 2003 (p. 348). In the same year, ASIRI investigated 600 cases of piracy (p. 349). PAPPRI also reported losses suffered by producers and songwriters from the sales of pirated CDs to the tune of Rp 2.5 trillion in 2006. Meanwhile, according to a report published in the Republika newspaper, the state suffered similar losses of Rp 15 billion (Abdullah 2008, p. 26). From 2005 to 2010, the police handled the highest number of copyright cases in 2006, a total of 1443 cases, and the lowest number, 209, in 2008. In the same year, PAPPRI met with President Susilo Bambang Yudhoyono to argue that rampant piracy was the consequence of weak law enforcement and a cultural predilection for pirated goods (KS 2013, p. 354). Still within the same year, ASIRI attended a discussion on MP3 music copyright violations at the office of the Law and Human Rights Ministry which featured Freddy Haris, Edmon Makarim, and the head of PAPPRI.

TABLE 1
RECAPITULATION OF COPYRIGHT DISPUTE RESOLUTIONS BY THE INDONESIAN NATIONAL POLICE
2005-2010



	2005	2006	2007	2008	2009	2010
COPYRIGHT	603	1443	5982	09	3332	54

SOURCE: ABDULLAH 2008

Piracy's persistence in the midst of a digital technology revolution seemed to be the main trigger for the revised Copyright Act of 2014. Piracy data were in the spotlight during the revision process. One white paper claimed "copyright

violations... in the form of compact disc, had disadvantaged the economy of the people and in the end also the state, whose tax revenue was rendered less than its optimal level" (Abdullah 2008, p. 25-26). Copyright violations were thought to have rendered artists and business people in the copyright field "listless and crushed their desire to create new work; their creativity is restricted, even shackled, as if they were in long coma" (p. 26). This statement seems to assume that business and the creation of artistic work are interchangeable. It also assumed that both business people and artists were beset by the same problem: the loss of creativity caused by rampant piracy.

For these reasons, the Copyright Act of 2014 incorporated a few revisions. The first narrowed the possible interpretation of duplication and broadcasting rights (Kurnianingrum 2015). The Act gave more rights to phonogram (recording) producers, from just duplication and lease rights in the 2002 Act to duplication, distribution, provision, and lease rights over phonogram or recording products. A widening and more detailed breakdown of rights were also given for Artists, Copyright Holders, Performers, and Broadcasting Institutions. Specifically, this Act offered a more detailed breakdown of the economic rights of performers, something that was always left as a grey area in its previous incarnations. The Act also categorized copyright violations as "delik aduan" or a category of offense which cannot be prosecuted without a complaint by the victim, and made mediation a compulsory first avenue to find a resolution. The third change in the new Act was a series of tighter rules on digital rights management and copyright management information and the authority of the state to impose blocking on internet sites. In addition, Article 10 of the Act also made business owners responsible for any copyright violation that happens in their premises. To try to ensure speedier dispute resolutions, the Act also contained articles on the temporary authority of the court in copyright violation cases.

Responding to the demand for a regulation on the scope of work and function of collective management organizations (LMK), the 2014 Act finally offered a definition of LMK and ordered the formation of a national collective management

organization. The policy makers' relative slowness in responding to the need for a clearer regulation on LMK had already created several conflicts of interest, which will be discussed in another chapter.

It is now relatively clear that historically the issue of piracy has always been the smoking gun for the creation and multiple revisions of Indonesia's Copyright Act. The damning data on piracy were provided by industry players, who allied themselves in various music industry associations. In the analog era, anti-piracy raids were conducted by the police in collaboration with recording company associations, such as ASIRI. On the other hand, there were musicians who saw piracy as a watermark of mass popularity. Piracy became a main cause for disputes. Technology was seen mainly as a gateway to new methods of piracy. The Copyright Act in response widened and offered a more complete breakdown of rights, charged more institutions with responsibility over copyright violations, and dealt out heavier penalties — while at the same time ignoring other forms of exploitation that have arisen in the digital era.

The reality has been that digitalization had caused even more complex problems which threatened the rights — both economic and moral — of musicians, the local economy, and state revenue. In the streaming age, piracy should have become a non-issue. Of more note is the emergence of new roles and players in the industry which have remained untouched by the Copyright Act.

They include digital service providers (DSP), aggregators, and music publishers with specific technological resources which allowed them to play a central role in the dissemination of digital music. These technocrats should be allowed the right to extract profit from the music they distribute to be able to fund their operations. And yet the lack of specific regulations — for example on the minimum amount of royalty payment — have resulted in unfair royalty deals and

licensing agreements for the musicians. Article 80 point 5 of the 2014 Copyright Act, for example, deleted a previous requirement for royalty arrangement within a licencing agreement to be agreed upon by professional organizations and replaced it with the vague provision that it should be based on "existing and normal practice that is considered fair for all parties".

The rise of digital music has seen the need for new regulations on charging, collecting, and the distribution of royalty, as well as on the dissemination of music. We need an open and accountable data system that can track the use of any piece of music so artists, copyright holders, and the holders of related rights are able to monitor the amount of royalty due to them. This has been the biggest issued faced by the music industry in Indonesia since the government rolled out PP (Presidential Regulation) 56/2021 and Permenkunham (Justice and Human Rights Ministerial Regulation) 20/2021 — which were both derived from the Copyright Act of 2014.

Roles of Trade Agreement and International Convention in the Formation of Copyright Policies

Regulations concerning copyright and music royalty also develop in response to the need to synergize policies with international trade agreements rooted on TRIPS. One of the prerequisites of this agreement was that Indonesia must ratify the Berne Convention.

Indonesia was part of the Berne Convention when it was still a Dutch colony called the Dutch East Indies, back in 1931. At that time the colony's copyright law was called the 1912 Auterswet, which was a ratification of the Berne Convention. But independent Indonesia decided to withdraw from the convention in 1958. The often cited official reason for the withdrawal was because Indonesia did not yet possess its own national Copyright Act (Gautama 1975). The newly independent country needed to speed up development by, among others, translating many foreign works into Indonesian. But the royalties on these works were considered

too expensive. According to Gautama (1975), other developing countries around that time were using the same excuse to withdraw from the Berne Convention. But he argued that by remaining within the convention, these countries could have met their translation needs — at a fair price — by making use of compulsory licensing for educational purposes. In Indonesia's case, they could also have applied the 1967 Stockholm Convention revisions on the Berne Convention in order to seek copyright exemptions which were allowed for developing countries.

As mentioned previously, Indonesia rejoined the Berne Convention in 1997 through the Presidential Decree No. 18/1997 on the Ratification of the Berne Convention For The Protection Of Literary And Artistic Works. The government made this move after Indonesia joined the World Trade Organization (WTO) in 1994. The WTO made it compulsory for member countries to ratify the Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS). Indonesia ratified TRIPS in its Law No. 7/1994 on the Ratification of Agreement Establishing The World Trade Organization. In the same year, Indonesia also ratified the WIPO Copyright Treaty through the Presidential Decree No. 19/1997 on the Ratification of WIPO Copyrights Treaty.

International conventions became the main reference for Indonesian copyright laws in restructuring rights and which parties receive remunerations from those rights, especially after the Copyright Act of 1997 was released.

Ever since then, harmonization with international conventions became the main consideration in Indonesia's copyright laws. For example, to meet TRIPS standard, the 1997 Copyright Act extended the copyright protection period for any work to 50 years after the death of its author. For performances of the original work, the corresponding period was 50 years after the first performance; for recordings 50 years after the first recording was released; and for broadcast 20 years after the first broadcast. Meanwhile, the 1996 WIPO Copyright Treaty contained general

copyright guidelines for digital platforms, including regulations on distribution rights, leasing rights, and communication rights. It also mandated the development of a copyright management system and digital rights management to prevent copyright violations (WIPO 1996). For this reason, the 1997 Copyright Act for the first time contained definitions of performer, sound recording producer, and broadcasting institution. But it did not contain a detailed breakdown of their rights. According to the Act, a producer had the right to duplicate sound recordings; a performer the right to produce recordings of their performance (later on termed as "fixation" in the 2014 Copyright Act), to duplicate them, and to broadcast them; a broadcasting institution the right to produce, duplicate, and broadcast programs. The relation between broadcasting right and the right holder was not yet clearly defined. Communication right was not defined at all in the Act. Digital rights management and copyright management system only started to earn attention in the 2002 Copyright Act.

Indonesia ratified the WIPO Performances & Phonogram Treaty 1996 (WPPT 1996) in 2004 through the Presidential Decree No. 74/2004 on the Ratification of the WIPO Performances & Phonogram Treaty. The agreement contained specific regulations on the rights of performers and phonogram producers in the digital realm. As did the WCT 1996, the WPPT 1996 also contained provisions on duplication, leasing, distribution, and communication (making available) rights. A provision on communication right was eventually included in the 2014 Copyright Act where it was categorized as the economic right of the artist. Communication right became a central element of the commercial extraction of copyright and other related rights in the digital realm. Communication right differed from broadcasting right with the former including the element of "making a work available in the time and place chosen by its listeners". Consequently, all music or songs made available online — through streaming, peer-to-peer, or download services — must be licensed from their authors or copyright holders even though the listeners may not be able to own a copy of the recording or access the work directly, Also, the application of communication right meant that copyright violations needed to be controlled using special technology which will need to be continuously updated.

Apart from lending its right structure to be copied, international agreements also had another important role in the formation of copyright collectives (LMK).

Even though LMK were only regulated by the Copyright Act of 2014, the collectives had started operating in Indonesia since 1990 with memorandum of understanding as their legal base. The emergence of LMK in Indonesia was a consequence of the country joining the WIPO. The first LMK in Indonesia was founded as Indonesia's part of the bargain in the bilateral Indonesia-Japan Economic Partnership Agreement (Aditya 2007). The first copyright collective in Indonesia, the KCI, operated according to a memorandum of understanding with the Trade and Industry Ministry because the regulation as it stood (Law No. 19/2002) had not acknowledged the role of LMK in collecting and distributing royalty payments.

Most of international agreements and conventions on intellectual property — copyright being one of them — were designed according to lobbying by industries in developed countries.

Since international policies on copyright are often triggered by industry lobbying, the copyright laws in many countries often also function mainly to protect the interests of industry — with the intention of securing exclusive licenses using the threat of piracy as justification (Drahos and Braithwaite 2002).

Farrand (2014) has shown that criticisms of TRIPS often centered on its nature as essentially an economic agreement driven by the corporate interests of companies as copyright holders. Drahos and Braithwaite (2002) argued that TRIPS failed to meet the three requirements of democratic bargaining: full representation, comprehensive information, and the absence of domination.

The blueprint for TRIPS was created by a small number of US companies and multinational companies based in Europe and Japan, who had developing countries squarely in their line of sight. These countries were soon forced to criminalize every form of piracy. Explicitly, TRIPS was adopted as the main global strategy of the International Federation of Phonographic Industries (IFPI) to try to eradicate piracy rampant in many countries (p. 182).

To apply TRIPS, developing countries were forced to revise their national policies on copyright. Pressures were applied through bilateral trade agreements. Indonesia, Thailand, and South Korea were targeted by the US and the European Community in 1984. All three countries were threatened with revocations of their trade privileges if they failed to meet intellectual property protection standards (p. 121). According to KS (2013), Indonesia was included in the US priority watchlist in 1997. Indonesia's "sins" of piracy were enumerated in the 12th Regional Asia-Pacific IFPI Summit: a total of 60 million pirated cassette tapes. Discourses on copyright in Indonesia were practically a carbon copy of the main agenda of international copyright agreements: that piracy must be eradicated through strict copyright laws. The urgency to construct these laws was deliberately triggered by information fed by "industry players" who were always reluctant to divulge how they came up with their data. Often they only provided minimal information on their data counting methodology (Harker 1997).

Physical-Analog Bias in Copyright Expansion

Since regulations on digital music royalty in Indonesia were developed based on canonical international policies, they were also rooted on copyright logics borne out of accepted norms in the printing industry. In other words, the regulations were weighted towards a physical space and the analog format, something that has been the target of criticism from academics in other countries (Farrand 2014; Foong 2019; Osborne 2021). Copyright expansion as defined by the law has progressed from physical duplication right to

broadcasting right, then continued on to making available right .

Osborne (2021) argued that the right giving access to musical work in the digital space was only an extension of the trade in physical copies of a musical piece. The conceptualization of making available right was a way for streaming and music download to be recognized by laws just as duplication right was. According to Osborne, it was this physical bias in copyright policies that allowed record labels — those who produce the recordings — to obtain exclusive rights over the duplication, broadcasting, and making available of sound recordings apart from the songwriters themselves. In the long history of recorded music, the production of sound recordings has always been seen as a high-cost process, and the entities with the capital to produce the recordings as deserving of remuneration — one based on the principle of "equitable remuneration". The amount of royalty due to phonogram producers was also based on the same principle. But since equitable remuneration did not apply to interactive music service, record labels had the freedom to determine the royalty amount due to their signed musicians. Since in this type of service the production cost is nearly zero, equitable remuneration is justified in the form of marketing and promotional costs.

White papers on the Copyright Act of 2014 stressed the need for broadcasting right to be explicitly defined according to two different categories: sound creation (composition) and sound recording (master) (Abdullah 2008). Consequently, phonogram or sound recording producers own the exclusive broadcasting right and should be remunerated for direct or indirect use of the music recording that was published or distributed. Abdullah wrote, "Article 14 of the 1996 WPPT on the right of making (sound recordings) available is an important element that must be governed by copyright regulations and laws so we can have definitive ownership of broadcasting right for songs and voice recordings" (p. 43).

Making available right occupies a central position in the digital space where the economic value of the work lies in its access. The right is defined as "the transmission of a work, show, or phonogram so any member of the public can access it within a time and space determined by the individual". This right has an extensive scope and applies whether or not the public

The scope of making available right also determines how much market power is in the hands of incumbent distributors. The wider the scope, the greater the power. When a work (a musical one in this case) is still distributed in the old fashion, distributors with new models of sharing content will find it hard to operate legally in the market.

Disruptions will be regarded as illegal practice. From the history of music distribution, the Napster and Pirate Bay cases appear as cause for reflection. Both platforms treat copy ownership as a collective one, reflected in its peer-to-peer (p2p) sharing model. But the logics of copyright at that time allowed a quick condemnation of p2p, branding it as an illegal use of the making available right. Even though no copies of the work were owned individually and the downloaded music might never actually be played or broadcast, an act of communication was determined to have taken place in the making available of the music to the public. When the act was conducted without permission from the copyright owners, a copyright violation was deemed to have happened.

The argument that record labels own exclusive rights over recordings gained prominence when copyright underwent the so-called "technological turn". Copyright became not dissimilar to patent right, one that is applied on objects of technological advancement (sound recording technology in this case) and not just to a work of art. Firth (1998) in Osborne (2021) argued that recording companies no longer rely on the creation of work for their income, but on the creation of copyright over the work. The recording industry is a copyright industry. Firth argued that copyright is an attempt by the recording industry to protect the profits they earn from the work. We will see that a large part of Firth's argument was on point, but he did not foresee that labels were not the only people who would soon be profiteering from copyright.

Right Transfer and the Emergence of New Players

Expanding restrictions over music use and new methods and formats of music distribution, from physical recording, broadcasting, to digital distribution, created the need for middlemen and other new players and roles in the industry.

This research found that the important new players in the digital music ecosystem were as follows: aggregator, providers of digital music listening service (digital service providers or DSP), music publishers (particularly those who issue related right and synchronization right licenses), and record labels equipped with new business strategies.

These new players in practice took a cut from musicians' royalty payment or charge fees outside the royalty payment for the service(s) they provided. The rights of these new players were only accommodated by law within the regulations on the transfer of economic rights and the regulation on licensing. The 2014 Copyright Act regulated the transfer of economic rights in its Article 16, which defined copyright as an "amorphous moving object". Article 17 through to 19 stated that as a moving object, the economic right of a work could be transferred from the author to another party through inheritance, grant, donation, will, signed agreement, and other methods. Meanwhile, Article 80 through to 83 stated that licensing agreements were made possible and must be recorded in copyright public records by the related minister to have a binding legal power.

The emergence of these new middlemen as digital technology continued apace was not anticipated by policymakers in explicit terms. They could have done so by setting a minimum royalty payment for songwriters and performers. But they chose to ignore the problem, burying it under the vague phrase "except agreed otherwise" and leaving it to market forces to solve, under the phrase "according to normal practices". Article 28 of the 2014 Copyright Act stated, "except agreed

otherwise, Phonogram Producers must pay Performers ½ (half) of their income". In practice this meant any agreement made in a civil contract could ignore the 2014 Copyright Act. Meanwhile, Article 80 point 3 stated "the amount of Royalty in Licensing agreements must be determined according to existing fair and normal practices". Articles such as these do not provide sufficient protection for artists during right negotiations with phonogram producers and their middlemen. To make matters worse, artists and performers often entered the negotiations in already compromised positions.

Amidst the increasing popularity of streaming platforms, Kjus (2021) pointed out a real threat for musicians often contained within the contracts they signed with record labels. Kjus's analysis of these contracts showed most contemporary musicians signed contracts for singles, not albums. Even though they promised bigger royalties, this type of contract often meant the musicians had to pay for the song production out of their own pockets. Kjus also discovered that a majority of the contracts were 360 ones, i.e., the labels also took a cut from whatever income the musicians earned outside of their songs. Schwartz, D (2020) meanwhile pointed out that generous advanced royalties in a 360 contract only meant that musicians would owe the amount to the record labels until they were able to pay them back with sales of their work.

The protection provided for artists and performers in the licensing regulations is lined with vague intentions. Article 82, for example, stated that licensing should not inflict financial losses on the state, should not contradict state laws, and should not become means to erase or take over the artists' rights over their work. In other words, the Copyright Act of 2014 allowed the transfer of rights but did not provide maximum protection for artists or performers when their rights were transferred to others.

Aside from the 2014 Copyright Act, only the government regulation PP 36/2018 contained rules on copyright licensing. The regulation applied to all intellectual property objects including patents, brands, industrial designs, layout designs for integrated circuits, trade secrets, and plant varieties. Further, Article 9 of PP 36/2019 on the Registry of Intellectual Property Licensing Agreements added that

“licensing should not contain agreements that can inflict financial losses on the Indonesian economy or harm its national interests; or limitations that can restrict the ability of the people of Indonesia to transfer, control, or develop technology; or cause unfair business competition; and/or contradict laws, religious values, propriety, and social order”. This regulation was more binding since it did not contain exemptions. But the vagueness of some of its terms, such as “unfair business competition”, “Indonesian economy”, and “[Indonesia’s] national interests”, meant it failed to provide clear protection for parties who were often in a disadvantaged position during contract negotiations for right transfers, such as artists and performers. The term “unfair business competition” referred to its definition in Law No. 5/1999 on Monopoly and Unfair Business Competition Bans, but its Article 50 contained an exemption on copyright licensing agreement. Exemption Guidelines issued by Republic of Indonesia Business Competition Monitoring Commission (KPPU) stated that when there was a real threat of monopoly and unfair business competition arising from copyright licensing, the rules of Law No. 5/1999 still apply. The guidelines mentioned six elements of exclusive agreements that must be investigated in copyright licensing to determine whether or not an unfair business competition had been created. But since these were only guidelines, the regulation had weak legal power.

The rapid development of media format also created the need for more transparency and efficiency in the collection and distribution of royalty. As explained above, collective management organizations (LMK) had been operating long before the Copyright Act of 2014 was issued through official permits and memorandums of understanding. The number of collective management organizations kept increasing responding to the needs of music industry players. Since before the Copyright Act of 2014 was released the collectives were under no obligation to meet accountability and transparency requirements, coupled with the fact that music users (hotel, restaurant, cafe managers) did not have to keep a list of the songs they played in their establishments, no standards were applied on the royalty collection and distribution system. As a result, there were many disputes triggered by the lack of transparency, double charges, and doubts over the authority of the collectives. The government’s response was to found the National Collective Management Organization (LMKN) with a mandate issued

in the Copyright Act of 2014 as part of an effort to improve royalty management. Meanwhile, a registry of commercial music use in an integrated database — called the Song and Music Information System by law — was mandated by Government Regulation No. 56/2021 on the Song and/or Music Copyright Royalty Management (PP 56/2021). The Bali Declaration, signed by the LMKN and eight LMKs in 2019, produced an agreement that royalties will be collected through one channel, the LMKN (DJKI 2019). The agreement was followed by more disputes, especially since PP 56/2021 was issued. Since the old LMKs had been the target of fierce criticism for their lack of transparency and frequently issuing double charges, their new role in the LMKN attracted heavy protest from hotel, restaurant, and cafe owners, who felt they were disadvantaged by the new policy. The Indonesian Hotel and Restaurant Association (PHRI), for example, reported they were receiving charges from LMKs even though they had made the payment through the national collective (SIB Newspaper 2021). Some of the LMKs were even reported to have subpoenaed establishments they thought were refusing to pay up. Soon after, the Indonesian Song and Music Writers Association (AMPLI) started making demands for PP 56/2021 to be revoked on the ground of its lack of transparency, including its failure to engage musicians and songwriters when it was being drafted (CNN Indonesia 2021; Prasetyo 2022). An article on the formation of SILM in PP 56/2021 that granted permission to the LMKN to collaborate with third parties was the main cause of objection from the AMPLI musicians and songwriters.

Further, since the Copyright Act of 2014 was issued, musicians were forced to join a collective management organization if they want to collect some parts of song royalties, namely the performance and communication royalties.

Article 87 of the Act stated that writers and performers must join an LMK as members if they wanted to be paid for commercial use of their songs. Article 91 stated that

a maximum of 20% of the royalties that LMKs collected went to their operational costs or a maximum of 30% in the first five years of their operations. Though not stated explicitly, these articles gave the LMKs the right to take a 20% cut of all the royalties they collected, even if no musician or songwriter claimed them. In practice, if a musician refuses to join an LMK, they would not be able to claim any royalty. Article 15 of PP 56/2021 also determined that unclaimed royalties will be absorbed as reserve funds after two years. In reality, musicians had no choice but to join an LMK only to claim royalties that should have been their right.

Digital Paranoia in the Absence of Digital Music Policy

Detailed analysis in the previous chapters has shown that the development of copyright policies in Indonesia historically has been triggered by anti-piracy paranoia and pressured from international trade organizations. Copyright rules and regulations were drafted using TRIPS and WIPO Treaties as their main guidelines — two international agreements engineered by lobbying from US, European, and Japanese companies. Copyright expansion with a physical-analog bias made it almost impossible for new technology disruptions to take place. Vague definition of making available right created competing interpretations that caused only confusion when faced with new innovations in distributing and consuming music. Every time a new way of consuming music surfaces — driven by rapid development in tech — policies invariably lagged behind in indentifying new threats for musicians. Technology is constantly seen as a threat that will only pave the way for more piracy and easier methods of doing it.

A long history of paranoia against piracy of physical-analog copies of music and fear of technology has produced copyright policies in Indonesia that are nearly impotent in regulating the digital music space, and specific rules that are too restrictive and punitive since they focus too much on preventing digital piracy.

At the same time, regulations with limited functions to expand rights and actions could turn into "rubber band articles" that only create multi-interpretations and confusion. Examples in this case include Articles 1, 23, and 24 of 2014 Copyright Act that contain the vague phrases "whatever device" and "in whatever form".

Indonesia still does not possess specific regulations to govern the digital music space. Regulations on the management of music royalty in general were only issued in 2021, seven years after the latest iteration of the Copyright Act was released, in the form of a government regulation, the PP 56/2021. Royalty rates for shows staged in a physical space were determined through the Human Rights and Law Ministerial Decree HKI.02.OT.03.01-02/2016 on the Ratification of Royalty Tariff for Commercial Users of Creation or Product Related to Music and Song Copyright (Kepmenkumham 2016). The Copyright Act of 2014 — the main guideline for a host of regulations on music royalty — was issued before arrival of streaming platforms. Understandably, it contains no specific provisions on streaming practices, new industry players arising out of the newly created space, or detailed and explicit protection for musicians or music licences that are distributed widely in the digital space.

Copyright and music royalty policies are still oriented around performance royalty and not around mechanical royalty. Unlicensed duplication attracts the heaviest sanctions. The Copyright Act of 2014 hands down severe penalties for any illegal act of duplication and show, phonogram, or broadcast "fixation" — a maximum prison sentence of 4 years and/or a fine of Rp 1 billion. Piracy earns its own terminology in the Act: "The Illegal Duplication of a Creation and/or Related Right Product and the Extensive Distribution of the Duplicated Creation/ Product with the Intention to Profit Economically". Piracy so defined attracts a maximum of a 10-year prison sentence and/or a fine of Rp 4 billion. The meaning of "extensive" was deliberately left vague and only showed off the paranoid attitude of policy makers towards piracy.

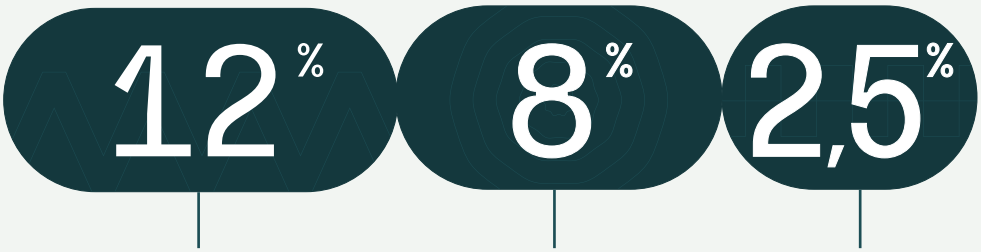
The current regulations on digital music ironically marginalize digital rights — not only failing to reward artists who create the songs but also offering little access to the works for the public and not allowing them to participate in a deep and

meaningful way in the formation of policies on digital space management. A specific chapter was included in the Copyright Act of 2014 to provide protection for works in the digital space in the form of digital rights management (Simatupang 2021) and content blocking. Digital rights management — in essence a method to keep technology under control — was defined as all techs, devices, or components designed to prevent copyright violatons, for example illegal duplication or publication (Dingledy and Matamoros 2016). Articles 52 and 53 in the 2014 Copyright Act forbid the destruction of digital rights management tools and made it compulsory for the related authorities to meet permit and production requirements. Who or what was meant by “related authorities” is not clear. On the other hand, sanctions for parties who destroyed digital rights management tools were made very explicit: a maximum of two years in prison and/or a fine of Rp 300 million. Meanwhile, Article 54 through to 56 in the Act gave ministers the authority to take down online content that violated copyrights or block access to them. The decision to make either action has to be made through a court order within 14 days after the content is uploaded.

The digital rights management rules very closely resemble the highly controversial anti-circumvention articles published in the 1998 Digital Millennium Copyright Act in the US and the 2019 Copyright Directive in Europe. Both potentially violate individual privacy and freedom of expression (Boutelle and Villasenor 2021) as well as the ideal balance between incentivisation for artists and public access to the work (Homiller 2014). Articles like these severed access to the digital space and copyright’s role in dissemination of work. Technology and digitalization once again are regarded as threats to works of art, and not as an avenue to create new ones.

Meanwhile, there are still no rules regulating the minimum tariff for digital royalty. The digital royalty rates depend almost entirely on market mechanism, internal policies off digital service providers, and licensing agreements between two or more parties. The licensing regulations contain more exemptions than any other copyright regulation. Interviews with music industry figures in Indonesia revealed the local performance royalty rate in the digital space was 12% for on demand music and video streaming, 8% for download service, and 2.5% for over-the-top (OTT) service. The rates were determined based on average rates in other countries.

Meanwhile, the mechanical royalty rates differed considerably according to the agreements made between distribution service providers (aggregators) or digital music listening services (DSP) and the artists or copyright holders (record labels or other representatives of the industry).



ON DEMAND MUSIC AND VIDEO STREAMING

DOWNLOAD SERVICE

OVER-THE-TOP (OTT)

Digital paranoia in policy has not meant that industry players have ignored the potentials of the digital music marketplace. Many of them in fact made moves to retain or increase their profit margins once they realised the increasing domination of digital music consumption. This was reflected in the judicial review case brought on to Constitutional Court by record label Musica against the Copyright Act of 2014. Musica wanted the Court to review the reversion rights (rights to re-negotiate) articles in the Act that stated all rights to works that have been sold wholesale would be returned to the artists after 25 years. Musica also wanted the "exploitation period" for phonogram products to be extended to 70 years. It seemed Musica already had a sniff of the massive profits waiting in its extensive catalogue made available by the DSPs. Reversion rights might put an end to the flow of money from the catalogue to Musica's coffers, automatically wipe out their assets, and slash the value of the company. As the oldest recording company in Indonesia, Musica has a catalogue that encompasses all genres and eras of music in the country. Now that vintage songs are all the rage with the DSPs, Musica stands to profit handsomely.

The rules and regulations explained above did not specifically provide solutions for problems afflicting musicians and their fans.

Policy is still a step behind in terms of understanding the consequences of music digitalization beyond the threat of piracy. New industry players and power relations have not even been identified, despite the fact digitalization not only opens up music and musicians to more threats of piracy but also to less transparent flow of royalty, weaker bargaining power for the artist in contract negotiation, and scant involvement in and access to policy formation.

As long as policy development is still dominated by fear of piracy, the implementation of the reward and acknowledgment principle for the artist would only result in the entrenchment of unfair industry practices and minimum protection for musicians.

Music royalty has become a complex issue that's often beyond the comprehension of the average musicians. Its policy development has been dominated by industry players, who provided carefully curated data to support their anti-piracy rhetorics — which in reality barely represent the real interests of musicians.

Very few companies are willing to expose their income sources in detail, let alone the royalty rates they offer to their contracted musicians. There is almost no way to question the validity of data they provide for the public, and musicians are left with very little ammunition to launch their objections.

Law Number 28 of 2014 on Copyright (2014 Copyright Act)

Utilitarian and Deontological Principles: At Whose Service?

In Indonesia, copyright protection is influenced by two philosophical principles: deontology (author's right) and utilitarianism. The deontology camp is centered around the idea that the author possesses the natural right over the fruits of their intellectual labor, works that originate from one's body and soul. This principle is embodied in the Bern Convention, and was widely applied in the copyright policy traditions of Continental Europe, before it gradually shifted to the utilitarian school of thought. Some traits of the deontological approach include (Bottis 2018):

- the absence of formalities as a prerequisite of copyright;
- the recognition that only natural persons can be copyright holders;
- copyright and related rights can only be granted to persons who are closely associated with the creation or interpretation of the work (and not, for example, to movie producers or database creators);
- originality of the work is a prerequisite for copyright;
- the tie between copyright to the author's life;
- the application of moral rights to works;
- the fact that rights automatically emerge once the work is formed;
- the recognition of resale rights in favor of the author.

In contrast, the classical utilitarian school of thought bases its principles on economic progress. Utilitarian-based policies are based on a comparison of costs and benefits with the maximization of welfare for the greatest number of individuals as the primary goal ("maximization of common well-being ... the good for the greatest number of people in a population") (Bentham 1781). Utilitarianism posits that economic incentives for authors are a prerequisite for the welfare of society.

The 2014 Copyright Act is based on the author's rights principle, as it was influenced by Auteurswet 1912, the copyright law during the Dutch colonial period. The Auteurswet 1912 was adapted from the copyright doctrine in the Statute of

Anne, the first copyright law in the United Kingdom which was formulated from the interests of publishing companies (Sardjono 2010). Continental European societies widely believed at the time that it was the authors, not publishers, who should be protected. The Indonesian term for copyright, “hak cipta”, was adopted from the term “hak pencipta” (“author’s right”) and first appeared in the 1952 Cultural Congress (Sardjono 2010). The author’s rights principle is manifested in the 2014 Copyright Act, among others, in the recognition of moral rights, the provision that copyright applies automatically at the work’s formation, and the provision of the right to resell after the term of the transferred rights expire. The 2014 Copyright Act also adopts the deontological stance when regulating reversion rights, where works that were previously sold by the author can be returned to the author 25 years after the signing of the sale agreement.

Meanwhile, the law’s utilitarian influence is reflected in the rhetoric of piracy as a threat to society’s welfare, which was stated in the white paper used as basis to formulate the 2014 Copyright Act (see Chapter “Piracy as the Main Trigger for the Establishment of Copyright Law”). The paper argued that piracy is the common enemy, a major threat not only to the economy but also to people’s creativity; as a result, the copyright law must be strictly enforced. The paper also explicitly stated that the purpose of the 2014 Copyright Act was to strengthen copyright protection “to support national development and promote public welfare.” Such protection is carried out through the expansion of the economic rights of authors and holders of related (neighboring) rights, where authors are not only limited to natural persons as the deontological school of thought dictates. The utilitarian approach also grants protection to legal persons such as phonogram producers and broadcasters, who are entitled to hold copyright. Furthermore, the utilitarian influence is apparent in the lax protection in the private sphere, especially regarding licenses. The 2014 Copyright Act leaves the mechanism for the transferring of rights to “reasonable market practices”, assuming that this will facilitate business processes that will ultimately support the economy.

Incentivization vs. Dissemination

Combining the two schools of thought does not necessarily make Indonesian copyright policy effective in balancing between the functions of respecting authors' rights and public access to works. In fact, copyright protection in Indonesia tends to focus on the former. The 2014 Copyright Act does distinguish between commercial and non-commercial uses of songs/music. Authors, copyright holders, and owners of related rights are entitled to royalties from any commercial use of the work. Unfortunately, restrictions on non-commercial use tend to be in the gray area, leading to potential multiple interpretations. Commercial use is broadly defined in Article 1 as, "the utilization of a Work and/or Related Rights product for the purpose of obtaining economic benefit from various sources or for a fee." Furthermore, the elucidation to Article 55 Paragraph (1) specifically defines the scope of commercial use in information and communication technology media, namely, "direct (paid) commercial use or the provision of free content services that obtain economic benefits from other parties who benefit from the use of Copyright and/or Related Rights." This means that commercial use applies to both subscription and freemium DSPs.

Meanwhile, copyright restrictions are listed in Article 26, Article 43, and Article 44 Paragraphs a and d of the 2014 Copyright Act. In the context of digital music, the above articles established prerequisites to prove that a song/music work is not being used commercially, namely:

- For educational and research purposes, or for scientific works, reports, criticism or review purposes, with no detriment to the reasonable interests of the Author/Copyright Holder, or
- If the performance of the work is free of charge with no detriment to the reasonable interests of the Author/Copyright Holder, or
- Not aimed at generating economic benefits from various sources/paid, and/or
- Does not benefit the Author/related parties, or
- With a statement of no objection from the Author.

Based on these prerequisites, the phrase “detrimental to the reasonable interest” is potentially subject to multiple interpretations as there is no measurable method to determine what constitutes as “reasonable”. In other words, while the concept of fair use is embedded here, its limits are not defined with clear indicators. If a complaint is filed, and the author, copyright holder, or owner of related rights feels that the non-commercial use is detrimental to their fair interests, then it is very likely that the work will have to be taken down and the uploader penalized. In this case, the public’s right to use the music/song for educational purposes or the public’s right to free performance could be compromised.

Commercial use is further expanded in Article 27, which stipulates that “all Phonograms made available for public access through cable or otherwise shall be deemed to be Phonograms for which a Performance has been made for commercial purposes”.

In addition, when read in conjunction with Article 10 on the prohibition for managers of trading premises to sell/reproduce works that infringe on copyright and/or related rights, Articles 26 and 43 have the potential to encourage DSPs to impose more aggressive rules to take action against content that allegedly infringes on copyright. These actions include demonetization, content removal, or diversion of monetization. Such actions would threaten the right to freedom of expression if the content is unilaterally removed by the DSP through its means of technological control without any opportunity to appeal.

The introduction of the above articles essentially treats the digital realm as a commercial one, enabling licensees such as aggregators, DSPs, record labels, publishers, or LMKs to collect royalties for song playback. However, in the digital realm where access is key to fulfilling rights, commercialization is the main obstacle. Referring back to Foong’s (2019) argument, restrictions on dissemination will only benefit the original distributors. Specifically, restrictions set in vague wording — as is the case with these articles — minimize the possibility of new listening technologies that allow works to be enjoyed legally under the principle of fair use, or the possibility that musicians will benefit more from their work.

Consequences of the Law's Broad Coverage

Due to the broad scope of copyright — which covers other forms of work beyond music — the division of rights into copyright and related rights in the 2014 Copyright Act is based on the beneficiaries. The beneficiaries of copyright are authors and copyright holders, while related rights are intended for performers, phonogram producers, and broadcasters.

As it covers more than just the music industry, the 2014 Copyright Act uses terms for rights and performers that differ from those commonly used in the music industry. The 2014 Copyright Act uses the terms communication rights, reversion rights, and performance rights, which are commonly used in the digital music industry. Meanwhile, different terms are used to refer to mechanical rights and synchronization rights. Mechanical rights are recognized in the 2014 Copyright Act as reproduction rights, which is one of the economic rights of a work and related rights products. The law also mentions the right of provision, which is part of communication rights.

In addition, the 2014 Copyright Act does not distinguish between mechanical, performance, and synchronization royalty components. This implies that the LMK and LMKN also have the function of managing master/mechanical royalties. Inconsistencies become more apparent as the 2014 Copyright Act is derived into its implementing regulations, namely the Government Regulation (PP) 56 and the Minister of Law and Human Rights Regulation (Permenkumham). Government Regulation (PP) 56 only regulates performance and communication royalties managed by LMK and LMKN. Thus, a separate PP is needed to regulate the management of mechanical royalties. As of the writing of this report, a draft PP on Song and Music Licenses is being prepared.

Term Comparison Table

IN INDONESIAN LEGISLATION	EQUIVALENTS IN THE DIGITAL MUSIC INDUSTRY
RIGHTS	
Based on the beneficiaries, rights are divided into: - Copyright - Related rights	Copyright Neighboring/related rights
Each right is further divided into: - Moral Rights - Economic Rights	Moral rights Economic rights
Economic rights are further divided into: - Performance Rights	Performance rights
- Reproduction Rights	Mechanical rights
- Translation Rights	Translation rights
- Adaptation, Arrangement, Transformation Rights	Synchronization rights
- Distribution Rights	Performance Rights
- Performance Rights	Performance Rights
- Performance Rights	Performance Rights
- Communication Rights	Communication rights (making available rights)
- Rental Rights	Performance rights, mechanical rights
- Fixation rights (performers)	Performance Rights
- Reproduction, distribution, rental and provision of fixtures (performers) rights	Mechanical rights, performance rights, communication rights

- Reproduction, distribution, rental, provision of phonograms (phonogram producer) rights	Mechanical rights, performance rights, communication rights
- Rights of rebroadcasting, broadcast communication, broadcast fixation & duplication of broadcast fixation (broadcasters)	Performance rights, communication rights, mechanical rights
Right of reversion after 25 years.	Reversion rights
Copyright that can be used as a fiduciary object	Fiduciary object
PARTIES	
Phonogram producers	Record companies or individuals who produce masters
Authors	Composer, songwriter (songwriter and lyricist)
Performers	Performers, including band members, session players, additional players, vocalists, instrument players
Broadcasters	Broadcasters
Collective Management Organizations (Lembaga Manajemen Kolektif, LMK)	Consists of separate institutions based on the type of royalties managed, which generally includes: PROs (performing rights organizations), CMOs (collective management organizations), and MROs (mechanical rights organizations). The form and role of LMK in Indonesia is similar to that of a Collective Management Organization in the US, which is a company and competes with other CMOs (not a monopoly). The difference is that in Indonesia, the LMK must be non-commercial. In Indonesia, LMK only manages performance royalties. In the context of digital music, mechanical royalties are more commonly managed by aggregators, while synchronization royalties are managed by publishers.

National Collective Management Agency (LMKN). In Indonesia, this is divided into Author's Rights LMKN and Related Rights LMKN.	The duties and powers of the LMKN are generally similar to those of CMOs in EU countries. The LMKN is established by mandate of law and is a monopoly. The 2012 EU Directive states that a CMO should have the function of negotiating royalty rates. Indonesia adapted the European system after previously implementing the US system, so the roles and authorities of the LMK and LMKN overlap.
Distributors	Aggregator (in the context of digital music)

Limitations of the Digital Space in the Law

As outlined earlier, the 2014 Copyright Act only regulates the digital space as an extension of rights in the physical realm to enable the entire act of disseminating, providing, and utilizing digital music/songs to be monetized (see sections "Expansion of Physically-Oriented Rights" to "Digital Paranoia"). The digital aspect is mentioned in the 2014 Copyright Act both explicitly and implicitly. Explicit arrangements regarding digital copyright include:

a. A definition of "Performance" which includes all acts of publication using electronic means. Article 1 defines Performance as "the reading, broadcasting, exhibition of a work by using any electronic or non-electronic means or conducting it in any way so that it can be read, heard, or seen by others".
b. Articles 6 and 7 on copyright management information state that the author is entitled to information on methods to recognize the originality of the work, including those in the form of digital data. In the music industry, this is known as the song code or ISRC.
c. Chapter VIII Articles 54-56 on copyright and related rights content in information and communication technology states that the government is authorized to supervise the distribution of works in the digital space. The

Minister of Communications and Information Technology can take down or remove any content that utilizes IT facilities if there is copyright infringement. A court decision must be issued no later than 14 days after the removal of the content. These articles identify works published in the digital space as "content".

d. Chapter VII Articles 52-53 on digital rights management require all parties using production facilities and digital databases to comply with licensing regulations and production requirements determined by competent authorities. The chapter also prohibits anyone from tampering with digital rights measures that serve to protect and secure digital works from misuse. Sanctions for violations are stipulated in another article, which is a maximum of 2 years of imprisonment and a fine of IDR300 million. The exception to this is other agreements that make these safeguards unenforceable.
e. Article 111 states that evidence of violations in the form of electronic information/documents has the same validity as non-electronic or physical evidence.
f. The Elucidation to Article 55 Paragraph 1 states that "Commercial Use" in information and communication technology media includes direct (paid) commercial use as well as the provision of free content services with the purpose of gaining economic benefit from other parties. This means that the law recognizes subscription-based song listening/rental services, such as Spotify or iTunes, and free services with content monetization through advertising, such as non-subscription YouTube or Spotify services.

Meanwhile, the 2014 Copyright Act also contains implicit stipulations regarding digital aspects, including:

a. A definition of "reproduction" to cover "any form" of reproduction. Consequently, infringement sanctions also apply to digital reproduction as it is also part of reproduction rights.
b. A definition of "fixation" that covers "through any device", so fixation in digital form also falls under this definition.
c. A definition of "phonogram" that covers the fixation or representation of sound, meaning that it is applicable in any format when referring to the above definition of fixation.

d. All articles governing various forms of economic rights also cover the commercial use of works and performances in the digital realm. However, the 2014 Copyright Act does not explicitly mention what rights are included in music streaming. Interpretation is left entirely to industry practices. For example, streaming original music constitutes the exercise of several rights at once, namely reproduction, performance, and communication.
e. The chapter on Licenses automatically covers licenses with other parties in the digital music industry, such as aggregators, publishers, and streaming platforms. However, these parties are not explicitly identified.
f. Article 10 Paragraph 1 affects music stores and digital music listening services. It states, “Managers of business premises are prohibited from allowing the sale and/or reproduction to take place within their premises of products resulting from copyright and/or related rights infringement.” This means that all music stores and digital listening services (including streaming platforms) are liable for copyright infringement on their platforms/stores.
g. Article 27 states that Phonograms made available for public access “through cable or otherwise” shall be deemed to be Phonograms for which a Performance has been made for commercial purposes. This article automatically considers all music recordings that enter the digital realm are for commercial uses that entitle phonogram producers to royalties.

Apart from ensuring that all acts of music/song utilization in the digital realm are monetized, these articles generally only narrowly identify the digital realm, i.e., in the context of preventing and combating piracy. As a result, the application of sanctions against rights violations in the digital space may be confusing in practice. The process of investigating and enforcing violations is also unrealistic and limited to blocking/takedown. Article 55 on blocking states that content blocking by government authorities must be based on a court ruling. This mechanism is lengthy, costly, and more complicated compared to the standard private DSP mechanism, where DSPs can simply perform report-based takedowns. If a complainant wishes to take the process through the commercial court, the 2014 Copyright Act states that processing a lawsuit, from the time it is filed until a decision is reached, takes a maximum of 120 days. A provisional decision can be issued within 24 hours as long as it includes a statement, evidence, and a

security deposit. With such a complicated process, self-management by the industry will be much more effective than a court mechanism. However, private dispute resolution mechanisms may not ensure equal bargaining power for the parties.

Furthermore, the investigation process requires the personal data of the alleged offender to be submitted in order to identify the offender's location and identity, and this requires a lengthy process to request it from the DSP in advance. The government has issued the Minister of Communication and Informatics Regulation (Permenkominfo) No.10 of 2021, which requires all Electronic Service Providers (PSE) to be officially registered at the Ministry database. If the infringement is committed at a DSP that has not been registered, the process of requesting personal data will be in violation of international law on personal data protection.

Another consequence of this digital paranoia is that the 2014 Copyright Act has not specifically identified the intermediary parties that have emerged as a result of developments in digital music listening patterns, namely streaming platforms, aggregators, publishers, and digital music stores. The 2014 Copyright Act only identifies making available rights, which are referred to as communication rights and provision rights. In fact, the law essentially leaves license agreements with intermediaries to the market mechanism, through the "in accordance with reasonable practices" clause. Furthermore, the 2014 Copyright Act does not establish a minimum percentage that authors are entitled to in a license agreement, even though the law has many "unless otherwise agreed" clauses in the articles. A minimum percentage for authors is only established for agreements with phonogram producers, which is 50-50.

The national Collective Management Organization (LMK) was first introduced in this law. Private LMKs are also recognized, provided that they have a business license and membership. The law's chapter on LMKs caused problems seven years later when PP 56 was issued. Article 87 states, "to obtain economic rights, every Author, Copyright Holder, owner of Related Rights becomes a member of the Collective Management Organization in order to be able to collect reasonable

compensation from users who utilize Copyright and Related Rights in the form of commercial public services." This means that authors, copyright holders, and related rights owners must be registered as LMK members in order to claim their royalties.

Meanwhile, provisions in the 2014 Copyright Act has also proven problematic. The 2014 Copyright Act states that the organization manages economic rights, which also include the 11 rights of the authors/copyright holders listed in the Law, 5 rights of the performers, 4 rights of the phonogram producers, and 4 rights of the broadcasters. While in practice, LMK only manages performance rights and communication rights. Other than those three rights, the collection, collation, and distribution of royalties will depend on each party's license agreement.

Government Regulation Number 56 of 2021 on the Management of Royalty for Copyright of Songs and/or Music (PP 56)

PP 56 explicitly states two objectives. First, to provide legal safeguards and certainty to authors, copyright holders, and owners of related rights over the economic rights of songs and music. Second, to develop a song royalty management system (SILM) by LMKN. This section will examine the extent to which this objective of "legal safeguards and certainty" can be implemented.

The focus of PP 56 is on LMKN governance and the development of SILM as the basis for LMKN to manage royalties. While a national LMK is not specifically mentioned in the 2014 Copyright Act, this PP defines LMKN (capital N) as: "a non-State Owned Enterprise government auxiliary institution established by the Minister based on the Copyright Law with the authority to charge, collect, and distribute royalties and manage the interests of the economic rights of authors and owners of related rights in the song and/or music industry." To some, this definition is inconsistent, as Article 1 Paragraph 22 jo. Article 89 of the Copyright Law states that the national LMK must be a non-profit legal entity (AMPLI 2022,

ICLD 2021). This inconsistency raises major issues, especially when it comes to the appointment of SILM managers and LMKN daily executives.

SILM is defined as "the information and data system used in the distribution of song and/or music royalties". The role of SILM is central in the governance of digital music royalties because ideally SILM promises information disclosure on the commercial use of each song. Since it is a digital data information center, SILM should also be able to process royalty information comprehensively.

As a derivative regulation of the 2014 Copyright Act, PP 56 has not accommodated music distribution practices in the digital space in detail. PP 56 explicitly and implicitly includes works in the digital format and works disseminated in the digital realm. Explicitly, this rule is listed in Article 2 Paragraph (4) which states, "commercial public services as referred to in Paragraph (1) through Paragraph (3) include analog and digital forms". The commercial public services in question are:

- Commercial use of public services for the Author or Copyright Holder includes the performance of the Work, publication of the Work, and communication of the Work.
- Commercial use of public services for performers includes broadcasting and/or communication of performers' performance.
- Commercial use of public services for phonogram producers includes the provision of publicly accessible phonograms with or without cable.

Since all public services are commercial in nature — including in digital form — the digital scope is also implicitly accommodated in all provisions on SILM, LMKN, and LMK in the collection royalties from commercial public services. However, the list of public services identified in PP 56 does not mention services that play a major role in digital music distribution, such as digital service providers (DSPs) that provide streaming or download services. The public services identified in Article 3 of PP 56 are limited to:

- commercial seminars and conferences;

- restaurants, cafes, pubs, bars, bistros, nightclubs and discotheques;
- music concerts;
- airplanes, buses, trains, and ships;
- exhibitions and fairs;
- movie theaters;
- ringback tones;
- banks and offices;
- shopping centers;
- recreation centers;
- television broadcasters;
- radio broadcasting organizations;
- hotels, hotel rooms, and hotel facilities; and
- karaoke businesses.

Article 3 Paragraph (3) of PP 56 further states that the addition of the list of public services will be regulated in a ministerial regulation. However, at the time of this research, there has been no ministerial regulation that explicitly mentions streaming platforms and digital stores as public services. This means that LMKN's authority to collect performance royalties from music distributed on various DSPs, especially streaming platforms, has not been established in any regulation. This regulatory void can potentially lead to illegal collection practices, placing musicians as authors or owners of related rights in a more precarious situation.

This is exacerbated by the absence of any mechanism to govern dispute resolution in the PP, especially if the dispute involves labels, DSPs, aggregators, and publishers who are usually the Authorities or copyright holders/owners of related rights who deal directly with the LMK. The dispute resolution mechanism is still regulated by the 2014 Copyright Act, which also has many weaknesses as described in the previous section.

The royalty collection process described in PP 56 is as follows:

1. A Work is registered in the Copyright Public Records

2. The Work is entered into a song/music database
3. LMKN accesses song/music database
4. Those who wish to use the song can ask for a license through LMKN
5. License is recorded by the minister
6. License requires users to log song usage to SILM
7. Royalty is paid to LMKN
8. In performances, the use of songs can be done without a license. However, royalties must be paid after the performance is completed to LMKN.
9. LMKN collects royalties for members and non-members
10. The amount of royalty is determined by LMKN with the approval of the minister
11. In addition to being distributed to rights owners (who are members of LMK), royalties are allocated to operational funds and reserve funds.
12. Royalties from unknown/non-members are will be withheld for 2 years
13. If unclaimed, royalties are absorbed into a "reserve fund". A "reserve fund" is a fund derived from royalties that: (a) are from songs and/or music whose use has not been recorded; (b) are still disputed; or (c) are from Works where the Author, Copyright Holder, and/or the owner of the Related Rights has not registered as a member of the LMK.

The above royalty collection and distribution procedure has some fundamental problems, and given implementation challenges, achieving PP 56's stated objective of improving governance still leaves a lot to be desired. The fundamental problem lies in the governance of SILM, which is the main indicator for improving royalty governance in the digital realm. PP 56 promises a comprehensive and transparent collection and distribution system through an information technology system called SILM, which will be managed by LMKN as the party authorized to collect and collect royalties, who will then distribute them to LMKs. But to this day, there remains no clear information on the development — let alone management — of SILM. Meanwhile, PP 56 does not give any sanctions to LMKN if SILM has not been established after two years.

This problem is exacerbated by the overlapping roles of LMKN with the existing functions of LMK. PP 56 mandates the establishment of LMKN despite the fact that LMKs have been operating as royalty collectors, administrators, and distributors

for some time. This one-stop arrangement has actually been mandated since the 2014 Copyright Act was established, although the law does not specifically mention when the LMKN should be formed and operational. According to Panji Prasetyo, ideally LMKN should serve as a consortium or coordinator of LMKs, which would make the process of collecting royalties through a single gate more seamless (AMPLI 2022). Unfortunately, this was not the case in practice. At the 2019 Bali Declaration organized by the Directorate General of Intellectual Property (DJKI), representatives from eight LMKs stated their agreement to the one-stop royalty collection method under LMKN (DJKI 2019, Tumanggor 2019). However, it seems that the implementation of this agreement has not been consistently carried out by the LMKs. HOREKA reported cases of double charging by LMKN as well as LMK (SIB Newspaper 2021). In fact, several LMKs have issued a subpoena (Pebrianto 2021). Another conflict arose due to the unilateral appointment of a non-LMK company tasked to handle the daily management of LMKN and the Song and Music Information System (SILM). This appointment is based on Article 20 which states, “the development of SILM can be carried out in cooperation with third parties”. As early as seven days after PP 56 was issued, Article 20 became the focus of criticisms from various industry players. Critics have highlighted the potential for corruption, collusion, and nepotism in the appointment of the “third party” in question (Shaidra 2021). According to WAMI, one of the largest Author’s Rights LMKs in Indonesia, it makes no sense for a non-LMK entity LMKN in the form of a limited liability company (PT) to charge royalties, especially from works published in the digital space. The digital music ecosystem consists of DSPs, each with its own procedures to document the commercial utilization of songs. DSPs will assess the capabilities of a potential partner’s technological and human resources in collecting royalties. A DSP will not work with potential partners who do not have standardized technology devices. Meanwhile, it is the LMKs who have substantial experience in partnering with DSPs. This situation illustrates the copyright policy’s inability to identify digital music industry players, leading to real problems on the ground.

Allegations of corruption, collusion, and nepotism culminated when Tempo published an investigative report on LMKN’s unilateral appointment of a private company called PT Lentera Abadi Solutama (hereafter “PT LAS”) (Shaidra 2021).

Some LMK administrators have even suspected a conspiracy behind this unilateral appointment. In the agreement with PT LAS, several clauses appointed PT LAS not only as a service provider and manager of SILM information technology, but also as the executive administrator of LMKN. According to LMK, it makes no sense to appoint PT LAS to be the executive management (who is also authorized to collect royalties) because PT LAS is not a non-profit organization, and has no experience and capacity as an LMK. PT LAS's potential revenue is estimated at IDR 15 billion a year. The investigative piece also revealed the names of those who received shares of PT LAS, including several prominent musicians, the son of a former deputy of the Indonesian National Police, and a number of businessmen, one of whom had been involved in a civil lawsuit. This controversy was preceded by an anonymous letter circulating through a WhatsApp Group of music industry players. To date, musicians have not been widely informed of the progress of SILM development — based on our interviews with AMPLI members who have been advocating and monitoring the implementation of the 2014 Copyright Act's derivative regulations.

As long as SILM is not established, the user's obligation to report the commercial use of songs is unclear. In practice, documenting the commercial use of songs in the digital realm is conducted independently by industry players using the system applied by the LMK in charge of collecting royalties and the system of each digital service providers (DSP) in the digital music industry. Based on our investigation, LMKN continues to collect performance royalties from DSPs and reports them publicly on its website. The reports published so far are for 2019 and 2020 (LMKN 2022). According to our interview with WAMI representative Meidi Ferialdi, the digital royalty report was obtained from WAMI. Since 2019, LMKN and several LMKs agreed to appoint WAMI to collect authors' royalties for digital music performance on behalf of of LMKN. KCI and RAI entrusted the commercial utilization of their members' songs through WAMI's IT system. According to the Indonesian YouTube representative we interviewed, YouTube's official LMK partner is WAMI, who also represent other LMKs. In other words, WAMI remains the only LMK with a royalty management information system. As long as there is no other LMK that has a more effective system, the calculation of performance royalties for authors will only refer to WAMI's system. Meanwhile, the calculation

of digital music master/mechanist royalties will refer to a number of aggregators which have official partnerships with digital music service providers. This mechanism seems to be working effectively for now. However, the state will likely lose its ability to intervene if issues or conflicts of interest arise in the future.

Since PP 56 focuses on the governance of LMKN and LMK, the royalties regulated can only be implemented in the scope of LMKN and LMK practices so far, namely for performance and communication royalties. As long as the mechanical royalty LMK does not exist, the provisions of mechanical royalty collection and distribution are left entirely to the licensing mechanism detailed in the 2014 Copyright Act and Government Regulation (PP) 36 of 2018. According to our interviews with WAMI and AMPLI, the Government Regulation on Song and Music Licensing is currently being drafted. Meidi Ferialdi emphasized that the regulation of mechanical royalty rates will be very complex because it falls into the domain of the private sphere, unlike that of performance and communication royalties for the performance and provision of works/related rights products to the public. Irfan Aulia, who served as Chairman of the Board at WAMI in 2019-2021, argued that collective management organizations or LMKs, as the name implies, are established out of a collective need. There is currently no LMK that collects mechanical royalties in Indonesia, and it is most likely because there is no need for such an organization. On the other hand, Agus Sardjono argued that it is not appropriate to separate between provisions for performance and mechanical royalties into different Government Regulations.

Furthermore, while PP 56 only protects LMK members, there is no obligation on LMKs to inform musicians that signing up with an LMK is a prerequisite to obtaining performance royalties. As a derivative regulation of the 2014 Copyright Act, PP 56 does not give musicians the option to not sign up with an LMK if they want to enjoy royalties on song compositions (performance and communication royalties). Agus Sardjono emphasized that authors and performers should have been given this freedom. The 2014 Copyright Act and PP 56 give the LMK great privileges to deduct 20 percent of the royalties regardless of whether or not the musician is signed up with the LMK. Furthermore, Article 14 Paragraph (1) of PP 56 states, “Royalties that have been collected by the LMKN as referred to in

Article 13 are to be distributed to Authors, Copyright Holders, and Owners of Related Rights who have become members of the LMK". LMKN is only obliged to publicize works owned by non-members. Article 15 states that if authors, copyright holders, and owners of related rights are not members, royalties will be withheld and announced by LMKN for two years. If unclaimed, the royalties will go into a reserve fund. There is no article that explicitly regulates what kind of announcement needs to be made so that authors, copyright holders, and owners of related rights can be informed. This special protection for LMK members is based on the mandate that has been stated in the governing law, namely Article 87 of the 2014 Copyright Act.

A survey by Koalisi Seni of 104 respondents found that a majority of musicians (77.9%) do not have a membership at any LMK. In fact, 36.5% of respondents were not aware of the obligation to sign up with LMK to obtain performance royalties, and more than half of the respondents (59.6%) did not know who collected the royalties. Most respondents were aware of the Copyright Law, but 41.3% had never read it. The survey was distributed online to members and networks of Koalisi Seni, with respondents consisting of authors, permanent vocalists/ instrument players, and non-permanent vocalists/instrument players (session players).

Furthermore, there is no article that further regulates sanctions on LMKN if it does not carry out its audit duties and obligations, as mandated by Article 93 of the 2014 Copyright Act. The fact that there is no article regulating the accountability and transparency of LMKN is also the main focus of criticisms by authors who are members of AMPLI. This objection remains unresolved in the recently issued Minister of Law and Human Rights Regulation No. 9 of 2022 on the Implementing Regulation of PP 56.

Regulation of the Minister of Law and Human Rights Number 9 of 2022 on the Implementing Regulation of Government Regulation Number 56 of 2021 on the Management of Royalties for Song and/or Music Copyright (Permenkumham 2022)

Permenkumham 2022 was issued to replace Permenkumham 2021, as a quick response by the government following sharp criticisms from various musicians regarding the substance of PP 56 and Permenkumham 2021. The 2021 Permenkumham had compounded existing problems in PP 56, namely:

1. Article 6, which states that executive management can be a legal entity. As a result, it is possible that the LMKN executive management does not come from a Author's Rights LMK, Related Rights LMK, or government representatives. Tempo's investigation further strengthened this indication, which found that LMKN has appointed PT LAS as the executive management.
2. Article 9 states that the government plays a dual role: both as LMKN commissioners and as administrators of copyright and related rights.
3. Article 21 which states that LMKN is entitled to 20% of royalties collected for operational costs, **on top of the** 20% of royalties given to LMKs.

For songwriters who are members of AMPLI, Permenkumham 2022 was expected to regulate more strictly the transparency and accountability of LMKN and harmonize the flow of coordination between LMKs and LMKN. AMPLI also demands the government to revoke the agreement between LMKN and PT LAS that was based on Permenkumham 2021, because the appointment was made with a lack of transparency and was rife of conflicts of interest (Widiastuti 2022).

Despite this, some of the changes in Permenkumham 2022 indicate that consolidation has taken place between LMKs and LMKN, with the inclusion of LMK representatives as commissioners, daily executives, and supervisory teams. Article 9 of Permenkumham 2022 lays out the arrangement of LMKN executive management — from previously a legal entity — to individual experts/professional personnel including LMK representatives. Article 9 also shifts the flow of daily executive responsibilities from LMKN commissioners to the general manager.

The general manager, who will lead and appoint executives, is appointed by the chairman of the LMKN commissioners through an open selection process. The mechanism for appointing LMKN commissioners is stipulated in Article 7 through an agreement process LMKs recorded in the minutes. Qualification requirements for commissioners representing LMKs and academics are laid out in detail. In addition, Article 2 of Permenkumham 2022 also expressly regulates that LMKN is responsible to the minister. According to Koalisi Seni's interview with Andre Hehanusa, the board of commissioners of the Author's Rights LMKN consist of one commissioner representing the government, one commissioner who is an expert or authors' representative, and three commissioners representing Author's Rights LMKs. Meanwhile, the board of commissioners of the Related Rights LMKN according to Marcell Siahaan consist of a government representative, one commissioner who is an expert or performers' representative, and three commissioners representing Related Rights LMK (two Performers Related Rights LMK and one Phonogram Producers Related Rights LMK).

Furthermore, Permenkumham 2022 Article 22 revises the percentage of royalties that will be used as operational funds to a maximum of 20 percent for LMK including LMKN operational costs. The 20 percent allocation agreement will refer to the annual expenditure budget plan agreed at the LMKN plenary meeting.

In addition, in Article 20, LMKN is given a special authority to collect royalties from non-MLK members. Meanwhile, in Article 21, LMKs are also required to notify LMKN at least twice a year on the distribution of royalties.

The maximum amount of reserve funds in Permenkumham 2022 is set in the plenary meeting. Previously, the reserve fund was set at a maximum of 7 percent. The allocation of reserve funds is also expanded and further detailed — previously for music education, social/charitable funds, and incentives to LMK members — to music education, social/charitable activities, social security for individual LMK members, and socialization of copyright and related rights related to royalty management. However, interviews indicate that in practice the reserve fund is still being allocated based on Permenkumham 2021.

Permenkumham 2022 has added changes to the organizational structure of LMKN, where a Principal LMKN oversees the Author's Rights LMKN and Related Rights LMKN. In addition, the stipulation on the dismissal of of the LMKN chairman of commissioners has been added to include a clause on violating the LMKN code of ethics. The period for reporting to the minister in the event a chief commissioner is dismissed or replaced is extended from 3 days to 14 days. Furthermore, for commissioner members, the dismissal clause is revised from committing a criminal offense that carries a 5 year-sentence to committing any criminal offense. Permenkumham 2022 also stipulated additional documents required for the establishment of LMK.

Despite these changes, fundamental issues remain unaddressed: the appointment of a third party to develop the SILM, the fact that no party is held accountable if the SILM development exceeds the expected time period, and the lack of obligation to inform and engage with authors, copyright holders, and related rights owners who are not members of LMK. In its press release, AMPLI called for a complete revision to Permenkumham, and urged that PP 56 be replaced. While SILM has not been developed, LMKN continues to collect royalties. But according to AMPLI, LMKN has not released its financial reports. To this day, LMKN has only published aggregate data of copyright royalties and related rights on its website with no detailed breakdown.

Turning LMKN back into its initial role as a consortium of LMKs will be a major undertaking for LMKN commissioners for the 2022-2025 period. According to Andre Hehanusa, the only issue that has been accommodated in the new Permenkumham is the transfer of the royalty collection function from PT LAS to the Author's Rights LMK (represented by WAMI) and the Related Rights LMK (represented by SELMI). From our interviews with LMKN sources, the organization is committed to ensuring transparency of royalty management and restore the trust of authors and performers in LMK.

Draft Government Regulation (RPP) on Song and Music Licenses

Optimal implementation of copyright policy requires derivative regulations that specifically regulate the type of works/products of related rights and can accommodate technological developments that have changed the way people listen to music. According to DJKI (2022), the RPP on Song and Music Licenses is intended to strengthen the protection of the economic rights of authors, copyright holders, and owners of related rights, especially in the digital era, and anticipate developments in digital music that have not been accommodated in the 2014 Copyright Act.

Reflecting on the various problems described above, this Government Regulation should provide more concrete protection for musicians, both authors and performers, in license agreements. However, it seems that the discussion of the RPP is once again driven by the fear of piracy: the draft regulation puts heavy emphasis on prohibiting the duplication, performance, and communication of works/related rights products on digital platforms, rather than on balancing the contractual positions between authors/performers and licensees. Nevertheless, a thorough analysis of the RPP can only be done until the draft is made public.

Other Regulations

A. Government Regulation Number 16 of 2020 on the Recordation of Related Rights Works and Products (PP 16/2020)

Copyright needs to be recorded in order to obtain stronger legal protection. PP 16/2020 was issued as a derivative regulation of the 2014 Copyright Act. This regulation sets out a more detailed mechanism regarding the recording procedures of copyright and related rights products.

Article 2 of PP 16/2020 stipulates that the minister has the right to organize the process of recording works and removing related copyright products. This process is carried out through a registration mechanism that includes recording the work and recording the transfer of copyright and related rights. The registration comes with several requirements that the applicant must complete. In addition, the applicant can also change the data during the application process. Article 19 of PP 16/2020 emphasizes that applications can be submitted in electronic and non-electronic methods. Article 24 of PP 16/2020 states that the minister will announce the recording or deletion of a work or related rights product on the official website of the directorate that handles intellectual property affairs.

This PP's effectiveness in improving the administrative management of song recordation will depend on how far SILM can be integrated with the copyright public records. Upon a request for a record removal, the work/related rights product will only be removed from the Copyright Public Records. The regulation does not mandate that coordination be done on the removal across platforms that have already monetized the work/related rights product. As a result, it is possible that the song may still be monetized without an assignee. SILM is expected to automatically update any changes made in the Copyright Public Records to ensure that song monetization cannot be done without an established assignee.

Furthermore, the process of application for recordation, transfer of rights and removal is regulated under the authority of the minister. The provision of these services should not be outsourced to a third party. In addition, the recordation fee is forfeited if the applicant fails to fulfill all requirements within the 30-day period.

B. Government Regulation Number 36 of 2018 on the Recordation of Intellectual Property License Agreements (PP 36/2018)

In addition to recording an intellectual property in the copyright public records, the recordation of license agreements in the context of intellectual property

rights also needs to be carried out to exercise exclusive rights in accordance with the agreement that the rights owner has made with other parties. A separate regulation on the recordation of song- and music-specific licenses is still being drafted (DJKI 2022). In the meantime, the recordation of licenses for works/related rights products refers to Government Regulation No. 36/2018 on the Recordation of Intellectual Property License Agreements (PP 36/2018).

Article 2 of PP 36/2018 explains that the recordation of intellectual property license agreements is carried out for intellectual property objects in the field of copyright and related rights except for work whose copyright terms have expired and have been abolished. Furthermore, Article 6 prohibits parties from conducting a license agreement process that: may harm the Indonesian economy and national interests; contains restrictions that hinder the ability of the Indonesian people to transfer, master and develop technology; results in unfair business competition; is contrary to laws and regulations, religious values, decency and public order.

In addition, Article 7 stipulates that the recordation process carried out to the minister shall contain all the details needed in the process of recording the intellectual property license contract. Through Article 8, the regulation also provides flexibility for licensees who are not domiciled in the country to authorize a proxy on their behalf. Furthermore, this regulation also provides special arrangements for works/related rights products consisting of several titles or works on intellectual property objects involving the same parties in the license agreement to be submitted under a single application. Article 10 of PP 36/2018 explains that applications can be made via electronic and non-electronic means. The application must attach a copy of the license agreement, an official copy of the ownership of the work and related rights, a power of attorney and proof of payment of fees.

PP No. 36/2018 also regulates the mechanism related to the examination of applications and publications along with license excerpts that will be published in the public register of copyright agreements and official gazette of the public register of copyright license agreements through Article 15 of PP 36/2018. In

addition, Article 15 confirms that license agreements that are not registered and not publicized will not have any legal effect on third parties. Finally, PP 36/2018 elaborates that the license recordation agreement can be revoked based on an agreement between the licensor and licensee, a court decision, or other reasons justified by statutory provisions.

There are several key things to note from this regulation. The PP provides no concrete protection to balance the bargaining powers of the licensors and licensees. Restrictions on licensing are quite weak. While Article 6 contains a prohibition that licenses must not contain restrictions that may hinder the ability of the Indonesian people to transfer, master and develop technology, sub-point 3 of Article 6 also contains a clause that license agreements are "prohibited from causing unfair business competition". However, to prove that competition between business actors is unfair requires a separate process through the mechanism of the Business Competition Supervisory Commission, which is not only time-consuming but also has its own problems. In addition, the clause that license agreements are prohibited from being "detrimental to the Indonesian economy and national interests" and "contrary to ... religious values, decency and public order" will be highly arbitrary in its interpretation. Since Article 8 of this regulation accommodates non-Indonesian parties as licensors or licensees through the power of attorney system, this regulation cannot actually protect local musicians who enter into licensing agreements with foreign distributors, for example.

C. Decree of the Minister of Law and Human Rights NO HKI 2. OT. 03.01.02 2016 on the Ratification of Royalty Rates for Users who Perform Commercial Utilization of Works (Royalty Rates Decree)

In the year of its ratification, LMKN issued several decisions regarding royalty rates charged to parties for using songs commercially in public places. The LMKN Plenary Meeting held on May 12, 2016 also decided on 12 types of rates subject to royalties based on the segmentation of public places.

On May 20, 2016, the Ministry of Law and Human Rights issued a Royalty Rates Decree based on the plenary decision meeting. The official amount will be evaluated annually. The Royalty Rates Decree also emphasizes that rates based on several indicators, including global good practices. These good practices can be divided into internationally accepted references, input from LMK, input from users, “appropriateness” and “sense of fairness”.

Payment is made on an annual basis and the rates are broken down into:

SEGMENTATION	ROYALTY RATES
Commercial Seminars and Conferences	Lumpsum IDR500,000 per day
Restaurants, Cafes, Pubs, Bars, Bistros, Nightclubs, Discotheques	For Cafes and Restaurants: IDR60,000 per year for royalties on authors' rights and related rights For Pubs, Bars, Bistros: IDR180,000 per m2 (square meter) for royalties on author's rights and related rights For discotheques and nightclubs: IDR250,000 per m2 (square meter) for royalties on author's rights and related rights
Music Concerts	For free music concerts: calculated based on music production costs x 2 For paid music concerts: gross ticket sales x 2% plus complimentary tickets multiplied by 1%.
Exhibitions and Bazaars	Lump sum IDR1,500,000 (once a year)
Airplanes, buses, trains, ships	Airplanes: using the formula number of passengers x index rate x duration of music while flying x percentage of music usage rate Buses, trains, ships: number of passengers x index fare x duration of music during flight x percentage of music usage rate audiobility: 10% (paid once a year)
Cinemas	Lump sum IDR3,600,000 per screen (once a year)

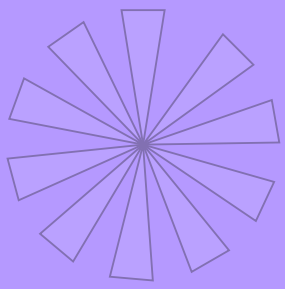
<table>
<tr><td>Ringback tones, banks, offices</td><td>For Ringback Tones: IDR100,000 per telephone line per year

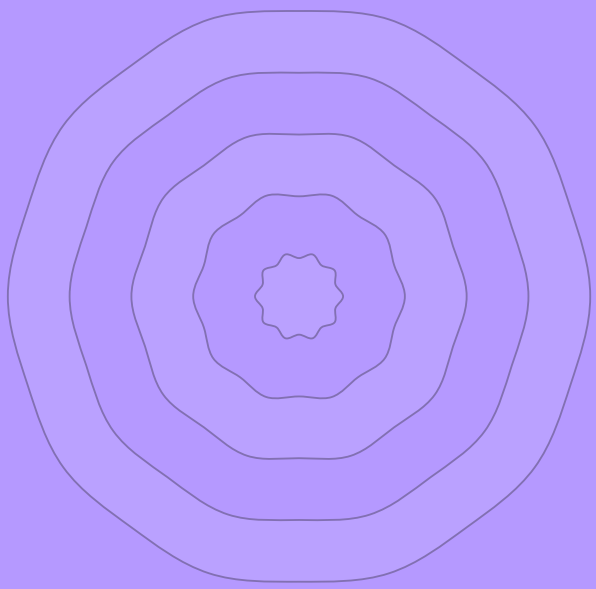
For Banks and Offices: IDR6,000 per m2 annually</td></tr>
<tr><td>Hotels</td><td><table>
<tr><th>1-50</th><th>Amount</th></tr>
<tr><td>51-100</td><td>IDR2,000,000</td></tr>
<tr><td>101 - 150</td><td>IDR4,000,000</td></tr>
<tr><td>151 - 200</td><td>IDR6,000,000</td></tr>
<tr><td>Above 201</td><td>IDR8,000,000</td></tr>
<tr><td>Resorts, Exclusive</td><td>IDR12,000,000</td></tr>
<tr><td>Hotels, Boutique Hotels</td><td>IDR16,000,000 (lump sum per year)</td></tr>
</table></td></tr>
<tr><td>Recreation centers</td><td>Royalty rates for Recreation Centers who charge visitors fees: 1.3% ticket price x number of visitors per day x 300 days x percentage of music usage

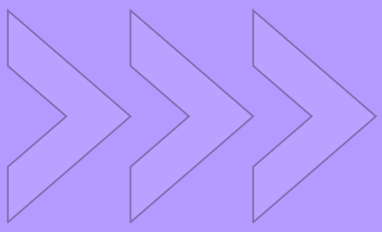
For Recreation Centers without visitors fees: lump sum of IDR6,000,000 per year</td></tr>
<tr><td>Television broadcasters</td><td>Lump Sum Per Year
1. Copyright: IDR6,000,000
2. Related Rights: IDR4,000,000</td></tr>
<tr><td>Radio Broadcasters</td><td>Lump Sum Per Year
3. Copyright: IDR1,000,000
4. Related Rights: IDR1,000,000</td></tr>
<tr><td>Shopping Centers</td><td>Including
- Supermarkets
- Grocery Stores
- Shopping Complex
- Shops
- Distros
- Beauty Salons
- Fitness Centers
- Sports Arenas
- Showrooms</td></tr>
</table>

Area of Premises	Author's royalty per square meter (per m2)	Related Rights Royalty per square meter (per m2)
first 500 m2	IDR4,000	IDR4,000
next 500m2	3,500 IDR	3,500 IDR
next 1000 m2	IDR3,000	IDR3,000
next 3000 m2	IDR 2,500	IDR 2,500
next 5000 m2	IDR 2,000	IDR 2,000
next 5000 m2	IDR 1,500	IDR 1,500
Additional areas	Rp1,000	Rp1,000

As of 2022, these rates have not been updated despite the decree mandating that the rates be evaluated annually. In addition, royalties for performance rights in the digital space have not been established in this regulation.







Conclusions

This research offers an overview of digital music copyright policy in Indonesia from the vantage point of digital rights: the rewards for artists and related copyright holders, access to the work in the digital space, and how far the public can get involved in the development of policies concerning the management of digital space. An analysis of existing regulations showed they have failed to maximise the rewards for authors and performers. The regulations in fact offer up massive privileges for record labels and turn a blind eye as music industry middlemen started signing up contracts with musicians who are left without enough rules to protect their rights. Access to the work is severely limited by making sound recordings automatically commercial when released in the digital space. Meanwhile, "quiet politics" became another speed bump for musicians who want to get directly involved in the formation of policies.

1. Anti-musician policies

Historically, the development of copyright policies in Indonesia happened mostly in the “quiet politics” arena, far from the reach of most musicians who should’ve been the majority stakeholders. Ever since the first post-Independence Copyright Act was issued in 1982, the development of copyright policies has been shaped by pressures from local industry and international trade organizations. Data used as references when formulating policies were industry data tailored to spice up anti-piracy rhetorics. In order to comply with TRIPS, developing countries were forced to revise their national copyright policies. If they are unable to meet intellectual property protection standards, they face the threat of having their trade privileges revoked. Indonesia was one of the countries that became the targets of this international agenda. TRIPS in the end became the main guidelines for successive iterations of Indonesia’s Copyright Act.

Anti-piracy rhetorics created paranoid policies that imagined digitalization as rolling out the red carpet for new models of piracy. This is when the real issue for many musicians in the new digital space is the struggle to create a more transparent and more pro-musician digital royalty management model.

The digital paranoia created digital copyright regulations that marginalised its own dissemination role. In the Copyright Act of 2014, song and music recordings (phonograms) made available in the digital space are automatically categorized for commercial use irrespective of the uploader’s intention. Apart from that, copyright enforcement is limited for only a few uses with much of the regulations remaining in the “grey area” category, ones that use such vague phrases as “inflicting losses on reasonable interests”. The 2014 Copyright Act seemed desperate to adopt the fair use concept but still failed to provide a clear scope for the use of the term, rendering its implementation severely limited.

In reality, incentivization (for artists) can only happen when music dissemination is unimpeded, and vice versa (Foong 2019). In a digital music ecosystem that prioritizes access, dissemination needs to be monitored to sustain a pro-creation and pro-innovation copyright model. If policies fail to encourage effective

dissemination, innovations in music distribution will come at a much slower pace and musicians will be forced to follow only old, outdated models.

Influenced by a long history of paranoia over analog piracy and fear of technology, Indonesia's copyright policy lags way behind in its management of the digital music space. New policies merely define "digital" as a format, instead of a sweeping change in relations between old and new players (and roles) in the music industry. The Copyright Act still does not offer specific regulations on digital music. The Act only offers generalised copyright protection that also accommodates other art forms beside music. The categorizations offered in the Act are based on the right owners, not the types of the art work. Many of the definitions of rights and parties offered up by the Act became too broad to be applied in the more specific digital music work flow.

The Copyright Act of 2014 still offered up policy logics based on physical-analog realities. For example, in regard to expanding the scope for rights and actions — to make them more digital, the Act only added the phrases "whatever device" and "in whatever form". The focus of policies remained the prevention of privacy. Illegal duplication attracted the heaviest sanctions in the 2014 Copyright Act. Further, business managers were also made responsible when acts of piracy happened in their establishments. This new responsibility meant digital service providers (DSP) had to apply special mechanisms to prevent copyright misuse. Since the most effective mechanism so far is taking down offending works, there's a risk of artistic freedom being violated when DSPs are given

the authority to take down works distributed in their space. The government also has blocking privileges that are almost impossible to implement thanks to a complicated mechanism and the fact that any investigation into a case requires access to the private data of users — always a controversial issue.

Licensing policies also leave gaps to exploit musicians — the marginalised parties in many contract negotiations. The emergence of new middlemen in the midst or rapid digital technology development has not been anticipated, and no explicit instrument policies exist to manage them. This could have been done by determining a minimum profit cut for artists and performers, or through pro-musician measuring standards provided for ministers when they evaluate license registrations. But vague policyspeak such as “except agreed to in different ways” or “according to current normal [market] practices” suggests that policy makers prefer to stick their heads in the sand. The existing regulations do no provide enough protection for artists when they enter into rights negotiations with record labels or industry middlemen. In many such cases, artists and performers don’t hold the upper hand.

Since the majoriy of licensing regulations were left to market devices, derivative regulations based on the Copyright Act of 2014 only began to manage performance royalty through tariff regulations for physical spaces contained in the Law and Human Rights Ministerial Decree HKI.02.OT.03.01-02/2016 on the Ratification of Royalty Tariff for Commercial Users of Work and/or Related Rights Music and Song Products (Kepmenkumham 2016). Meanwhile, Government Regulation No. 56/2021 (PP 56/2021) and Law and Human Rights Ministerial Regulation No. 9/2022 (Permenkumham 2022) provide the mechanism to collect and distribute royalty payments through collective management organizations (LMK) and a national collective management organization (LMKN). But in practice, both institutions only have the authorities to manage performance and making available royalties. This means the above regulations can only manage these two royalty components. Royalty management under LMK and LMKN as mandated the 2014 Copyright Act even forced musicians to join an LMK to get their performance and making available royalties. There will be a maximum of a 20% cut on these royalties, whether or not the musicians that accrued them decided to join an LMK (so they can claim them) or not (in which case the 20% cut still flow to the LMK’s coffers). .

The issuance of many derivative copyright and music royalty management regulations has not resulted in more protection for artists and performers. Policies that refuse to side with musicians in fact push their position further to the margins.

2. Music industry that exploits its musicians

The shift in music commodification patterns — from owning physical or digital copies of music to making available access to those copies (streaming) — produced new players in the music industry, such as aggregators, streaming platforms, intellectual property-based record labels, 360 record labels, and music publishers. The relation between musicians and these new players became even more complex thanks to various conflicts of interest. Since these new relations have not been accommodated by Indonesia's copyright policy, their management has been left to the mercy of market forces. There is so far no clear formulation on the minimum royalty for musicians. The performance royalty rate is determined by the agreement made between the DSP, LMK, and the publisher. Meanwhile, mechanical royalty is determined in private agreements between musicians and a host of middlemen. Aside from that, record labels have also expanded their monetization strategy, now not only limited to profiteering from song copyrights but also from musician personas.

3. Royalty management not yet transparent

Royalty management has become a long and complex homework for Indonesia. Even though Permenkumham 2022 offered many improvements, the fact that LMKs or the LMKN are under no obligation to encourage musicians to join LMK as members, and since they will not be held responsible if the SILM is not completed before the deadline, only worsens musicians' distrust of both institutions. The problem became even more complex as debates continued over how far the government must meddle and to what extent LMKs are able to function independently. Many are of the opinion that the LMKN is being less than transparent about its operations and demand the revocation of PP 56. While users question LMKs' lack of transparency, the new LMKN commissioner must smooth out the transfer of royalty collection power from PT LAS to LMK. For the time being, the collection of performance royalty and making available royalty for digital music are managed by WAMI (on behalf of artists) and by SELMI (for related copyright holders). In the midst of the ensuing royalty politics dispute, the collection mechanism devised by the DSP in collaboration with WAMI-SELMI is still regarded as the most effective. But in the long term, the government may lose its intervention power if the mechanism continues to produce conflicts of interest. SILM has to be the ultimate goal in efforts to find a solution for the lack of transparency problem in royalty management.

4. Musicians' low bargaining power

Amidst the saturation of data that illustrate the music industry's optimism and the paucity of data supporting artists' and performers' objections, musicians lose much of the ammunition to articulate their concerns. They have to navigate themselves and their musical careers in a marketplace that only gives them bad and even worse options. The tendency for policies to never take their sides has pushed them further into the margins. Digitalization only perpetuates the power imbalance between users and owners of technology, between musicians and DSPs, record labels, and middlemen.

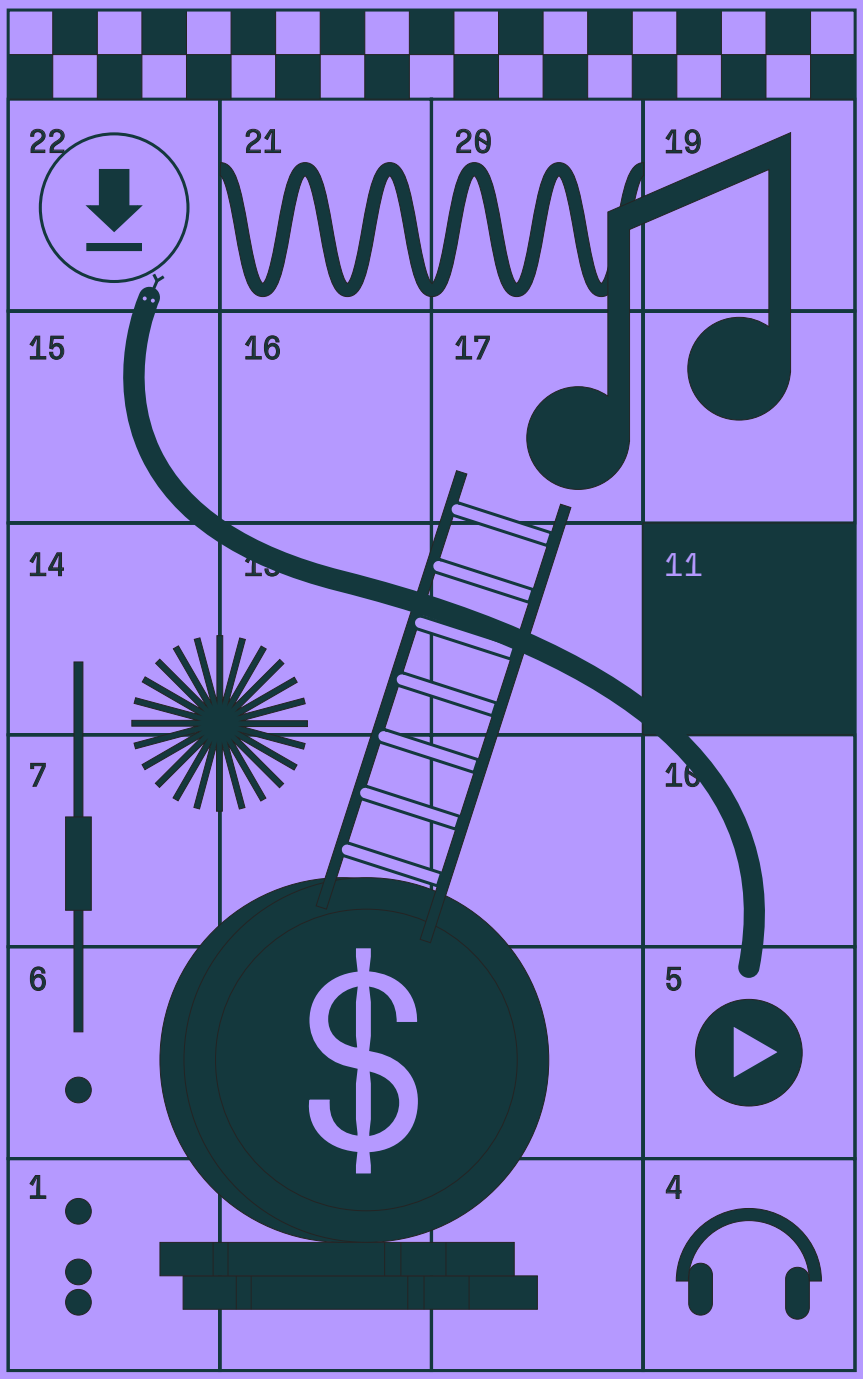
Despite the uncertainties and a policy climate injurious to musicians, music industry players and activists have kept busy strategizing. There's still a chance, albeit a small one, for musicians to get involved in policy development. More musicians seem to have mobilized themselves, if one looks at the increasing number of music associations, be it professional organizations or unions. Exchange of copyright law knowledge is being facilitated not only by associations (e.g., AMPLI, FESMI, Indonesian Netaudio Forum) but also by local business initiatives (e.g. aggregator Netrilis and the Store Front digital music store). Local music business players have started to offer alternative profit-sharing models that promise to be more fair to musicians. Unfortunately, these initiatives still operate outside the existing national copyright policy and with a very limited scope.

The current situation does not seem to promise much significant changes in the welfare of musicians in the long term — this will continue as long as state policies fail to see the digital space for what it is: a new arena for a power struggle that ignores the principles of artistic freedom and digital rights.

Recommendations

According to the findings from the situation analysis conducted by Koalisi Seni, there are a few things that could and should be done to improve the condition for musicians in the digital music space.

Generally, more synergy between stakeholders is sorely needed. Policy development also has to be more transparent and involve more musicians from different walks of life. Specifically, the steps that should be taken by stakeholders are as follows: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A. The government

1. Revise the Copyright Act of 2014

   Revisions must be taken to accommodate digital technology developments in the creation, distribution, and consumption of music. Digitalization not only changes music storage format but also the relations between different players in the music ecosystem. Following the incentivization principle, the structure of a Copyright Act based on right use that holds dear the basic principles of author's rights should include the following:

   a. Moral rights, which include the integrity/unity and reputation of the artistic creation:
      i. Adaptation right
      ii. Translation right
      iii. Arrangement right
   b. Economic rights, which include duplication and commercial distribution:
      i. Duplication right
         1. Reproduction right
         2. Synchronization right
      ii. Right to perform
         1. Performance right
         2. Making available right

   The above steps will allow the Copyright Act to be more flexible in accommodating new economic activities borne out of technological development.

   Aside from that, the Copyright Act must provide separate, detailed categorizations for different works of art since music has different

characteristics compared to books, films, and other art formats.

To ensure unobstructed dissemination, the Copyright Act must define clearly what is meant by “reasonable interests” in the exemptions for the commercial use of a song according to the principle of fair use.

Economic rights must be protected, but commercial use of work has to be an option for the right holders. For this reason, Article 27 of the Copyright Act that categorizes each phonogram that has been published in the digital space automatically as a commercial product must be deleted.

DSP has to be included in the list of public service providers in the revised regulation derived from the Copyright Act.

Just like commercial use of any work, LMK membership status for musicians and performers should not be compulsory. LMK can only collect royalties on behalf of musicians and performers who are registered as members.

2. Since they have an active role in keeping the general list of Copyright License agreements as mandated by the Copyright Act of 2014, the government must apply basic standards that are pro-musicians in its definitions of “the normal existing practices” and “meeting the principle of fairness” according to Article 80 point 5 of the Copyright Act of 2014. The drafting of the basic standards must involve musician associations, the industry, and LMKs. The basic standards will assist the government to provide more objective evaluations and if necessary to reject licensing agreements that may erase and/or take over all the rights of the artist over their creation(s). The license registration must also be promoted widely among the stakeholders.

3. As an alternative to foreign DSPs, the government should come up with a local DSP development strategy that involves incentivization, scholarship, and training to encourage innovations of digital music listening practices that offer more advantages for musicians.

4. More musicians need to be involved in the development of copyright policies. The plan to form a Licensing RPP could be used to manage monitoring of DSP and to negotiate fairer royalty deals for musicians.

B. DSPs, record labels, aggregators, and publishers:

1. Must guarantee fairer royalties and more transparent collection method for local musicians.

2. Aggregators and foreign DSPs must form a legal Indonesian subsidiary with the authority to make independent decisions that prioritize capacity development for local musicians. The subsidiary will also allow for dispute resolutions to be conducted according to Indonesian laws.

3. Local aggregators should become the preferred partners of foreign DSPs by using their own proprietary technology.

4. DSP need to help increase consumption of digital music produced by local musicians, in particular new faces, through:
   a. Curated algorithm skewed in favor of local musicians
   b. More pitching opportunities for local musicians

C. National Collective Management Organization:

1. Must prioritize completion of SILM.

2. Along with LMKs must prioritize transparency in charging, collecting, and distributing royalties. The LMKN must announce openly to the public the amount of royalties distributed by artists' LMKs and related right holders' LMKs in detail, not just the overall sum of the royalties.

3. Along with LMKs must promote widely the main requirement to claim royalties to musicians and performers: i.e., to join an LMK as a member.

D. Musicians:

1. Must form and strengthen unions.

2. Unions need to improve their advocacy capacities in:
   a. revising copyright policies, be it the Copyright Act or its derivative regulations
   b. advocating for members whose economic rights have been violated

3. Unions need to improve members' capacity by educating them about the moral and economic rights of musicians.

4. Unions need to create pro-musicians contract and licensing guidelines.

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Indonesia is said to be a potential market for the digital music industry. However, is this market favorable to its songwriters and performers?

As a broad initial study of the state of digital music copyright policy, this book combines literature review, interviews, and group discussions first to rethink digital music copyright in terms of digital rights, then identify key actors in the digital music industry, and finally analyze digital copyright-related policies formed in the arena of "quiet politics". The policy analysis explores who and what circumstances influenced the formation of copyright policy throughout history, the extent to which music digitization is understood and identified in the policy, and the extent to which the rights and interests of musicians are protected.