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# *Legal Certainty of Music Royalties in Commercial Public Spaces: Constitutional Court Decision No. 28/PUU-XXIII/2025*

# Kepastian Hukum Royalti Musik Komersial Ruang Publik Pasca Putusan Konstitusi Nomor 28/PUU-XXIII/2025

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## Abstract

*Ambiguous stipulations in the Indonesian Copyright Law regarding royalty liabilities have historically disadvantaged performing artists through double claiming. This normative legal research examines Constitutional Court Decision 28/PUU-XXIII/2025 utilizing statutory, conceptual, and case approaches to evaluate its profound impact on music royalty governance. The analysis demonstrates that the ruling decisively resolves normative uncertainty by attributing strict royalty liability directly to commercial event organizers, simultaneously mandating objective statutory tariff standardization. Nevertheless, the discussion reveals persistent structural impediments concerning post-ruling implementation within the creative economy. These cPagelenges encompass low legal compliance among commercial users due to inadequate socialization, jurisdictional dualism between national and sectoral collective management organizations, and profound transparency deficits within the digital music information system. Consequently, while this landmark judicial intervention successfully restores normative legal certainty and protects creators' fundamental economic rights, realizing substantive justice necessitates comprehensive administrative harmonization, advanced digital transparency, and sustained legal education to foster optimal industry compliance.*

## Abstrak

Ketentuan yang ambigu di dalam Undang-Undang Hak Cipta Indonesia mengenai kewajiban royalti secara historis telah merugikan pelaku pertunjukan melalui penagihan ganda. Penelitian hukum normatif ini menguji Putusan Mahkamah Konstitusi 28/PUU-XXIII/2025 melalui pendekatan perundang-undangan, konseptual, dan kasus guna mengevaluasi dampaknya terhadap tata kelola royalti musik. Analisis menunjukkan bahwa putusan tersebut tegas menyelesaikan ketidakpastian normatif dengan membebankan tanggung jawab mutlak royalti langsung kepada penyelenggara acara komersial, sekaligus mengamanatkan standardisasi tarif objektif. Namun, pembahasan mengungkap hambatan struktural persisten terkait implementasi pascaputusan dalam ekosistem ekonomi kreatif. Tantangan tersebut mencakup rendahnya kepatuhan hukum pengguna komersial akibat minimnya sosialisasi, dualisme yurisdiksi antara lembaga manajemen kolektif nasional maupun sektoral, serta defisit transparansi mendalam pada sistem informasi musik digital. Oleh karenanya, meskipun intervensi yudisial monumental ini sukses memulihkan kepastian hukum normatif dan melindungi hak ekonomi fundamental pencipta, perwujudan keadilan substantif mutlak membutuhkan harmonisasi administratif komprehensif, transparansi digital terpadu, serta pendidikan hukum berkelanjutan demi mendorong kepatuhan industri secara maksimal.

# A. INTRODUCTION

## 1. Background

Copyrighted works in the form of songs and/or music are manifestations of intellectual property possessing economic significance within the national creative industry ecosystem. Normatively, these works constitute objects of legal protection as stipulated in Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law).[1] This regulation affirms the position of the Creator and/or Copyright Holder as the legal subject possessing exclusive rights to the exploitation of their works. The *ratio legis* of this legal protection is not merely a form of recognition for human creativity, but also serves as a juridical foundation to stimulate the growth of the creative economy on both national and global escalations. Predicated on this conception, the royalty management system is institutionalized as a legal instrument to provide certainty and guarantees that Creators and Copyright Holders acquire equitable (proportional) economic rights for every form of commercialization of their creations in the public sphere.

At the normative level, the obligation to remit royalties for the commercial utilization of musical works has been prescriptively constructed within the Copyright Law, *in casu* Article 23 paragraph (5) *juncto* Article 87 paragraph (1). The *a quo* provision is subsequently concretized through an implementing instrument, namely Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties (hereinafter referred to as GR 56/2021).[2] This regulation mandates that every legal subject exploiting musical creations for commercial purposes bears an imperative obligation to fulfill the payment of economic rights in the form of royalties to the Creator, Copyright Holder, and/or owner of Related Rights through a licensing mechanism or via a Collective Management Organization (CMO). The existence of GR 56/2021 yields significant juridical implications in fortifying copyright protection, although at the practical level, it still necessitates a more comprehensive elaboration of

[1] Afifah Husnun et al., "Mekanisme Pengelolaan Hak Royalti Musik Oleh LMK & LMKN Ditinjau Dari Peraturan Pemerintah No. 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik," *Padjadjaran Law Review* 9, no. 1 (2021): 1–12, https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/501.

[2] Gabriel Indarsen, "Konsekuensi Hadirnya Peraturan Pemerintah Nomor 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/ Atau Musik Terhadap Pemungutan Royalti Lagu Dan/ Atau Musik," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 2 (June 22, 2023): 99–112, https://doi.org/10.56128/jkih.v3i2.44.

technical regulations to reaffirm the mechanisms and objects of royalty imposition. The synchronization between the Law as the legal umbrella and the Government Regulation as the technical framework represents state intervention in realizing legal certainty for all stakeholders in the music industry.[3]

Nevertheless, at the practical level (*das sein*), the implementation of these norms paradoxically engenders legal uncertainty (*rechtsonzekerheid*). This problematic situation is rooted in the presence of vague norms (*vage normen*) within the formulation of multi-interpretable articles. Specifically, the phrase "Every Person" in Article 23 paragraph (5) and the phrase "reasonable remuneration" in Article 87 paragraph (1) of the Copyright Law have triggered dogmatic debates regarding the determination of the legal subject who precisely bears the obligation to remit royalties, as well as the parameters for establishing fair and proportional tariff rates. This juridical ambiguity is not merely a technical issue of legal interpretation (hermeneutics), but rather possesses the potential to degrade substantive justice. Such a condition places performing artists in a vulnerable position against the practice of double claiming royalties from various entities claiming legitimacy.[4] From a regulatory standpoint, the remittance of royalties to song copyright holders is well-established; however, the issue of a deficient legal culture persists, necessitating improvements in inter-institutional coordination, the reinforcement of a transparent royalty distribution system, and continuous legal education.[5]

This condition of legal uncertainty (*rechtsonzekerheid*) empirically manifests in various commercial disputes involving legal subjects within the national music industry ecosystem. One precedent that seized public attention is the intellectual property dispute between Ari Bias, acting as the Creator of the song "Bilang Saja", against Agnez Mo at the Commercial Court of the Central Jakarta District Court. Although the court of first instance initially granted the *petitum* of the lawsuit and penalized the Defendant to pay material

[3] Edward James Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu Dan/Atau Musik," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (November 2, 2020): 553–78, https://doi.org/10.30641/kebijakan.2020.V14.553-578.

[4] Mohamad Thaufiq Rachman, "Pengelolaan Royalti Dari Pencipta Lagu Yang Tidak Terdaftar Di Lembaga Manajemen Kolektif Oleh Lembaga Manajemen Kolektif Nasional," *"Dharmasisya" Jurnal Program Magister Hukum FHUI* 2, no. 2 (2022): 995–1010, https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/35/.

[5] Gideon M Masola, Rikser Alsandro Parera, and Malino Gemma Galgani, "Pembayaran Royalti Kepada Pemegang Hak Cipta Lagu Dalam Budaya Hukum Masyarakat Di Era Digital," *Locus Journal of Academic Literature Review* 4, no. 3 (June 2, 2025): 160–67, https://jurnal.locusmedia.id/index.php/jalr/article/view/474.

damages amounting to Rp1.5 billion, the verdict was ultimately annulled by the Supreme Court at the cassation level through Decision Number 825 K/PDT.SUS-HKI/2025, which exonerated Agnez Mo from the aforementioned financial penalty. This dynamic became increasingly complex after Ari Bias's subsequent lawsuit amounting to Rp4.9 billion against the event organizer (PT Aneka Bintang Gading/HW Group) was also declared inadmissible (*Niet Ontvankelijk Verklaard*) by the Central Jakarta Commercial Court in June 2026 due to the failure to join indispensable parties.[6]

The *a quo* decision disrupted the sense of security among performing artists, considering the judges' *ratio decidendi* affirmed that a singer could be burdened with legal liability for a normative object that dogmatically still experiences interpretive ambiguity. This apprehension regarding the threat of constitutional detriment subsequently served as the legal standing for 29 prominent Indonesian musicians—including Armand Maulana, Ariel (NOAH), Vina Panduwinata, Titi DJ, Bunga Citra Lestari, Rossa, and Raisa Andriana—acting as Petitioners to file a petition for judicial review concerning the constitutionality of the norms within the Copyright Law to the Constitutional Court.[7]

This constitutional litigation effort represents a rationalization of the absence of legal certainty as well as an expectation for the optimization of the protection of the Creators' exclusive rights. The filing of this judicial review petition constitutes a strategic juridical maneuver to restore the clarity of royalty imposition norms and to eliminate the potential for more massive constitutional damages. Furthermore, this measure serves as a manifestation of collective advocacy in restructuring the creative industry ecosystem predicated on the principle of proportional justice for all stakeholders in Indonesia.

Responding to the complexity of these juridical and empirical dynamics, the Constitutional Court rendered Decision Number 28/PUU-XXIII/2025 dated December 17, 2025, which holds a fundamental role as a landmark decision in resolving the problem of legal uncertainty. Through its injunction, the Court declared the phrase "Every Person" in Article 23 paragraph (5) of the Copyright Law conditionally unconstitutional against the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), and devoid of binding legal force insofar as it is not interpreted as "including commercial performance

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[6] Gio Giovanni, "Ari Bias Soal Gugatannya Tidak Dapat Diterima: Saya Akan Perjuangkan," Kumparan, 2026, https://kumparan.com/kumparanhits/ari-bias-soal-gugatannya-tidak-dapat-diterima-saya-akan-perjuangkan-27fbXKkKnhP/full.
[7] Forum Keadilan, "MK Tegaskan Pembayaran Royalti Hak Cipta Dibebankan Ke Penyelenggara Pertunjukan," Forum Keadilan, 2025, MK Tegaskan Pembayaran Royalti Hak Cipta Dibebankan ke Penyelenggara Pertunjukan%0A.

organizers." *Mutatis mutandis*, the Court also provided a constitutional interpretation that the phrase "reasonable remuneration" in Article 87 paragraph (1) must be interpreted as royalties determined based on the mechanisms and tariffs regulated in statutory provisions. The *a quo* decision holds profound constitutional significance, as it does not merely provide a final and binding interpretation of the *vage normen* (vague norms), but also restores the fundamental tenets of copyright law to its foundational rationality: protecting the economic rights of the Creator while guaranteeing the sustainability of an inclusive and equitable creative industry ecosystem.[8]

The juridical implications of this Constitutional Court Decision are estimated to be capable of accelerating essential transformations within the copyright protection regime to establish equitable legal certainty. This decision simultaneously serves as a catalyst for legislators and implementing institutions to conduct subsequent regulatory reforms regarding royalty governance, to ensure that Creators receive equitable remuneration. Thus, the affirmation of the constitutional interpretation by the Court represents the firm commitment of the judiciary in protecting the exclusive rights of the Creator, integrated with the vision to construct a proportional and transparent sustainability of the music performance industry.

The academic discourse concerning music royalty regulations has historically been dichotomized into two principal streams of thought. The initial cluster of research predominantly examined the institutional framework of Collective Management Organizations (CMOs) through a normative perspective.[9,10] Conversely, the contemporary cluster of literature places greater emphasis on a sociological-empirical review that highlights the vulnerability of society's legal culture in the contemporary digital era.[11,12] Nevertheless, a significant research gap remains, namely the paucity of comprehensive examination regarding the shifting of royalty payment obligations from performing artists to commercial event organizers subsequent to the enactment of the 2025

[8] "Putusan Mahkamah Konstitusi Nomor 28/PUU-XXIII/2025 Tentang Pengujian Materiil Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (2025).
[9] Husnun et al., "Mekanisme Pengelolaan Hak Royalti Musik Oleh LMK & LMKN Ditinjau Dari Peraturan Pemerintah No. 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik."
[10] Sinaga, "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu Dan/Atau Musik."
[11] Rachman, "Pengelolaan Royalti Dari Pencipta Lagu Yang Tidak Terdaftar Di Lembaga Manajemen Kolektif Oleh Lembaga Manajemen Kolektif Nasional."
[12] Masola, Parera, and Galgani, "Pembayaran Royalti Kepada Pemegang Hak Cipta Lagu Dalam Budaya Hukum Masyarakat Di Era Digital."

Constitutional Court Decision.

As a point of distinction from preceding studies that predominantly concentrated on CMO governance and general legal culture, this research offers methodological and conceptual novelty. This research deconstructs the constitutional interpretation of the phrase "Every Person" and recalibrates the parameters of legal liability for commercial performance organizers with reference to Constitutional Court Decision Number 28/PUU-XXIII/2025. Employing a normative legal research method (juridical-normative) integrated with a critical analysis of copyright law doctrines and a case approach, this study aims to identify the roots of legal uncertainty, its operational implications for economic entities in the music industry, and the steps taken by the Constitutional Court in restoring legal certainty while simultaneously protecting the constitutional rights of musicians within the digital creative economy ecosystem.

This scientific article constructs the argument that the decision rendered by the Constitutional Court is not merely of administrative rectification value, but rather constitutes a paradigmatic deconstruction of the copyright infringement doctrine within the national legal system. Imperatively, this juridical conclusion emancipates performing artists from the threat of double claiming royalty obligations, and concurrently attributes strict liability to commercial event organizers as the legal subjects who directly reap economic benefits.

## 2. Research Questions

a. How did the construction of legal uncertainty and normative ambiguity in music royalty regulations disproportionately burden performing artists prior to Constitutional Court Decision Number 28/PUU-XXIII/2025?

b. How does Constitutional Court Decision Number 28/PUU-XXIII/2025 establish legal certainty concerning music royalty remittances, and what are the implementational problematics post-adjudication?

## 3. Research Methods

This research constitutes a normative legal study (juridical-doctrinal) intended to systematically and comprehensively examine the construction of legal norms. The analytical tool utilized herein relies upon three primary approaches, namely: first, the statute approach to examine the hierarchy and synchronization of relevant regulations; second, the conceptual approach to deconstruct the legal concepts and principles underlying royalty regulations; and third, the case approach specifically focused upon

Constitutional Court Decision Number 28/PUU-XXIII/2025 as the ratio decidendi and central jurisprudential reference. The integration of these three approaches is operationalized to construct a holistic and prescriptive understanding of researched legal problematics.[13]

Data sources within this research are classified into primary and secondary legal materials. Primary legal materials are authoritative, encompassing Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law), Government Regulation Number 56 of 2021, Minister of Communication and Informatics Regulation Number 27 of 2025, and Constitutional Court Decision Number 28/PUU-XXIII/2025 acting as the grand norm in this analysis. Secondary legal materials are extracted from academic literature comprising scholarly books (doctrines), reputable scientific journals, and other relevant publications that provide explanations regarding primary legal materials. All these legal materials are subsequently analyzed via qualitative-prescriptive methodology, predicated upon systematic interpretation and argumentation grounded within legal certainty theory. Through a rigorous framework of syllogisms and legal logic, this analytical procedure culminates in drawing valid dogmatic conclusions that are rationally and academically accountable.[14]

## B. DISCUSSION

### 1. The Interpretation of Commercial Use of Music in Public Spaces Prior to the Constitutional Court Decision

The juridical discourse concerning the interpretation of "the commercial use of music in public spaces" prior to the rendering of the Constitutional Court (MK) Decision represents a crucial juncture that confirms the absence of legal certainty (*rechtsonzekerheid*) in the administration of Law Number 28 of 2014 concerning Copyright. The absence of a precise operational definition within the said statute has stimulated a divergence of interpretation among law enforcement apparatuses, business actors, and Collective Management Organizations (CMOs). This dogmatic complexity is escalated by the existence of *vage normen* (vague norms) in essential phrases such as "every person," "reasonable remuneration," and "public space," which are unaccompanied by limitative juridical taxonomic boundaries within the *a quo* law.[15]

[13] Peter Mahmud Marzuki, *Penelitian Hukum*, 2nd ed. (Jakarta: Kencana, 2024). Page, 133.
[14] Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021). Page, 15.
[15] "Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta, Lembaran Negara Republik Indonesia Tahun 2014 Nomor 266, Tambahan Lembaran Negara Republik Indonesia Nomor 5599" (2014).

Such normative ambiguity is not merely of theoretical dimension, but rather engenders empirical implications that disrupt the national music industry ecosystem. Business entities utilizing music to bolster commercial value—such as cafes, restaurants, clinics, fitness centers (gyms), hospitality services, and digital service platforms—confront ambiguity regarding licensing obligations, alongside an absence of objective parameters in assessing royalty tariff thresholds categorized as "reasonable".[16] On the opposing pole, Creators and Copyright Holders experience structural impediments in executing their economic rights due to the absence of unified legal guidelines. The essence of this regulatory dysfunction is reflected through various precedents of civil disputes in the Commercial Court, which imperatively demand a reconceptualization of fundamental principles in music copyright governance.[17]

To dissect the anatomy of the problem concerning the interpretation of "commercial use in public spaces" prior to the constitutional intervention from the MK, the analytical blade must be directed toward three fundamental elements. First, an examination of the cumulative elements that serve as the line of demarcation (distinction) between commercial and non-commercial use. Second, a holistic scrutiny of the implementing regulatory architecture, particularly Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties. Third, the mapping of *in concreto* disputes in judicial practice to capture how the vacuum and ambiguity of these norms manifest and are resolved in factual cases.

### a. *Publicness* and Commerciality in the Use of Music

The commercial use of musical creations in public spaces is constructed through the presence of two mutually integrated cumulative elements: the element of public nature (*publicness* or openness of access) and the element of commerciality (economic orientation).[18] Both elements are imperative and must be fulfilled simultaneously to classify whether a form of copyright utilization falls within the category necessitating a

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[16] Putri Ayu Permatasari, Didiek Wahju Indarta, and Irma Mangar, "Tanggung Jawab Hukum Pelaku Usaha Dalam Pembayaran Royalti Lagu Berdasarkan Permenkumham Nomor 27 Tahun 2025 Tentang Peraturan Pelaksanaan Peraturan Pemerintah Nomor 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan Musik," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 1 (January 16, 2026): 5189–5202, https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/4004.
[17] Sri Ajeng Sukmawati, Zamroni Abdussamad, and Mohamad Hidayat Muhtar, "Hak Cipta Musik Dan Keadilan Bagi Pencipta," *Journal Evidence Of Law* 4, no. 3 (December 30, 2025): 1578–90, https://jurnal.erapublikasi.id/index.php/JEL/article/view/1843.
[18] Mark A. Lemley and Julie E. Cohen, "Patent Scope and Innovation in the Software Industry," *SSRN Electronic Journal*, 2000, https://doi.org/10.2139/ssrn.209668.

permit (license) and the remittance of royalties to the Copyright Holder.

The *publicness* element emphasizes the parameter that a musical work is disseminated or performed (*performing rights*) in an area accessible to the general public, and not confined to a closed communal scope. The terminology of "public space" in this context pierces the boundaries of conventional open physical spaces (such as parks, plazas, or streets), and instead expands to encompass private spaces utilized en masse for economic activities, such as cafes, restaurants, shopping centers, hospitality venues, and transportation infrastructure. This conception aligns with global copyright doctrine and international jurisprudence, wherein public performance is defined as any form of transmission or broadcasting of a creation to the public, whether through electronic devices, digital mediums, or acoustic amplification.[19]

On the other hand, the commerciality element indicates the presence of an economic intention or motivation (*economic benefit*) behind the exploitation of the music. The concept of commercialization within the copyright regime is not restrictively articulated as mere direct monetization (*direct profit*), but rather extends to any form of utilization designed to extract indirect economic advantage. For instance, the playing of music in a cafe or restaurant functions as an instrument for creating ambiance (*atmospheric value*) that psychologically influences consumer comfort, thereby correlating with customer retention and equivalent to an escalation in business revenue. The identical legal logic applies to operational service sectors such as health clinics and fitness centers (gyms), where the playing of music is integrated as a service enhancement to guarantee consumer loyalty.[20]

The simultaneous fulfillment of these two cumulative elements serves as a line of demarcation separating commercial use from pure domestic (household) exploitation of creations, as well as use for socio-cultural purposes devoid of economic motives (*non-profit oriented*). Despite the highly fundamental significance of this separation, in reality, the Copyright Law does not reconstruct an authentic and limitative definition regarding the parameters of "commercial use," nor does it provide rigid variables to distinguish it from non-commercial utilization. The absence of this juridical taxonomy ultimately

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[19] World Intellectual Property Organization, *Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms* (Geneva: WIPO Publications, 2004). Page, 10-12.

[20] Tifani Haura Zahra and Kezia Regina Widyaningtyas, "Tinjauan Hak Cipta Terhadap Kewajiban Pembayaran Royalti Pemutaran Lagu Dan/Atau Musik Di Sektor Usaha Layanan Publik," *Padjadjaran Law Review* 9, no. 1 (2021), https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/487.

transforms into the embryo of interpretative ambiguity and triggers protracted discourse in its law enforcement practices.

**b. Regulatory Framework: Government Regulation Number 56 of 2021 and Commercial Public Services**

State efforts to present legal certainty regarding the commercial exploitation of music in public spaces are manifested through the promulgation of Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties (hereinafter referred to as GR 56/2021). This regulation delegates direct juridical obligations to business actors and public space managers to acquire licenses and fulfill royalty payment obligations to the Creator, Copyright Holder, and/or owners of Related Rights.[21] The presence of the *a quo* GR constitutes an implementing instrument of the normative mandate of the Copyright Law, which essentially affirms that every legal subject exploiting copyrighted works for commercial purposes is obligated to provide reasonable remuneration (royalties), wherein its managerial administration mechanism is further regulated by the state.

Taxonomically, Article 3 of GR 56/2021 has classified the forms of public services that are commercial in nature regarding the utilization of musical creations. Broadly, this classification encompasses: (1) music performances (live or recorded) in commercial areas such as cafes, restaurants, bars, nightclubs, and entertainment centers; (2) the playing of background music in shopping centers, retail stores, offices, healthcare facilities, and fitness centers; (3) dissemination through radio and television broadcasting institutions; (4) utilization in telecommunication services and digital platforms; and (5) use in massive-scale events such as music concerts, festivals, exhibitions, and bazaars.[22]

This regulation delegates the establishment of a differential tariff structure based on service classification, spatial dimension (area size), and consumer volume. As an illustration, royalty obligations in the restaurant and hospitality sectors are calculated based on the number of seats or a percentage of the room rate, whereas for the retail sector, it refers to the square meters of the business floor space. Although GR 56/2021 has constructed a more concrete categorization, at the implementation level, it still leaves

[21] "Peraturan Pemerintah Nomor 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik, Lembaran Negara Republik Indonesia Tahun 2021 Nomor 116, Tambahan Lembaran Negara Republik Indonesia Nomor 6639" (2021).
[22] Husnun et al., "Mekanisme Pengelolaan Hak Royalti Musik Oleh LMK & LMKN Ditinjau Dari Peraturan Pemerintah No. 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik."

a margin of doubt (*grey area*). This problematic prominently surfaces particularly in the interpretation of the "reasonable remuneration" parameter and the flexibility of tariff adaptation toward new variant business models (public services) that have not been explicitly accommodated within the nomenclature of the *a quo* regulation.[23]

Furthermore, GR 56/2021 still leaves structural loopholes that ignite dogmatic discourse in the field. First, regarding the effectiveness of the centralization of collection authority. Although the regulation has mandated the National Collective Management Organization (LMKN) as the state representation (*single window*) possessing absolute authority to collect royalties for subsequent distribution to CMOs, field practices are frequently marred by resistance and overlapping billings by parties claiming to act on behalf of Creators' individual licenses. Second, pertaining to the disharmony of law enforcement within the digital ecosystem. The ecosystem of Digital Service Providers (DSPs) such as Spotify, Apple Music, and YouTube Music introduces a streaming business model that disrupts the conventional music consumption paradigm. Even though these platforms *de facto* constitute massive commercialization spaces subject to the licensing regime, their collection and law enforcement mechanisms frequently collide with a regulatory architecture that historically was predominantly constructed to encompass physical public performances.

### c. The Ambiguity of the Phrase "Every Person" in Article 23 paragraph (5) of the 2014 Copyright Law

Textually, Article 23 paragraph (5) of Law Number 28 of 2014 concerning Copyright imperatively postulates that, "Every Person exercising economic rights as referred to in paragraph (2) letter a, letter b, letter c, letter d, letter f, and letter g is obligated to obtain permission from the Creator or Copyright Holder." The use of the legal subject "Every Person" (*hij die* / everyone) within this statute engenders interpretative ambiguity that disrupts legal certainty, considering the spectrum of commercial music activities involves a highly complex chain of economic subjects.[24]

Dogmatically, the obscurity of the phrase "Every Person" ignites fierce debate concerning the attribution of legal liability. The primary interpretation positions this

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[23] Ranti Fauza Mayana et al., "Intellectual Property Development & Komersialisasi Non-Fungible Token (NFT): Peluang, Tantangan Dan Problematika Hukum Dalam Praktik," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 5, no. 2 (June 30, 2022): 202–20, https://doi.org/10.23920/acta.v5i2.812.
[24] Graeme B. Dinwoodie and Rochelle C. Dreyfuss, *A Neofederalist Vision of TRIPS: The Resilience of the International Intellectual Property Regime* (Oxford University Press, 2012), Page, 100. https://doi.org/10.1093/acprof:oso/9780195304619.001.0001.

phrase rigidly (textually), wherein every individual who physically executes the creation—such as musicians or singers (*performing artists*) on stage—is deemed the subject obligated to secure a permit and pay royalties. Conversely, the secondary interpretation (a systematic-teleological approach) targets business entities or commercial performance organizers (event organizers, promoters, or venue owners) as the "Every Person" party fundamentally facilitating and reaping economic rent from the exploitation of the said work. The absence of a demarcation of liability between these two subjects creates a vulnerability to misdirected royalty billing, and paradoxically risks criminalizing performing artists rather than their commercial executors.

The ambiguity of the subject "Every Person" also permeates the discourse of the digital ecosystem. In the context of Digital Service Provider (DSP) platforms such as Spotify or Apple Music, ambiguity arises regarding the boundary of the "user" classification. The juridical question that emerges is: do DSP platforms act solely as transmission mediums (merely as facilitators/safe harbors), or do they constitute the "Every Person" subjects independently executing economic rights? This dynamic triggers disorientation within the license enforcement regime, particularly when the legal architecture is not yet fully capable of accommodating the disruption of the streaming business model into the traditional nomenclature of statutory legislation.

Furthermore, this normative ambiguity is frequently capitalized upon by users of commercial public spaces as a legal shield. At the practical level, numerous business entities (such as cafes or restaurants) allege they are exempt from public space license payment obligations (*public performance rights*) on the grounds that they play music via premium subscription accounts. In fact, doctrinally, the license attached to such streaming platforms possesses the characteristic of an End-User License Agreement (EULA) which is limitative for personal-private consumption (*private use*), and strictly prohibits secondary commercial exploitation. This collision of interpretation continuously becomes a residual conflict among business actors, Collective Management Organizations, and Creators, which ultimately impels the presence of a constitutional interpretative intervention from the Constitutional Court.

**d. The Ambiguity of the Phrase "Reasonable Remuneration" in Article 87 paragraph (1) of the 2014 Copyright Law**

Article 87 paragraph (1) of the Copyright Law delegates attribution authority to the government to construct tariffs or "reasonable remuneration" (*equitable remuneration*) for the commercial utilization of creations. However, the terminology of "reasonable" is inherently a concept of justice heavily laden with subjectivity and classified as *vage normen* (vague norms). The absence of a precise operational definition within the said statute engenders sharp epistemological collisions among stakeholders. From the Creator's perspective, the principle of reasonableness is constructed as optimal compensation guaranteeing the equivalence of economic incentives for their intellectual labor. Conversely, from the lens of commercial user entities, the ratio of reasonableness is measured based on thresholds that do not disrupt profitability margins and the operational load (*economic burden*) of their businesses.

Efforts to unify interpretation through the GR 56/2021 instrument—which dictates tariff stratification based on business categories and scales—in reality have not fully resolved the roots of ambiguity. The *a quo* regulation leaves room for dogmatic debate regarding tariff rigidity: whether the tariff structure stipulated by the government is limitative (an absolute imperative) as maximum/minimum tariffs, or merely serves as a baseline opening room for civil negotiation (Business-to-Business) based on service specifications and scales. The obscurity regarding the prescriptive nature of this tariff in practice degrades the effectiveness of collection, transmuting a supposedly static legal obligation into a transactional object of bargaining, and not infrequently culminating in the escalation of litigation disputes.

Furthermore, the determination of "reasonable remuneration" experiences complications when confronted with the absence of comprehensive benchmarking parameters. The global Intellectual Property Rights regime, as mandated within the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and WIPO treaties, indeed mandates royalty standards that are appropriate or equitable, yet surrenders the elasticity of their interpretation to domestic jurisdictions.[25] In the context of national law, the lack of composite calculation variables accommodating external factors—such as regional economic capability disparities, SME profitability fluctuations, and local industry standard propriety—renders the formulation of "reasonable remuneration" frequently perceived as a unilateral burden, rather than an instrument of proportional and equitable economic value distribution.

[25] Bayu Abdillah, "TRIP'S Agreement in Legal Protection of Intellectual Property Rights in Indonesia," *Rechtenstudent* 5, no. 2 (August 31, 2024): 142–53, https://doi.org/10.35719/rch.v5i2.306.

### e. The Impact of Legal Uncertainty: The Ari Bias - Agnez Mo Dispute and the Petition of 29 Musicians to the Constitutional Court

Legal uncertainty (*rechtsonzekerheid*) concerning the interpretation of commercial use in public spaces does not cease at the level of theoretical debate, but has empirically manifested into a protracted jurisprudential crisis. A paradigmatic case highlighting this regulatory dysfunction is the intellectual property dispute between Ari Bias (Songwriter) against Agnez Mo (Performing Artist) concerning the economic rights of an unauthorized commercial performance (*direct licensing*).

This dysfunction was initially reflected by mutually annulling verdicts; the Commercial Court at the Central Jakarta District Court (*judex facti*) through Decision No. 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst penalized Agnez Mo to pay damages.[26] However, the Supreme Court (*judex juris*) via Cassation Decision No. 825 K/PDT.SUS-HKI/2025 annulled the decision and exonerated the performing artist from personal liability.[27]

This crisis reached its climax when the songwriter's attempt to divert the target of the lawsuit towards the event organizer through Case No. 136/Pdt.Sus-HKI/Cipta/2025/PN Niaga Jkt.Pst paradoxically culminated in a *Niet Ontvankelijk Verklaard* (inadmissible) verdict on the grounds of failing to join indispensable parties (*plurium litis consortium*). This relay of legal impasse serves as irrefutable evidence that judicial institutions experience fundamental difficulties in interpreting the subject bearing absolute legal liability, as a consequence of normative contradictions (*vage normen*) between the restriction in Article 9 of Copyright Law No. 28/2014 and the collective mechanism in GR No. 56/2021.

The trepidation over this jurisprudential instability subsequently escalated an individual civil dispute into structural constitutional resistance. Recognizing the threat of massive constitutional damages, 29 prominent Indonesian musicians collectively utilized their legal standing to submit a petition for judicial review to the Constitutional Court.[28] The Petitioners challenged the constitutionality of Article 23 paragraph (5) and Article 87 paragraph (1) of the Copyright Law, postulating that the obscurity of the norms had

[26] "Pengadilan Niaga Pada Pengadilan Negeri Jakarta Pusat, Putusan Nomor 92/Pdt.Sus-HKI/Hak Cipta/2024/PN Niaga Jkt.Pst (Ari Bias v. Agnez Mo)" (2024).
[27] "Putusan Kasasi Nomor 825 K/PDT.SUS-HKI/2025 (Agnes Monica Muljoto Alias Agnez Mo v. Arie Sapta Hernawan Alias Ari Bias, Dkk" (2025).
[28] Forum Keadilan, "MK Tegaskan Pembayaran Royalti Hak Cipta Dibebankan Ke Penyelenggara Pertunjukan."

legitimized unlicensed commercialization practices that systematically reduced the economic rights of the Creator.[29] This litigation maneuver constitutes an implicit acknowledgment from industry actors that the general court mechanism has failed to provide consistent legal remedy, rendering constitutional interpretative intervention from the Constitutional Court a necessity (*ultimum remedium*).

This situation ultimately exposes an ironic regulatory paradox. On one side, the executive endeavors to inject legal certainty through tariff rigidity within GR 56/2021; yet on the other side, the regulatory product rests upon a *grand norm* (the Copyright Law) that is substantially fragile and multi-interpretable. The instant certainty offered by the Government Regulation becomes superficial because it fails to precisely attribute the exact party obligated to pay (performing artists vs. event organizers). Should this dogmatic uncertainty be allowed to protract, it not only injures justice for Creators but also threatens the investment climate and business certainty for commercial users, which in turn will destruct the growth potential of the national-scale digital and creative music industry ecosystem.

## 2. The Implications of Constitutional Court Decision Number 28/PUU-XXIII/2025 concerning the Judicial Review of Law Number 28 of 2014 concerning Copyright on the Legal Certainty of Music Royalties

Constitutional Court Decision Number 28/PUU-XXIII/2025 holds a fundamental position as a *landmark decision* within the national intellectual property law landscape, particularly in constructing legal certainty regarding the governance of music royalty payment obligations. This judicial product constitutes a manifestation of the judicial review of norms (*judicial review*) against several crucial articles in the Copyright Law alleged to contain normative ambiguity (*vage normen*) and trigger legal uncertainty (*rechtsonzekerheid*) at the implementative level. Philosophically, this decision represents a progressive maneuver by the judiciary in harmonizing public interests (commercial accessibility) with the absolute protection of the Creator's exclusive economic rights.[30]

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[29] Putusan Mahkamah Konstitusi Nomor 28/PUU-XXIII/2025 tentang Pengujian Materiil Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

[30] William Suryanto Suciadi, Peter Dave Ariffien Lihu, and Angeline Tania Gunawan, "Aspek Perlindungan Hukum Hak Royalti Atas Hak Cipta Lagu Di Industri Musik Digital Indonesia Serta Perkembangannya," *Anthology: Inside Intellectual Property Rights* 2, no. 1 (May 5, 2024): 402–26, https://ojs.uph.edu/index.php/Anthology/article/view/8522.

The sociological context underlying the inception of this *landmark decision* is inseparable from the accelerated growth of the Indonesian music industry, which has radically transformed due to the penetration of digital platforms and streaming technology. In the contemporary business ecosystem, the mechanism of extracting economic rights, particularly concerning the aspect of public performance of creations (*performing rights*), constitutes a crucial instrument determining the financial viability for Creators, Performing Artists, and Collective Management Organizations. Nevertheless, the effectiveness of the Copyright Law regime is factually disrupted by structural impediments rooted in dogmatic obscurity regarding the attribution of subjects bearing royalty obligations, the subjectivity of tariff "reasonableness" parameters, and the inadequate dispute resolution design within the derivative regulatory architecture.[31]

**Table 1. The Paradigm of Music Royalty Regulations**

| Key Indicators | Pre-Constitutional Court Decision 28/PUU-XXIII/2025 | Post-Constitutional Court Decision 28/PUU-XXIII/2025 | Legal Implications |
|---|---|---|---|
| **Royalty Payer Subject** | Remains ambiguous as the phrase "Every Person" can be interpreted broadly, including singers, venue managers, or other parties. | More strictly directed toward performance organizers or parties acquiring economic benefits from the use of music. | Provides certainty regarding the party obligated to pay royalties. |
| **Royalty Tariff Parameters** | The measure of "reasonable remuneration" remains subjective and potentially incites interpretative disparities. | Tariffs are directed toward measurements that are more objective, measurable, and statutory-based. | Promotes transparency and predictability in the establishment of royalties. |
| **Dispute Resolution Hierarchy** | Disputes possess the potential to directly enter the criminal realm or engender overlapping resolution mechanisms. | Mediation, administrative mechanisms, and civil avenues are prioritized prior to criminal avenues. | Positions criminal law as a last resort and fortifies proportional resolutions. |

The problematics of normative uncertainty within the music royalty governance regime intrinsically transform beyond technical-administrative discourse, escalating into a constitutional issue that directly intersects with the fundamental values of the national legal system, namely the guarantee of equitable legal certainty (*rechtzekerheid*) and the constitutional protection of the Creator's economic rights.[32] Referring to the postulate of

[31] Arbilriansyah Sahrul Ramadhan et al., "Keterbatasan Teritorial Perlindungan Hak Cipta Dan Tantangan Platform Streaming Global: Re-Evaluasi Sistem Royalti Indonesia," *Jurnal Hukum Cassowary* 2, no. 2 (December 30, 2025): 60–74, https://doi.org/10.65675/jhc.v2i2.185.
[32] Taufik H. Simatupang, "Hak Asasi Manusia Dan Perlindungan Kekayaan Intelektual Dalam Perspektif Negara Hukum," *Jurnal HAM* 12, no. 1 (April 22, 2021): 111–22, https://doi.org/10.30641/ham.2021.12.111-122.

the Purpose of Law (*Idee des Rechts*) constructed by Gustav Radbruch, the existence of law must represent an equilibrium of a trilogy of principal values: justice (*gerechtigkeit*), utility (*zweckmassigkeit*), and legal certainty (*rechtssicherheit*). Within the analytical framework of this Constitutional Court decision, the enforcement of legal certainty constitutes an absolute prerequisite (*conditio sine qua non*) for distributive justice for musicians and economic utility for the creative industry ecosystem to be realized. Through its constitutional interpretative intervention, the Court is not merely resolving interpretative disputes but is restoring the functionality of legal norms to regain precision in guiding behavior (guidance of human conduct) of commercial legal subjects, while simultaneously guaranteeing structured protection for creator entities.

**a. Clarification of Performing Rights Royalty Payer Subjects**

The most essential juridical consequence of Constitutional Court Decision Number 28/PUU-XXIII/2025 is the creation of a strict demarcation regarding the legal subjects bearing the obligation of royalty payments for announcement rights (*performing rights*). Prior to the rendering of this *landmark decision*, the implementation of the Copyright Law was afflicted by substantial multi-interpretations that triggered disputes over the attribution of liability: whether the licensing obligation is attached to individual musicians (singers) performing the work (*performing artists*), or constitutes an absolute burden on performance organizer entities and entertainment venue owners (*event organizers/venue owners*).[33]

At the pre-constitutional empirical level, this normative obscurity was frequently capitalized upon by several business entities as a justification for the evasion of liability (*evasion of liability*). Certain business actors alleged that they were exempt from direct royalty payment obligations to the National Collective Management Organization (LMKN) because the music broadcasted originated from streaming platforms claimed to possess their own separate licenses. On the opposite pole, unfounded extensive interpretations paradoxically directed legal liability toward singers on stage under the pretext of participating in commercial exploitation.[34] This condition created disorientation within the royalty collection ecosystem chain.

[33] Felicia Margaret et al., "Hak Cipta Dalam Sorotan: Gugatan VISI Dan Tantangan Hukum Di Industri Musik," *Anthology: Inside Intellectual Property Rights* 3, no. 1 (May 15, 2025): 223–242, https://ojs.uph.edu/index.php/Anthology/article/view/9814.
[34] Husnun et al., "Mekanisme Pengelolaan Hak Royalti Musik Oleh LMK & LMKN Ditinjau Dari Peraturan Pemerintah No. 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik."

Through its decision, the Court constructed dogmatic enlightenment by reinterpreting the phrase "Every Person." The Court imperatively determined that the legal subject paying *performing rights* royalties is the institution or entity acting as the commercial performance organizer directly reaping economic benefits (*direct economic benefit*). This constitutional interpretation automatically emancipates performing musicians from the threat of double claiming (*double claiming*), while simultaneously closing hermeneutical loopholes for commercial entertainment venues (such as cafes, nightclubs, and concert promoters) to evade licensing obligations. This definitive subject determination not only restores the certainty of LMKN's administrative governance but also solidifies the Creator's economic rights as constitutionally protected intellectual property entities.

**b. Objectification of Royalty Tariff Parameters**

The second crucial dimension of Constitutional Court Decision Number 28/PUU-XXIII/2025 is the deconstruction of the phrase "reasonable remuneration" to objectify royalty tariff parameters. In the pre-decision regime, the absence of limitative composite indicators in Article 87 of the Copyright Law delegated an overly elastic realm of administrative discretion (*administrative discretion*). Royalty collection practices were frequently executed unilaterally, devoid of transparency, and triggered billing disparities ungrounded in standardized methodologies. This structural phenomenon opened loopholes for the abuse of discretion (*abuse of discretion*), which in turn degraded the legal compliance ratio (*legal compliance*) of commercial entities due to the perceived arbitrary burden of levies.[35,36]

Through its decision, the Constitutional Court provided an imperative interpretation that "reasonable remuneration" must be constructed through a transparent, measurable, and accountable mechanism based on statutory regulations. The Court emphasized the urgency of formula objectification, such as the use of proportional calculation bases (for instance, a percentage of business turnover or accumulated admission ticket prices) and the implementation of adaptive periodic

[35] Tohadi Tohadi, Frieda Fania, and Dadang Gandhi, "Problem Teoritik Dan Implikasi Praktis Atas Perubahan Keputusan Tata Usaha Negara," *Jurnal Hukum Ius Quia Iustum* 26, no. 3 (September 1, 2019): 500–521, https://doi.org/10.20885/iustum.vol26.iss3.art4.

[36] Farel Sya'ban Mousavian and Gunardi Lie, "Protection of Intellectual Property Rights (IPR) of Musicians in the Indonesian Music Industry: A Legal Study on the CPagelenges of Copyright Enforcement and Royalty Distribution in the Digital Era," *Sighat : Jurnal Hukum Ekonomi Syariah* 4, no. 1 (December 3, 2025): 36–42, https://ejurnal.iainpare.ac.id/index.php/shighat_hes/article/view/15090.

reviews (*periodic review*) toward macroeconomic equilibrium. This objectification represents two-way distributive justice. For the Creator, this standardization guarantees that economic rights (*equitable remuneration*) are realized without manipulation or subjective reduction. On the other hand, for the paying subject (commercial organizers), tariff objectification presents financial predictability (*financial predictability*) and business certainty (*ease of doing business*), which will systemically reduce resistance and billing disputes in the future.

**c. Prioritization of Dispute Resolution via Civil Avenues and Mediation**

The third essential dimension of Constitutional Court Decision Number 28/PUU-XXIII/2025 is the paradigmatic reorientation of royalty dispute resolution. In the preceding regulatory regime, the absence of a strict jurisdictional hierarchy within the Copyright Law triggered uncoordinated forum pluralism. This normative vacuum engendered procedural instability, wherein there was no certainty regarding the judicial forum possessing absolute authority, nor the extent to which a decision in one forum bound parties in another. Through its constitutional interpretation, the Court constructed strict directives that royalty disputes be resolved by prioritizing the civil law corridor (litigation in the Commercial Court), and preferring Alternative Dispute Resolution (*Alternative Dispute Resolution*/ADR) mechanisms, *in casu* mediation. The rationalization of this prioritization rests upon the *Economic Analysis of Law* approach and the principle of party autonomy (*party autonomy*), which positions legal subjects as the most capable entities in designing resolutions for their commercial disputeseka.[37]

The mainstreaming of this mediation avenue represents a philosophical transformation within contemporary procedural legal systems concerning intellectual property. Formal litigation approaches and administrative sanctions are now repositioned as *ultimum remedium* (last resort legal remedies), when mediation, projected as *primum remedium* (primary remedy), reaches a deadlock (*deadlock*). As the essence of out-of-court dispute resolution emphasizes the restoration of relations and equilibrium of interests, mediation is deemed highly congruent with the characteristics of music industry disputes laden with complex civil dimensions. ADR mechanisms distance dispute resolution from rigid punitive approaches that potentially sever business

[37] Hana Nabilah Khairunnisa, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis Dalam Perspektif Peraturan Perundang-Undangan Di Indonesia," *Hangoluan Law Review* 2, no. 1 (2023): 136–63, https://hlr.unja.ac.id/index.php/hlr/article/view/22.

sustainability (*business sustainability*). Conversely, mediation facilitates the achievement of adaptive, pragmatic *win-win solutions* that are highly responsive to the economic rhythm of the digital creative industry.

### d. Review of Legal Certainty Theory in the Context of the Constitutional Court Decision

An in-depth examination of the implications of Constitutional Court Decision Number 28/PUU-XXIII/2025 requires a theoretical discourse grounded in the doctrine of legal certainty. Referring to Gustav Radbruch's postulate regarding the trilogy of the purpose of law, the existence of law must represent an equilibrium among *Gerechtigkeit* (justice), *Zweckmässigkeit* (utility), and *Rechtssicherheit* (legal certainty).[38] In Radbruch's terminology, *Rechtssicherheit* is the manifestation of norm quality enabling legal subjects to precisely predict the juridical consequences of their actions. In the pre-decision era, the level of *Rechtssicherheit* in music royalty governance was at a nadir. The absence of limitative guidelines concerning subjects bearing obligations, tariff parameters, and dispute resolution hierarchies birthed an interpretative anarchy that ultimately thwarted the function of law as a guide for behavior (*guidance of human conduct*).[39]

The constitutional interpretative intervention by the Court fundamentally restores this *Rechtssicherheit*. By strictly demarcating who the royalty-bearing subjects are and how tariffs must be objectified, the Constitutional Court Decision deconstructs vague norms (*vage normen*) into measurable and predictable norms (*predictable*). The significance of this restoration is not solely of an administrative dimension but touches the philosophical heart of the law. In accordance with Radbruch's doctrine, legal certainty is a *conditio sine qua non* (absolute prerequisite) for the realization of justice and utility. Legal norms intrinsically designed to achieve distributive justice (for Creators) and economic utility (for Commercial Organizers) will inevitably be paralyzed if not framed by rigid and uniform interpretative certainty.

Perfecting Radbruch's postulate, this analytical framework is fortified by Ernst Utrecht's doctrine concerning the principle of *kenbaarheid van het recht* (the knowability of law) or what is known as open and predictable legal norms (*known and predictable*

[38] Joachim Friedrich, *The Philosophy of Law in Historical Perspective* (Chicago: University of Chicago Press, 1958). Page, 110.
[39] Roscoe Pound and MarsPagel L. DeRosa, *An Introduction to the Philosophy of Law* (Routledge, 2017), https://doi.org/10.4324/9781351288880.

*legal norms*).[40] Utrecht postulates that the effectiveness of the law's binding force heavily relies on the accessibility and recognition of the said norms by the society it regulates.[41] Prior to the inception of the Constitutional Court Decision, the royalty legal regime was scattered across an overlapping regulatory jungle ranging from Laws, Government Regulations, to internal CMO regulations, creating information asymmetry, particularly for MSME actors in the entertainment sector. Through the *a quo* decision, the Constitutional Court constructed a centralized interpretation that is transparent and cognizable (easily comprehensible). This decision transforms music royalty law in Indonesia from being previously elitist and confusing into an inclusive, accessible (*accessible*) referential framework that guarantees the protection of the creative industry ecosystem.

### 3. Institutional Problematics of the LMKN Post-Constitutional Court Decision Number 28/PUU-XXIII/2025

Constitutional Court Decision Number 28/PUU-XXIII/2025, dated December 17, 2025, has triggered a fundamental transformation in the architectural governance of music copyright in Indonesia, specifically concerning the mechanics of extracting economic rights in the form of royalties. Although the *a quo* decision succeeded in constructing several positive implications for strengthening the legitimate authority of the National Collective Management Organization (LMKN), its implementative reality demonstrates that this institution remains entangled in systemic and persistent institutional problematics. A comprehensive examination of these problematics necessitates an analysis that coherently synergizes empirical achievements, residual structural challenges, and the theoretical framework of legal protection. Therefore, this section aims to dissect the institutional transformation discourse of the LMKN post-Court intervention, while simultaneously mapping the bottleneck variables that continue to reduce the acceleration of legal certainty and distributive justice for all stakeholders within the national music industry ecosystem.

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[40] Nupur Chowdhury, "Reconceptualizing Legal Certainty: From a Principle of Positive Law to Regulatee Expectations," in *European Regulation of Medical Devices and Pharmaceuticals* (Cham: Springer International Publishing, 2014), 47–69, https://doi.org/10.1007/978-3-319-04594-8_3.

[41] T.V. Yavetskyi, "The Principle of Legal Certainty and Its Regulatory and Legal Fixation," *Juridical Scientific and Electronic Journal*, no. 7 (2025): 372–75, https://doi.org/10.32782/2524-0374/2025-7/85.

### a. Acceleration of Royalty Collection and the Fortification of LMKN's Institutional Authority

Empirical data confirm a significant escalating trend in royalty accumulation during the 2024–2025 period following the Constitutional Court Decision. In 2024, the LMKN successfully amassed royalty funds amounting to Rp77 billion, recording the highest milestone throughout the institution's operational history. Entering 2025, the collection projection is targeted to surge progressively to reach Rp126 billion.[42] This surge, penetrating a 60 percent margin, represents a linear indicator that the Court's intervention successfully injected a level of public trust and legal awareness among commercial user entities. The *a quo* decision effectively eradicated interpretative ambiguity over the phrase "Every Person" (*Setiap Orang*), culminating in the fortification of the LMKN's legitimacy in exacting royalty obligations.

The Constitutional Court's affirmation regarding the shifting of royalty liability to event organizers constitutes a precise adoption of the vicarious liability doctrine within Intellectual Property Law. Through this legal construct, the entity holding operational control and reaping economic benefits from an activity is positioned as the party bearing strict liability for the fulfillment of the Creator's economic rights.[43]

This transformation harmonizes national jurisprudence with global collective management best practices. By way of comparison, the blanket licensing scheme implemented by the American Society of Composers, Authors and Publishers (ASCAP) in the United States imposes royalty tariffs based on a percentage of the performance organizer's gross revenue. A similar approach also serves as the operational foundation for Collective Management Organizations (CMOs) under the auspices of WIPO and CISAC. This doctrinal correlation fundamentally consolidates the authority of the LMKN as a state auxiliary organ in lawfully and accountably executing its collection rights.[44,45]

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[42] Ryan Suherlan, "Kenali LMKN, Lembaga Yang Berwenang Tarik Royalti Lagu Di Indonesia," Kontan, 2025, https://newssetup.kontan.co.id/news/kenali-lmkn-lembaga-yang-berwenang-tarik-royalti-lagu-di-indonesia.

[43] Shela Octavia and Robertus Belarminus, "MK Sebut Royalti Harusnya Dibayarkan Penyelenggara Acara," Kompas, 2025, https://nasional.kompas.com/read/2025/12/17/17355491/mk-sebut-royalti-harusnya-dibayarkan-penyelenggara-acara.

[44] Jim Rogers and Sergio Sparviero, "Navigating Performing Rights in Music: Digital-Native Organizations, Changing Values, and Industry Shifts in the United States and Beyond," *International Communication Gazette* 87, no. 4 (June 10, 2025): 376–97, https://doi.org/10.1177/17480485251327273.

[45] Sara Bannerman, "The World Intellectual Property Organization and the Sustainable Development Agenda," *Futures* 122 (September 2020): 102586, https://doi.org/10.1016/j.futures.2020.102586.

Furthermore, the Constitutional Court Decision restructures the copyright enforcement paradigm by integrating restorative justice principles. The Court affirmed that criminal sanctions must be rigidly situated as an *ultimum remedium* (remedy of last resort), only to be operationalized when negotiation, mediation, and civil mechanisms reach an impasse. Moreover, the injunction declaring the phrase "reasonable remuneration" in Article 87 paragraph (1) conditionally unconstitutional insofar as it is not interpreted based on statutory tariffs imperatively compels the government to formulate objective tariff standardization. The juridical implication is that the LMKN is now extricated from the grey area of tariff determination and is obligated to rely upon a calculation system that is transparent, measurable, and grounded in legal certainty.

**b. Sustained Structural Problematics: Low Compliance and Socialization Deficits**

Although a preceding study by Mbaling & Silalahi postulates that the impediment to the LMKN's effectiveness stems solely from the operational technical deficiencies of the Song and Music Information System (SILM), the comprehensive analysis in this article proves the existence of a far more fundamental structural problematic.[46] This substantiation concurrently demonstrates that the study by Palar et al. has not fully encompassed the socio-legal dimensions of the said institutional architecture. The essential problematics are precisely rooted in the low level of legal compliance among commercial users—particularly within the Micro, Small, and Medium Enterprises (MSME) cluster that dominates the national economic aggregate—as an escalation of massive and structured socialization deficits by the LMKN toward stakeholders at the grassroots level.[47]

This phenomenon represents an acute disparity between the law in the books and the living law within society. Even though the Constitutional Court Decision has restored normative certainty, the adoption and internalization of these norms at the practical level remain stagnant. Within the MSME ecosystem—such as coffee shops, small-scale hospitality, and regional retail establishments—the obligation to remit royalties is still

[46] Constantius Mario Valentino Mbaling and Wilma Silalahi, "Efektivitas Lembaga Manajemen Kolektif Nasional Dalam Perlindungan Hak Ekonomi Pencipta Lagu Di Era Digital Di Indonesia," *Kertha Semaya : Journal Ilmu Hukum* 13, no. 9 (November 3, 2025): 2145–54, https://doi.org/10.24843/KS.2025.v13.i09.p19.
[47] Miranda Risang Ayu Palar et al., "Centralized Management of Copyright Royalties: A Case Study on the National Collective Management Organization for Songs and Music in Indonesia," *The Journal of World Intellectual Property* 28, no. 1 (March 12, 2025): 24–57, https://doi.org/10.1111/jwip.12320.

pejoratively perceived as an additional economic burden that disrupts their operational stability. This resistance accumulates due to the LMKN's ongoing inability to formulate legal education instruments that are inclusive, communicative, and relevant to the realities of local businesses. International paradigms prove that the optimization of collective copyright management does not merely rely upon regulatory coerciveness, but demands substantial investment in public campaigns to forge a supportive ecosystem.

This normative compliance impediment culminates in a detrimental dual implication. Economically, a suboptimal royalty collection equilibrium results in the reduction of the material rights of Creators and Related Rights Holders, thereby failing to realize equitable remuneration. Institutionally, this low compliance ratio exposes the weaknesses of the LMKN's law enforcement instruments, which have yet to operate proportionally. Responding to the solid juridical foundation injected by the Constitutional Court Decision, the LMKN is compelled to transform its enforcement mechanisms to not merely rely on a punitive paradigm, but rather be counterbalanced by a paradigm that is more preventive, educative, and accommodative of the commercial subjects' capacities.

**c. Recurrent Institutional Conflicts: The Dualism of CMOs and the LMKN**

A crucial structural anomaly that concomitantly reduces governance effectiveness post-Constitutional Court Decision is the conflict of authority that recurrently manifests between the National Collective Management Organization (LMKN) and sectoral Collective Management Organizations (CMOs/LMK). The fault line of this dispute stems from regulatory disharmony. On the one hand, Article 89 of the Copyright Law attributes a mandate to CMOs as the representations receiving direct authorization from Creators. However, on the other hand, the derivation of its rules through Government Regulation Number 56 of 2021 paradoxically constructs the LMKN as a super-body with a centralized management architecture that generically monopolizes collection rights. This overlapping jurisdiction triggers substantive conflicts of interest. The most emblematic precedent is the dispute between the Indonesian Dangdut Royalty Association (ARDI) against the LMKN regarding the unilateralism of tariff determination. This dispute represents a fundamental friction between a centralized governance regime *vis-a-vis* the principle of stakeholder participation in determining the value of Creators' economic rights.

Unraveling this dualism of authority through the optics of State Administrative Law and Legislative Science, absolute centralization by the LMKN via GR 56/2021 dogmatically injures the *lex superior derogat legi inferiori* principle (higher law derogates lower law). The Copyright Law, in its capacity as the *lex superior*, prescriptively lays the foundation of primary management upon the CMOs. Nevertheless, this attribution is obscured and reduced by the derivative regulation holding the position of *lex inferiori* (GR 56/2021), without limitatively clarifying the hierarchical relationship and complementarity between the two institutions.

Ultimately, this dualism of institutional architecture engenders a dual-dimensional legal uncertainty in the field. In one realm, commercial users are confronted with the threat of overlapping double billing; while in a more essential realm, the Creators of the works experience administrative disorientation regarding which institution they should vest their power of attorney. This condition fundamentally destructs a healthy civil correlation between Creators and the institutions guaranteeing their economic rights, and obscures the essence of management decentralization envisioned by the parent statute.

**d. Transparency Deficits and the Limitations of the Song and Music Information System (SILM)**

The acceleration of legal certainty post-Constitutional Court Decision is likewise reduced by transparency deficits in distribution governance and the functional limitations of the Song and Music Information System (SILM). Referring to the provision of Article 1 Number 13 of GR 56/2021, SILM is idealized as an integrated database functioning to automate royalty distribution mechanisms precisely based on actual usage. However, in its operational reality, the instrument constructed to elevate accountability has not been able to optimally realize the statutory mandate. Based on institutional evaluations, SILM's performance remains plagued by various technical weaknesses that hinder the achievement of ideal collective management standardization.[48]

The crucial variable degrading SILM's effectiveness culminates in reporting inefficiencies and system synchronization failures. The primary challenge lies in the inaccuracy and tardiness of setlist reporting by commercial users, rooted in a lack of digital literacy and legal awareness, particularly within the MSME cluster. Furthermore, the SILM architecture has not been adequately elevated to establish interoperability with the global Digital Service Providers (DSP) ecosystem, such as Spotify and YouTube. This data synchronization failure results in the recording of music exploitation in the digital

[48] Mbaling and Silalahi, "Efektivitas Lembaga Manajemen Kolektif Nasional Dalam Perlindungan Hak Ekonomi Pencipta Lagu Di Era Digital Di Indonesia."

realm—which ostensibly dominates contemporary consumption trends—frequently experiencing distortions that prejudice the calculation of Creators' economic rights.

These technical infrastructure limitations ignite a domino effect in the form of a transparency crisis in the dimension of public reporting. The absence of comprehensive distribution audit details—such as allocation stratification based on user classification, regional demographics, and genres—creates a sharp information asymmetry between the LMKN/LMK (as managers) and Creators (as absolute rights holders).[49] Although the initiation of constructing a national music database constitutes a progressive step, the LMKN is required to radically accelerate digital transformation. To attain international operational standards, the SILM ecosystem must be integrated with algorithm-based data accuracy features, real-time reporting, and guaranteed transparent data accessibility for all stakeholders.

## C. CONCLUSSION

Prior to Constitutional Court Decision Number 28/PUU-XXIII/2025, legal uncertainty and normative ambiguity within the Copyright Law disproportionately burdened performing artists by triggering the threat of double royalty claims due to the absence of clear liability demarcation between musicians and commercial event organizers. The decision subsequently provided legal certainty by affirming that commercial performance organizers are the parties bearing absolute liability for royalty payments, simultaneously mandating objective and measurable tariffs based on statutory regulatory mechanisms. Although the juridical foundation has been fortified, post-decision implementation remains afflicted by various structural problematics, such as the low compliance of business actors due to minimal socialization, dualistic authority conflicts between CMOs and the LMKN, and transparency deficits in operating the Song and Music Information System (SILM). Therefore, achieving equitable legal certainty demands institutional authority harmonization, transparent digital transformation in royalty distribution systems, along with continuous legal education to ensure optimal protection of creators' economic rights.

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[49] Palar et al., "Centralized Management of Copyright Royalties: A Case Study on the National Collective Management Organization for Songs and Music in Indonesia."

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