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Legal Certainty on Licensing and Royalty Mechanisms in Public Performances in the Form of Music Concerts Following the Constitutional Court's Decision

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Abstract: The use of musical works in public performances in the form of music concerts frequently gives rise to disputes among composers, performers, and event organizers within the music concert industry ecosystem. Legal uncertainty concerning licensing mechanisms and royalty payments for the exploitation of the economic rights in music concerts constitutes one of the underlying factors contributing to legal disputes arising after the performance has taken place. The Constitutional Court Decisions Number 28/PUU-XXIII/2025 and Number 37/PUU-XXIII/2025, rendered in the context of judicial review of Copyright Law Number 28 of 2014, provide a constitutional interpretation of the regulation governing the use of musical works in public performance. However, in practice, these decisions continue to leave room for legal uncertainty, particularly concerning the timing of licence fulfilment and the obligation to pay royalties. This study adopts a normative juridical method, employing statutory and conceptual approaches. The findings of the study indicate that, following the Constitutional Court decisions, further regulatory measures are to specifically govern the mechanism of obtaining licences and paying royalties in public performance in the form of music concerts. In addition, preventive measures legal violations may be implemented through a clear contractual arrangements in cooperation agreements between performers and event organizers, particularly concerning obligations related to licence fulfilment and royalty payments, in order to ensure legal certainty, the protection of economic rights, and a balanced framework for all parties involved.

Keyword: Constitutional Court Decision, Copyright, Legal Certainty, Licence, Music Concert, Royalty.

INTRODUCTION

After the Covid-19 pandemic, the music concert industry recovered with concerts held by local and international musicians. In 2024, musician Taylor Swift held her world concert, The Era's Tour, in Singapore, which sparked debate among Southeast Asian leaders because

Singapore was the only concert destination in Southeast Asia.¹ Music concerts, as a sub-sector of the creative industry, serve as a medium for live performances of creativity, art, and culture, and also have the potential to significantly boost the country's economic growth, including by attracting local and foreign tourists to tourist destinations where the performances are held.²

The performance of live music concerts involving the use of musical works created by composers and/or copyright holders is protected by Law No. 28 of 2014 concerning Copyright (hereinafter referred to as the "Copyright Law") as the law that accommodates the implementation of copyright in Indonesia.³ Legal issues involving songwriters and musicians as performers often arise due to the lack of licenses and royalty payments when performing songs and music commercially in live performances. The lawsuit filed by Ari Bias, the composer of the song "Bilang Saja," against Agnez Monica, the performer, has caused turmoil in the development of the copyright regime, including the filing of a judicial review of Article 9 paragraph (2), Article 9 paragraph (3), Article 23 paragraph (5), Article 81, Article 87 paragraph (1), and Article 113 paragraph (2) of the Copyright Law to the Constitutional Court.

The Constitutional Court's decision on cases No. 28/PUU-XXIII/2025 and No. 37/PUU-XXIII/2025 accepted all of the proposed amendments to the articles being reviewed, but even after the decision was issued, it did not stop the conflict between songwriters and performers or concert organizers. Therefore, it is necessary to re-examine how the licensing and royalty payment processes should be carried out. This study aims to examine in greater depth and provide recommendations on the mechanisms for licensing and royalty payments in music concerts in order to create harmony in the Indonesian music concert industry ecosystem.

METHOD

This study uses a normative juridical method with a legislative and conceptual approach. The study was conducted by analyzing selected legal issues based on the discussion theme. The data used by the author is secondary data with primary legal materials based on the scope of intellectual property rights in general, copyright in particular, and constitutional foundations as the basis for material testing in the Constitutional Court. Other supporting materials used by the author come from scientific works in the form of books, journals, and reliable sources obtained from the internet that can be accounted for. The data obtained was analyzed and then presented in this paper by describing the circumstances in accordance with the legal issues raised.

RESULTS AND DISCUSSION

The Impact of Legal Uncertainty Regarding Licenses and Royalties on Legal Issues

Indonesia is a country based on the rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution. As a country based on the rule of law, the law must be able to create legal certainty in order to create order in society.⁴ Legal certainty consists of institutional certainty, procedural certainty, and various predictive outcomes used to achieve justice. Substantive justice is viewed from the content of justice itself and is considered from various perspectives such as the level of satisfaction, benefits, or the implementation of the law itself.⁵

¹ Frances Mao, Bad Blood over Singapore Taylor Swift Eras tour subsidies, <https://www.bbc.com/news/world-asia-68379688>, 2 Maret 2024, diakses pada 28 Desember 2025.

² Linhui Liu, "Impact and Growth in the Concert Industry: A Systematic Review", *2nd International Conference on Global Politics and Socio-Humanities*, Februari 2025, hlm. 89.

³ Ahmad M. Ramli, *Lagu-Musik dan Hak Cipta*, Bandung: PT Refika Aditama, 2022, hlm. 20.

⁴ Siti Halilah, Mhd. Fakhurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli", *Siyasah: Jurnal Hukum Tata Negara*, Vol. 4, II, Desember 2021, hlm. 57

⁵ Indra Perwira, Rahayu Prasetianingsih, Mei Susanto, *Pengantar Politik Hukum Indonesia*, Sumedang: Unpad Press, 2021, hlm. 133.

The staging of music concerts in Indonesia often causes disputes between songwriters and singers/musicians performing the songs due to legal uncertainty. A legal issue in 2025 regarding the use of song copyrights in a performance or music concert that attracted considerable public attention was a civil lawsuit filed by Ari Bias, the composer of the song “Bilang Saja” popularized by Agnez Monica, due to the absence of permission or a license from the songwriter and the non-payment of royalties through the National Collective Management Organization (LMKN). This legal issue has been decided at the cassation level through Supreme Court Decision Number 825 K/Pdt.Sus-HKI/2025, which granted the exception filed by Agnez Monica's party.⁶

Following Ari Bias' lawsuit against Agnez Monica, another lawsuit was filed by songwriters Keenan Nasution and Rudi Pekerti, the creators of the song “Nuansa Bening,” which was covered by Vidi Aldiano, against Vidi Aldiano for performances over a period of 17 (seventeen) years. Although the Central Jakarta Commercial Court granted the exception filed by Vidi Aldiano, the case was still continued to the cassation stage by the songwriters. Vidi Aldiano was sued for damages totaling Rp 24,500,000,000 (twenty-four billion five hundred million rupiah), namely for 2 (two) violations in 2009 and 2013 amounting to Rp 10,000,000,000 (ten billion rupiah), and 29 (twenty-nine) violations from 2016 to 2024 amounting to Rp 14,500,000,000 (fourteen billion five hundred million rupiah), in addition to a request to the court to impose a conservatory attachment on the land and buildings owned by Vidi Aldiano located in Cilandak Barat, South Jakarta.⁷

Legal issues arise due to the absence of permits and royalty payments to creators or copyright holders for public performances in the form of music concerts held by performers. For this reason, creators feel that the obligation to obtain licenses and pay royalties lies with the performers as the parties who derive commercial benefits, not other parties involved in the music concert industry. In practice, music concerts involve many parties, such as event organizers, ticket sales platforms that also act as vendors in ticket sales, and management companies or labels that represent the musicians themselves. The parties involved in the music concert industry also derive commercial benefits from the performance, so musicians as performers are not the only parties receiving commercial benefits.

Licensing and Royalty Mechanisms Following the Constitutional Court's Decision

In response to recent legal developments, a new implementing regulation has been enacted, namely Regulation of the Minister of Law of the Republic of Indonesia Number 27 of 2025 concerning the Implementation of Government Regulation Number 56 of 2021 concerning the Management of Royalties for Song and/or Music Copyright (hereinafter referred to as “Permenkum 27/2025”). which is a revision of and repeals the previous regulation, namely Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2022 concerning the Management of Royalties for Song and/or Music Copyright. Article 20 paragraph (4) is an addition to Permenkum 27/2025, which confirms that the obligation to pay royalties for the use of songs and/or music in commercial public services is the responsibility of the event organizer or business owner. Therefore, in the organization of music concerts, the obligation to fulfill licensing and/or royalty payments must be borne by the event organizer or the owner of the business premises.

In reality, the issuance of Ministerial Regulation 27/2025 did not immediately resolve the legal issues between Ari Bias and Agnez Monica, or between Keenan Nasution and Rudi

⁶ Putusan Mahkamah Agung Nomor 825 K/Pdt.Sus-HKI/2025 tanggal 11 Agustus 2025.

⁷ Adinda Jasmine, “Kisruh Hak Cipta Vidi Aldiano vs Keenan Nasution”, https://www.tempo.co/teroka/kisruh-hak-cipta-vidi-aldiano-vs-keenan-nasution-1815267#google_vignette, diakses pada 30 September 2025.

Pekerti and Vidi Aldiano. Ari Bias re-filed a civil lawsuit against PT Aneka Bintang Gading or Holywings as the Defendant, and Agnez Monica along with LMKN and LMK Karya Cipta Indonesia (KCI) as Co-Defendants. Keenan Nasution and Rudi Pekerti also continued to file an appeal to the Supreme Court for the same case. This indicates that the obligation to obtain a license and pay royalties to the songwriters remains unfulfilled, and the songwriters have no legal certainty as to when their rights to receive compensation for the commercial use of their songs will be fully recognized.

Reviewing Article 20 paragraph (4), it does not specifically mention the obligation to obtain permission or a license from the creator, only the obligation to pay royalties. In addition, royalty payments through LMKN may be an exception to the obligation to obtain a permit or license from the creator or copyright holder based on Article 23 paragraph (5) of the HC Law, but the timing of royalty payments is not specified in detail in the relevant regulations. Article 20 paragraph (3) of Permenkum No. 27 of 2025 states that royalties are paid “immediately after Commercial Use” of the song and/or music, meaning that it can be done after the music concert is held, but there is no clear limit on when royalties must be paid, so that songwriters and/or copyright holders do not have certainty regarding the fulfillment of their economic rights.

The current Copyright Law, Law No. 28 of 2014 (hereinafter referred to as “Copyright Law”), requires permission from the creator or copyright holder for the use of copyrighted works. Article 9 paragraph (2) letter a emphasizes that the exercise of economic rights over a performance of a creative work must obtain permission from the creator or copyright holder. Paragraph (3) reiterates that without permission from the creator or copyright holder, the reproduction and/or commercial use of a creative work is prohibited, including public performances or music concerts.

Furthermore, Article 23 paragraph (5) of the HC Law provides an exception that the commercial use of a creation in a performance may be carried out without prior permission from the creator, but with the payment of compensation to the creator through a Collective Management Organization. Furthermore, the management of royalties for the use of songs and/or music is further regulated through copyright implementing regulations, namely Government Regulation Number 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties (hereinafter referred to as the “Royalty Management GR”).

Article 9 paragraphs (2) and (3), and Article 23 paragraph (5) are provisions within the Copyright Law (UU HC) that are subject to judicial review at the Constitutional Court, alongside Article 81, Article 87 paragraph (1), and Article 113 paragraph (2), under Case Numbers 28/PUU-XXIII/2025 and 37/PUU-XXIII/2025. The phrase “Commercial Use” in Article 9 paragraph (3), as well as the phrases “Every Person” and “paying remuneration” in Article 23 paragraph (5), are deemed to create legal uncertainty and are prone to multiple interpretations. Constitutionally, these articles are being challenged against Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution, which mandate the guarantee of legal certainty and the protection of the right to security as fundamental human rights.

"During the court proceedings at the Constitutional Court, the Government and the House of Representatives, acting as the legislators, argued that Article 9, paragraph (3) constitutes a general norm (*lex generalis*) prohibiting the commercial use of a work without authorization, which is subsequently circumscribed by a special norm (*lex specialis*) under Article 23, paragraph (5). As a special norm, Article 23, paragraph (5) provides an exemption for performers, wherein direct authorization from the creator or copyright holder is not required, provided that royalties have been paid through a Collective Management Organization (CMO) via the mechanisms prescribed by law. Consequently, Article 9,

paragraph (3) and Article 23, paragraph (5) do not stand in isolation; rather, they must be interpreted systematically and in conjunction with one another.⁸

Furthermore, Prof. Dr. Ahmad M. Ramli, S.H., M.H., FCB.Arb, CRGP., acting as an expert witness in the proceedings, posited that Article 9, paragraph (3) should not be interpreted as granting absolute rights to creators that would impose a prohibition on performers, provided that the obligation to pay royalties has been fulfilled through a Collective Management Organization (LMK) in accordance with Article 23, paragraph (5). Pursuant to Article 23, paragraph (5), the authority to collect and distribute royalties from creators or copyright holders is mandated to the LMK; consequently, the absence of a direct permit or license does not constitute a copyright infringement. Prof. Ahmad M. Ramli further asserted that requiring permission to be obtained directly from the creator or copyright holder would represent a significant regression in the legal framework.⁹ "Professor Ahmad M. Ramli's statement aligns with the licensing system in Indonesia, which also implements collective licensing through a blanket license mechanism."¹⁰

Gustav Radbruch, a legal philosopher who advanced theories concerning legal certainty, proposed the "Radbruch Triad," which consists of the Law Triad, the Idea Triad, and the Purpose Triad. According to the first triad—the Law Triad—there exists a fundamental concept known as the idea of law (*Rechtsidee*). For Radbruch, an ideal legal system for society is one that reflects the inherent objectives or values it seeks to achieve, namely justice (*Gerechtigkeit*). Radbruch posits that within this framework, the primary objective of a legal system is the realization of justice; without justice, positive law is reduced to a mere collection of meaningless rules. Another key facet of his theory is the connection between reality (as manifested in positive law) and the idea of law, mediated by the concept of sense (*Sinn*). This "sense" represents the law's ultimate purpose: to provide justice. Consequently, based on Radbruch's theories and concepts, the existence of positive laws governing copyright protection must function effectively to manifest justice for society.¹¹ The Constitutional Court's decision should serve as a definitive resolution to the ambiguities and uncertainties surrounding music concert operations, particularly regarding licensing and royalty procedures. The pursuit of legal certainty in music concert copyright protection must align with the realization of justice for the entire music industry ecosystem.

Innovation and creativity have become the primary drivers of economic growth in the current era of globalization. The copyright protection practices of nations worldwide are increasingly aligned with fundamental principles that govern copyright operations, serving as the conceptual framework for legal protection within their respective jurisdictions.¹² In an industrial context, one primary objective of licensing is to access a broader market share that exceeds the original creator's inherent capabilities¹³. Consequently, musical works become more accessible to users without infringing upon legal frameworks. Fundamentally, a musical work gains greater significance and economic value as it is more frequently broadcast and utilized by the public. This aligns with the core principles of intellectual property, which posit

⁸ Keterangan Dewan Perwakilan Rakyat dan Pemerintah dalam Putusan Mahkamah Konstitusi Nomor 28/PUU-XXIII/2025, Hlm. 441

⁹ *Ibid.*, hlm. 442.

¹⁰ Redemtus Deferento Paldo Pone, Maria Fransiska Owa Da Santo, Uba Woho, "Problematika Yuridis Terhadap Pembayaran Royalti Lagu pada Pencipta Berdasarkan Pasal 23 Angka 5 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, *Al-Zayn; Jurnal Ilmu Sosial & Hukum*, Vol.: 3, No. 5, 2025, hlm. 7821.

¹¹ Robert Alexy, *Gustav Radbruch's Concept of Law*, <https://www.upjs.sk/app/uploads/sites/11/2022/10/Gustav-Radbruchs-Concept-of-Law.pdf>, 2021, hlm. 2-10.

¹² Tasya Safiranita Ramli, *Hak Cipta dalam Media Over the Top*, Bandung: PT Refika Aditama, 2022, hlm. 9-11.

¹³ Nicolas S. Gikkas, International Licensing of Intellectual Property: The Promise and the Peril; *Journal of Technology Law & Policy*, Vol. 1, 1996.

that a creation is intended for human utilization to enhance societal welfare and foster collective well-being.¹⁴

CONCLUSION

The discrepancy between statutory regulations and the actual practice of music concert organization underscores the urgent need to strengthen legal norms. Such reinforcement is essential to provide legal certainty for creators, copyright holders, performers, and event organizers regarding copyright protection in Indonesia. While the Constitutional Court's decision offers a promising outlook for legal certainty within the music industry ecosystem—specifically concerning concert management—further legislative follow-up is required. There is a need for specific regulations that explicitly define the timelines for obtaining licenses and the mandatory payment of royalties. This clarity ensures that songwriters' rights are fulfilled with certainty, performers feel secure in expressing copyrighted works publicly, and other stakeholders, such as event organizers, can contribute safely to the sustainability of the music concert industry.

Furthermore, essentially every performance within a concert production constitutes a collaboration between the performers and the event organizer, formally documented in a written cooperation agreement. The implementation of such agreements, in accordance with the principle of consensualism, is a product of mutual consent and the principle of freedom of contract between the parties involved. Consequently, as a preventive measure against copyright infringement, it is imperative that the cooperation agreement specifically includes clauses regarding the organizer's obligation to obtain licenses prior to the concert, as well as a defined timeline for the full payment of royalties through a Collective Management Organization (CMO). Thus, all parties involved in a concert production can ensure that their respective rights and obligations are fulfilled proportionally, in compliance with the prevailing laws and regulations.

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¹⁴ Tasya Safiranita, Ahmad M. Ramli, Rika Ratna Permata, Huala Adolf, Eddy Damian, Miranda Risang Ayu Palar, "The Protection of Content in Media Over the Top and Telecommunication Network in INDONESIA Copyright Law Perspective", *NTUT Journal of Intellectual Property Law & Management*, Vol. 8, No. 2, 2019, , hlm. 61.

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