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Rethinking Authors' Consent and Performers' Use in the Indonesian Copyright Act

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Abstrak. Sengketa antara pencipta lagu dan pelaku pertunjukan di Indonesia semakin intensif seiring dengan semakin tegasnya para komposer dalam menegakkan hak cipta mereka. Sengketa antara pencipta lagu dan pelaku pertunjukan telah menunjukkan adanya ambiguitas antara Pasal 9 ayat (2) Undang-Undang Hak Cipta 2014 yang mensyaratkan adanya izin terlebih dahulu untuk setiap penggunaan komersial atas suatu karya, dengan Pasal 23 ayat (5) yang memperbolehkan penyanyi menggunakan karya secara komersial selama royalti telah dibayarkan melalui Lembaga Manajemen Kolektif (LMK). Kajian doktrinal ini berfokus pada dua pembahasan: i) ruang lingkup hak pencipta untuk melarang pertunjukan atas lagu ciptaannya; dan ii) hubungan antara Pasal 9 ayat (2) dan Pasal 23 ayat (5) Undang-Undang Hak Cipta 2014. Penelitian ini menggunakan metode yuridis normatif, dengan bertumpu pada penafsiran undang-undang, doktrin hukum, serta analisis berbasis kasus. Selain itu, penelitian ini juga menggunakan pendekatan komparatif dengan menelaah praktik LMK di yurisdiksi lain untuk memberi konteks bagi kerangka hukum di Indonesia. Hasil penelitian ini menunjukkan bahwa: i) hak untuk melarang pertunjukan berakar pada hak moral dan hanya dapat digunakan untuk mencegah kerugian terhadap kehormatan atau reputasi pencipta; dan ii) Pasal 23 ayat (5) berlaku sebagai aturan khusus yang mengesampingkan Pasal 9 ayat (2) hanya sejauh menyangkut pertunjukan, dengan ketentuan bahwa royalti disalurkan melalui LMK.

Kata Kunci: Hak Ekonomi, Hak Moral, Lembaga Manajemen Kolektif, Hak Pelaku Pertunjukan.

Abstract. *Disputes between Indonesian songwriters and performers have intensified as composers become more assertive about their copyright. A dispute between a songwriter and a performer highlights the legal ambiguity between Article 9(2) of the 2014 Copyright Act that requires prior permission for any commercial use of a work, while Article 23(5) of the same Act allows performers to use work publicly once royalties are paid through a Collective Management Organization (CMO). This doctrinal study focuses on two discussions: i) the scope of an author's right to prohibit performances of their songs; and ii) the relationship between Article 9(2) and 23(5) of the 2014 Copyright Act. This research employs a normative juridical method, relying on statutory interpretation, legal doctrine, and case-based analysis. It also includes a comparative approach by examining practices of CMOs in other jurisdictions to contextualise the Indonesian framework. This research finds that i) the right to prohibit performance is rooted in moral rights and may be invoked only to prevent harm to the author's honour or reputation; and ii) Article 23(5) operates as a special rule that overrides Article 9(2) only to the extent of performances, provided royalties are channelled through a CMO.*

Keywords : *Economic Rights, Moral Rights, Collective Management Organization, Performers' Rights.*

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INTRODUCTION

In line with the growing awareness among composers of their copyright, conflicts over copyright between composers and the singers who perform their songs have become increasingly common in recent times.[1] The basic principle of copyright law is quite straightforward: if anyone wants to commercially exploit someone else's work, they need to get permission from the authors or copyright holders.[2] However, applying this rule in real-life situations is often much more complex. Dispute can arise over what constitutes permissions,[3] through whom it should be obtained,[4] and whether prior relationships affect the need for formal approval.[5] These nuances make real-world cases far less clearcut than what suggested by the copyright law.

One recent example in Indonesia is the dispute between songwriter Ahmad Dhani and singer Once. Once was formerly the vocalist of Dewa 19, a band managed by Ahmad Dhani, who was also a member of the group. Once left the band in 2011 after previously announcing his resignation at the end of 2010.[6] After leaving the band, Once pursued a solo career and occasionally performed Dewa 19's songs that he had sung during his time as a vocalist.[7] In March 2023, Dhani issued a public warning

[1] Maria Priska Seran, Lukman Hakim, and Muhammad Ramadhana Alfaris, "Copyright Protection of Owners for Commercialized Use of Created Song Without Permission," *Dialogia Iuridica* 16, no. 1 (2024): 50, https://doi.org/10.28932/di.v16i1.9503.
[2] For Indonesian context, see: Law No. 28 of 2014 on Copyright (Indonesia), art. 9(2).
[3] Sheila Namira, "Larangan Membawakan Lagu Tanpa Izin Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *JIPRO: Journal of Intellectual Property* (2023): 23-25.
[4] Vira Nur Maharani and Dwi Desi Yayi Tarina, "Wewenang dan Tanggungjawab Lembaga Manajemen Kolektif Nasional (LMKN) Dalam Perlindungan Hak Ekonomi Musisi Indonesia," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 885.
[5] Yngvar Kjus, "The use of copyright in digital times: A study of how artists exercise their rights in Norway," *Popular Music and Society* 44, no. 3 (2021): 245.
[6] Rintan Puspita Sari, "Bukan Bertengkar, Once Ungkap Alasan Keluar Dari Dewa 19: Gue Udah Jenuh," *KOMPAS.com*, April 14, 2023, https://www.kompas.com/hype/read/2023/04/14/135552266/bukan-bertengkar-once-ungkap-alasan-keluar-dari-dewa-19-gue-udah-jenuh.
[7] KumparanHITS, "Ini Alasan Once Mekel Sering Bawakan Lagu Dewa 19 yang Berjudul Cemburu," *KumparanHITS*, April 6, 2023, https://kumparan.com/kumparanhits/ini-alasan-once-mekel-sering-bawakan-lagu-dewa-19-yang-berjudul-cemburu-209qcKZQxu0/full.

prohibiting Once from performing any Dewa 19's songs.[8] The dispute between the two musicians continued, with each citing specific provisions of the Indonesian Copyright Act to justify their positions.

Whenever a conflict arises, both copyright holder and performers should ideally be able to rely on Indonesia's primary legal source on copyright, that is the Law number 28 of 2014 ('2014 Copyright Act'). However, the Act contains overlapping norms which cause lack of clarity in the interpretation of Article 9(2) and Article 23(5) of the 2014 Copyright Act. Article 9 of the 2014 Copyright Act states that anyone who wishes to exercise economic rights, such as performing a work, must obtain permission from the author or copyright holder.[9] On the other hand, Article 23 (5), which governs performers' rights, stipulates that anyone may use a work commercially in a performance without seeking permission from the author/copyright holder, as long as they have paid compensation to the author through a collective management organization (hereinafter CMO).[10]

These two provisions were quoted to justify both songwriters and performers' position. On one hand, songwriters believe that performers must obtain their permission before performing their works. On the other hand, performers can argue that if they have paid compensation through CMO, obtaining permission from songwriters is not necessary. To bridge this ongoing debate, this research aims to examine the scope of the author's rights to prohibit the use of their work under the 2014 Copyright Act, particularly in the context of musical performances. It also seeks to clarify the relationship between Article 9(2) and Article 23(5) of the 2014 Copyright Act. Additionally, it also explores Article 9(1) of the Government Regulation Number 56 of 2021 on the Management of Song and/or Music Copyright Royalties that allows anyone to use songs and/or music in public commercially by

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[8] CNN Indonesia, "Alasan Ahmad Dhani Larang Once Nyanyikan Lagu Dewa 19," *CNN Indonesia*, March 30, 2023, https://www.cnnindonesia.com/hiburan/20230329201646-227-931033/alasan-ahmad-dhani-larang-once-nyanyikan-lagu-dewa-19.

[9] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(2).

[10] Law No. 28 of 2014 on Copyright (Indonesia), Article 23(5).

submitting a license application through the NCMO.[11] While this article supports Article 23(5) of the 2014 Copyright Act, it is debatable whether performers still need to obtain licenses after the royalty has been paid through NCMO.

Despite various published articles discussing disputes between songwriters and singers, particularly the conflict between Ahmad Dhani and Once, very few have examined in depth the legal relationship between Article 9(2) and 23(5) of the 2014 Copyright Act. For example, Ananda Nafilah discussed primarily on the responsibility of the event organizers to pay royalties to copyright holders.[12] Similarly, the article by Angie Angel Lina *et. al.* discusses the dispute and suggests that CMOs should distribute royalties to Dhani through the NCMO.[13] However, the current research considers that framing to be misguided. The central legal issue is not about who should pay the royalties, but whether explicit permission from the songwriter is still required once royalties have been paid. This research argues that such permission is not necessary, as Article 23(5) functions as a more specific provision that overrides the general rule in Article 9(2), as explained in the sub-chapter 2 of this discussion.

This present research also recognizes a discussion regarding whether a songwriter has the right to prohibit others from performing their songs, written by Mochamad Aidil Adam and Yudho Taruno Muryanto. While the previous research has similar purpose to this research, they result in different answer. Adam and Muryanto justify Dhani's prohibiting Once singing Dewa 19's songs based on the economic rights analysis, particularly because such use was perceived to harm the band's commercial interests.[14] This present research, however, argues differently. It

[11] Government Regulation Number 56 of 2021 on the Management of Song and/or Music Copyright Royalties, Article 9(1).

[12] Ananda Nafilah, "Telaah Hukum terkait *Event Organizer* (EO) terhadap Hak Royalti kepada Pencipta Lagu (Studi Kasus Once Mekel dan Ahmad Dhani Dewa 19)," *Jurnal Ilmu Hukum Lasadindi* 2, no. 1 (2025): 106-08.

[13] Angie Angel Lina et al., "Perlindungan Hukum Royalti Karya Cipta Lagu Berdasarkan Peraturan Pemerintah Nomor 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik (Studi Kasus Ahmad Dhani Dan Once Mekel)" (paper presented at the Seminar Nasional Penelitian dan Pengabdian Kepada Masyarakat, 2023).

[14] Mochamad Aidil Adam and Yudho Taruno Muryanto, "Analisis Yuridis Pelarangan Penggunaan Lagu oleh Pencipta Lagu Performer," *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 1, no. 3 (2024): 97.

suggests that the moral rights of songwriters to prohibit the use of their works are restricted only to circumstances where the use may harm the author's honour or reputation, and not for economic reasons.

This research offers a timely contribution to the discourse on copyright in Indonesia, especially considering the increasing number of disputes between songwriters and performers regarding the performance of musical works in Indonesia. These conflicts often stem from the ambiguous relationship between Article 9 and Article 23(5) of the 2014 Copyright Act, which appear to offer contradictory rules on whether performers must seek permission from songwriters or whether a payment through a CMO suffices. With CMOs playing a central role in royalty collection and distribution, this research also explores their legal authority in granting commercial licenses. As discussions on amending the 2014 Copyright Act begin to emerge, this study seeks to provide critical insight into the future direction of Indonesia's copyright regime, particularly in ensuring legal certainty and fair treatment for all stakeholders involved.

METHODOLOGY

In examining the extent to which performers are legally required to obtain permission from songwriters prior to performing copyrighted musical works, this research employs a normative juridical method with a statutory and conceptual approach. Through the statutory approach, this research focuses on analysing the relevant provisions of Indonesia's 2014 Copyright Act, particularly Article 9(2) and Article 23(5), to determine whether these provisions conflict or can be read harmoniously. The conceptual approach is used to clarify the boundaries between economic rights and moral rights under the Indonesian legal framework and how these rights apply in cases where songwriters object to the use of their works.

To support the doctrinal analysis, this research relies on secondary data, including legislation, government regulations, scholarly journal articles, and news reports

relevant to performers' rights and copyright law in Indonesia and other jurisdictions. The data were analysed qualitatively to fulfil the research objectives.

First, in analysing whether the right to prohibit others from performing a copyrighted work falls under moral rights or economic rights, this research examines Article 5 of the 2014 Copyright Act, alongside scholarly interpretations and relevant examples, including the case of Ahmad Dhani and Once Mekel. Second, in assessing whether Articles 9(2) and 23(5) are conflicting or complementary, this research applies the principle of *lex specialis derogat legi generali* to evaluate whether performers are exempt from the obligations to obtain prior permissions as long as they have paid royalties through CMO. The analysis also considers the function and legal standing of national collecting management organisation (NCMO) and CMO in Indonesia's copyright regime, particularly in ensuring the economic interests of songwriters are protected.

RESULT AND DISCUSSION

Theoretical Justification of the Songwriters' Rights to Prohibit Performers from Singing Their Work

This study is based on two commonly used theories to justify economic rights in copyright, namely reward theory and incentive theory. First, according to the reward theory, economic rights is a reward to the authors for creating works and disseminating it to the public.[15] In the context of copyright, the authors' unpleasantness of labour justifies their economic rights.[16] Since authors have invested significant efforts in creating works, such economic rights function as a legal recognition and appreciation of such labour.[17] Songwriters' creative efforts are reflected when they compose songs, especially through their ability to integrate the

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[15] Lionel Bently et al., *Intellectual property law* (Oxford University Press, 2022), 37., p.37.
[16] Justin Hughes, "The Philosophy of Intellectual Property," *Georgetown Law Journal* 77, no. 2 (1988): 198-210.
[17] Fu Runpeng et al., "Deserving recipients: Defining copyright and methodology of AIGC through the lens of labour theory," *European intellectual property review* 45, no. 9 (2023): 531.

emotional dimensions of music and language.[18] From the perspective of reward theory, such creativity and effort justify granting songwriters economic rights as a form of reward. They are therefore entitled to earn financial benefits from the use of their works. This applies whether the works are performed by the songwriters themselves or by other singers.

Second, incentive-based theories do not aim to reward authors for the time or efforts they have spent in creating works. Instead, it focuses on encouraging the public dissemination of works, such as books, art, films, and music. Supporters of this theory argue that without copyright protection, the dissemination and availability of creative works would be limited or inefficient.[19] It is because the creation of original works often involves substantial costs, whereas reproducing those works typically incurs minimal expense.[20] In Indonesia, where the rate of music piracy is considerably high,[21] protecting songwriters' economic rights is important to encourage them to keep creating and sharing their work. Without which, the lack of financial return could discourage the production of new songs.[22]

The 2014 Copyright Act gives both economic and moral rights to authors.[23] Economic rights are the author's or the copyright holder's exclusive rights to gain

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[18] Maggie Colleen Cobb, Joseph A. Kotarba, and Christopher J. Schneider, ""When I Feel a Song in Me": Exploring Emotions through the Creative Songwriting Process," Studies in Symbolic Interaction (United Kingdom: Emerald Group Publishing Limited, 2016), 62.

[19] Jane C. Ginsburg, "Copyright and Control over New Technologies of Dissemination," *Columbia law review* 101, no. 7 (2001): 1634, https://doi.org/10.2307/1123809.

[20] Joseph P. Fishman, "The copy process," *New York University law review (1950)* 91, no. 4 (2016): 857.

[21] Adhika Putra Wicaksono and Erna Andajani, "Factors Affecting Attitude towards Online Music Piracy and Willingness to Try Subscription-Based Music Services (SBMS)?," *Journal of Economics, Business & Accountancy Ventura (Online)* 26, no. 1 (2023): 38-39, https://doi.org/10.14414/jebav.v26i1.3680.

[22] Even though it is often argued that monopoly rights incentivise the authors to create more works, it might not the only reason. Nina I. Brown asserts that authors may be motivated by the urges for self-development, personal satisfaction, and a desire to challenge oneself, see
Nina I. Brown, "Artificial Authors: A Case for Copyright in Computer-Generated Works," *Columbia Science and Technology Law Review*, no. 1 (2018-2019 2018), 41,
https://heinonline.org/HOL/P?h=hein.journals/cstlr20&i=1
https://heinonline.org/HOL/PrintRequest?handle=hein.journals/cstlr20&collection=journals&div=3&id=1&print=section&sction=3.

[23] Law No. 28 of 2014 on Copyright (Indonesia), Article 4.

economic benefit arising out of the work.[24] It gives rights to the authors or the copyright holders to publish, reproduce, translate, adapt, arrange, transform, distribute, perform, communicate and rent the works.[25] The economic rights of an author refer to their right to gain economic benefits from their work. One key aspect is that anyone who wants to use a work commercially must obtain permission from the author or copyright holder. Based on this provision only, if a singer is about to perform works of the songwriters, the singer needs to ask for the songwriters' or the copyright holders' permissions.[26] Such practice has been widely recognised around the world and receive more acknowledgement in the increase of cover songs in the music industry.[27] One prominent example includes the song "I Will Always Love You" written by Dolly Parton in 1974. The song was covered by Whitney Houston in 1992 and became a world hit.[28]

On the other hands, some disputes in Indonesia often showcase how those permissions were not even obtained and resulted in copyright dispute. Recent examples were shown in the dispute between Ari Bias as a songwriter of *"Bilang Saja"* who filed a complaint against Agnez Mo, because she allegedly had performed the song in some concerts without the songwriter's permission.[29] Another example was between Keenan Nasution (songwriter) and Vidi Aldiano (singer), where Aldiano had actually obtained Nasution's permission to record the *Nuansa Bening* song in a CD, but not to be sung in concerts.[30] And so is the case introduced at the beginning of this research between Ahmad Dhani (songwriter) and Once Mekel

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[24] Law No. 28 of 2014 on Copyright (Indonesia), Article 8(f).
[25] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(1).
[26] Yulianto, Ahmad Rudi. "Legal Aspects of Covering Songs on YouTube." *Ratio Legis Journal* 2, no. 1: 222-229.
[27] Rika Santina, Faisal Santiago, and Megawati Barthos, "Copyrights Protections of Songs in Cover Version Activities," *DEVOTION, Journal of Research and Community Service* 4, no. 1 (January 2023): 244-255.
[28] Alison Hall, "Celebrating Women through Their Copyright Story: Solly Parton and Whitney Houston," https://blogs.loc.gov/copyright/2023/03/celebrating-women-through-their-copyright-story-dolly-parton-and-whitney-houston/, 27 March 2023.
[29] Oktavianto Setyo Nugroho, "Juridical Review of the Right to Royalty Payments For Songwriters Based on Law Number 28 Of 2014 Concerning Copyright (Case Study of Ari Bias Vs Agnes Monica)," *Fox Justi: Jurnal Ilmu Hukum* 15, no. 02 (2025): 495.
[30] Raden Putri Alpadillah, "Duduk Perkara Vidi Aldiano Digugat Keenan Nasution Soal Royalti Lagu Nuansa Bening," *Tempo*, June 6, 2025, https://www.tempo.co/hukum/duduk-perkara-vidi-aldiano-digugat-keenan-nasution-soal-royalti-lagu-nuansa-bening-1654503.

(singer). The dispute between Dhani and Once is particularly unique because Dhani prohibited Once from performing his songs, allowing him to sing only one track titled *Cemburu*.[31]

To understand whether such prohibition was justified by the Indonesian Copyright Act. To understand whether such prohibition was justified by the Indonesian Copyright Act, it is important to look at both rights given by copyright, namely economic rights and moral rights. First**,** economic rights, as regulated in the Article 8 of the 2014 Copyright Act, is defined as the authors' or copyright holders' exclusive rights to gain economic benefit over their works. In the context of songwriters, this includes circumstances where their works are performed by other singers.[32] Article 9(2) of the 2014 Copyright Act implies that singers are expected to obtain permissions from the songwriters.[33] Under Article 9(3) of the 2014 Copyright Act, anyone is prohibited from commercially exploiting works without permission from authors or copyright holders.[34] Some songwriters consider that Article 9(3) gives them rights to prohibit others from performing their songs. However, a thorough investigation of Article 9(3) suggests that the 2014 Copyright Act does not grant authors the right to prohibit others. The prohibition from exploiting works comes from the law itself. Authors and/or copyright holders are only given rights to authorize the commercial use of their works. This is affirmed in the Article 113 (2) of 2014 Copyright Act, which states that using copyrighted work without permission can be considered a criminal offense, punishable by up to three years imprisonment and/or a fine of up to IDR 500,000,000 (five hundred million rupiah).[35] Because the law imposes criminal penalties, it can be implied that the prohibition under Article 9(3) is a legal mandate enforced by the state, rather than a discretionary right held

[31] Hans Daniel Felix Tairas and Steven cai Lee Phua, "Analysis of Dispute Resolution Related to Royalties and Song Copyright (Case Study of Ahmad Dhani's Feud with Once Mekel)," (2023): 1265-66.
[32] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(1)(f).
[33] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(2).
[34] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(3).
[35] Law No. 28 of 2014 on Copyright (Indonesia), Article 113(2).

personally by the songwriter.[36] Such Article does not give songwriters the authority to legally forbid others from using their works. Instead, it classifies unauthorized commercial use as a punishable offense.

Second, from the perspective of moral rights, this issue becomes particularly interesting. As a country that recognizes and upholds moral rights, Indonesia regulates these rights under the Article 5 of the 2014 Copyright Act. This provision states that one of the author's moral rights is to defend their works from distortion, mutilation, modification, or any action that may harm their honour or reputation.[37] This clause can be used as a justification if a songwriter objects to their song being performed by someone else only if such use could damage their personal integrity or reputation.[38] A prominent example can be found during Donald Trump's campaign in the United States. Several songwriters publicly objected to their songs being used during Trump's political campaign for various reasons.[39] Some artists explicitly stated they did not support Trump as a presidential candidate, while others opposed the political use of their works altogether.[40]

In the case of Ahmad Dhani prohibiting Once from singing Dewa 19's songs, it is important to examine whether the prohibition can be legally justified. In doing so, it is important to look at Dhani's reasons on such prohibition. As previously mentioned, Article 5(1)(e) of the 2014 Copyright Act explicitly grants authors the right to protect their works from any use that may harm their honour or reputation.[41] According to several reports, Dhani prohibited Once from performing

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[36] Ayup Suran Ningsih and Balqis Hediyati Maharani, "Penegakan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring," *Jurnal Meta-Yuridis* 2, no. 1 (2019): 16.
[37] Law No. 28 of 2014 on Copyright (Indonesia), Article 5(1)(e)
[38] Tanya F. Aplin and Ahmed Shaffan Mohamed, "The concept of 'reputation' in the moral right of integrity," *Journal of intellectual property law & practice* 14, no. 4 (2019): 272, https://doi.org/10.1093/jiplp/jpz004.
[39] Cathay YN Smith, "Weaponizing Copyright," *Harvard Journal of Law & Technology* 35 (2021): 195.
[40] Rolling Stone. 2024. "All the Artists Who Don't Want Donald Trump Using Their Music." *Rolling Stone*. Rolling Stone. August 30. https://www.rollingstone.com/music/music-lists/all-the-artists-who-dont-want-donald-trump-using-their-music-1235080043/.
[41] Law No. 28 of 2014 on Copyright (Indonesia), Article 5(1)(e)

Dewa's songs because the band was about to embark on a concert tour.[42] Dhani expressed concern that Once's solo performances of Dewa's songs might interfere with the success of Dewa's official concerts.[43] Dhani also explicitly describes the ban as temporary, and that he would publicly announce when it would be lifted.[44] This implies that the reason behind the ban was economic, not reputational. Should the concern have been reputational in nature, the prohibition would likely have been permanent, rather than temporary and conditional.

In conclusion, the prohibition imposed by Ahmad Dhani to Once cannot be justified under either the economic rights or moral rights provisions of the 2014 Copyright Act. There are two main reasons supporting this position. First, the prohibition cannot be justified on the basis of economic rights argument. Article 9(2) and (3) of the 2014 Copyright Act do not explicitly grant authors or copyright holders the right to prohibit others from exploiting their works. Second, the prohibition also cannot be justified under moral rights Article 5(1)(e) of the 2014 Copyright Act grants authors the right to defend their works from distortion or use that may cause reputational harm. In Dhani's case, his motive was entirely economic in nature. As such, moral rights cannot be invoked as the legal basis for the prohibition.

Seeking Songwriter's Approval for Performances: Is It Necessary?

In exploring whether performers need to ask for songwriters' approval in a performance, it is important to look at the tension between Article 9(3) and 23(5) of the 2014 Copyright Act. These articles reflect a deeper conflict between the economic rights of authors and that of the performers. Article 9(2) requires anyone who wish to commercially exploit a copyrighted work to first obtain permission from the author or copyright holder.[45] The scope of commercial exploitation under this article includes publication, reproduction, translation, adaptation, arrangement,

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[42] Mariska. 2023. "IPR Is the Reason Why Ahmad Dhani Banned Once from Singing Dewa 19 Songs." *Kontrak Hukum*. April 5. https://kontrakhukum.com/en/article/ipr-is-the-reason-why-ahmad-dhani-banned-once-from-singing-dewa-19-songs/

[43] *Ibid.*

[44] *Ibid.*

[45] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(2).

transformation, distribution, performance, dissemination, communication, and rental of the works.[46] In contrast, Article 23(5) provides a specific provision for performers, allowing them to use a copyrighted work in a performance without prior authorization, so long as appropriate compensation is paid to the author through a CMO.[47]

At the first blush, Article 9(2) and 23(5) of the 2014 Copyright Act may appear to be in conflict. However, this research argues that both articles serve different functions. Article 9(2) establishes a general rule, which applies whenever a work is commercially exploited, whether through publication, translation, arrangement or other forms of use. Meanwhile, Article 23(5) provides a specific exemption for performers under a very restricted circumstance. It allows them to use a work in a performance without obtaining prior authorization, provided that appropriate compensation is paid to the author through a CMO. This exemption applies exclusively to performances. It does not extend to other forms of exploitation. For instance, when a performer wishes to record and distributed a cover version of another songwriter's work, prior permission from the author or copyright holder is still required. In such cases, the use does not qualify for exemption under Article 23(5). Instead, it falls under the general category of economic rights protected by Article 9. This means that the two provisions should not be viewed as conflicting, but rather as complementary. Article 9(2) sets out the general rule for any commercial use of the work, while Article 23(5) offers a specific mechanism applicable only for performers in their performances. In this sense, Article 23(5) can be understood as a *lex specialis* to Article 9(2) in the context of performances.

The rationale behind this exception lies primarily in considerations of **efficiency and fairness** CMOs act as the authorized representatives of authors to manage their **economic rights**, particularly in the collection and distribution of royalties.[48] Historically, the establishment of the **NCMO** and CMO in Indonesia was aimed to

[46] Law No. 28 of 2014 on Copyright (Indonesia), Article 9(1).
[47] Law No. 28 of 2014 on Copyright (Indonesia), Article 23(5)
[48] Gazdeliani Giga, "The role and challenges of collective management organizations in copyright protection," *Актуальные исследования*, no. 41 (223) (2024): 10.

create a single-window system for collecting royalties from music users. This was aimed at preventing multiple or overlapping royalty collections by different CMOs operating within the same field.[49]

To ensure simple procedure in royalty management, it is reasonable that performers who have already paid royalties through a registered CMO are not required to seek individual permission from the copyright owner each time they perform a song.[50] This reflects the underlying nature of copyright itself, namely the distinction between **economic rights** and **moral rights.** In such cases, the primary concern is the protection of economic rights, which rest on the principle that any commercial use of a copyrighted work must be accompanied by appropriate compensation to the author.[51] Accordingly, from a practical and administrative standpoint, the requirement to obtain explicit permission may be considered unnecessary, provided that fair remuneration has been paid.[52]

The royalty collection practice in other jurisdictions also demonstrates that performers are not required to obtain direct permission from songwriters or copyright holder for public performances. In the United Kingdom, for example, if a singer or concert organizer intends to perform a copyrighted song, they only need to obtain a public performance license from the CMO known as Performing Right Society (PRS) for Music.[53] PRS collects royalties from concert promoters and subsequently distributes them to the relevant songwriters or copyright owners.[54] Similarly, Singapore operates under the Composers and Authors Society of

[49] Agus Sardjono, Brian A Prastyo, and Derezka G Larasati, "The Effectiveness of National Collective Management Organization Regulation," *Indonesian Law Review* 6 (2016): 327.
[50] Eric Priest, "The Future of Music Copyright Collectives in the Digital Streaming Age," *The Columbia Journal of Law & the Arts* 45, no. 1 (2021): 5, https://doi.org/10.52214/jla.v45i1.8953.
[51] Zachary L Catanzaro, "Beyond incentives: Copyright in the age of algorithmic production," *NYU Journal of Intellectual Property & Entertainment Law* 13 (2023): 23.
[52] Dina Kurniawati, "The Perspectives of Legal Progressivism Concerning Song Royalty Payments," *Syiah Kuala Law Journal* 6, no. 3 (2022): 273.
[53] Ananay Aguilar, "The Collective Management of Performers' Rights in the UK: A Story of Competing Interests," *SCRIPTed* 16 (2019): 8.
[54] John Street, Dave Laing, and Simone Schroff, "Regulating for creativity and cultural diversity: the case of collective management organisations and the music industry," *International journal of cultural policy : CP* 24, no. 3 (2018): 377, https://doi.org/10.1080/10286632.2016.1178733.

Singapore (COMPASS), which classifies public performances into several categories. One category relevant to this research is concerts and ticketed entertainment (with admission charges).[55] In such cases, the royalty fee is 2.5% of gross receipts, subject to a minimum fee of SGD 150 per show.[56] Further, in South Korea, a country with a globally recognized music industry, performers or event organizers are also not required to obtain direct permission from the songwriter or copyright holder for performing songs in concert or other public events.[57] They are only required to obtain a public performance license from the Korea Music Copyright Association (KOMCA).[58] KOMCA is responsible for distributing the royalties to copyright holders, based on set list reporting or digital tracking systems used during the event.[59]

The practices in countries with well-established CMO systems provide a useful reference point, suggesting that Article 23(5) of the 2014 Copyright Act is conceptually on the right track. However, its implementing regulations may still give rise to ambiguity in practice. In the Article 9(1) of the Government Regulation Number 56 of 2021 on the Management of Song and/or Music Copyright Royalties states that any person may commercially use songs and/or music in public of a commercial nature by submitting a license application to the copyright holder or related-rights holder through the NCMO. While this mechanism appears to align with the intent of Article 23(5), the language in the regulation may cause uncertainty as to whether performers must still obtain authorisation, even when royalty payments are made through NCMO. Further uncertainty is also reflected in the Article 37(1) of the Regulation of The Ministry of Law and Human Rights number 9 of 2022 on the Implementation of Government Regulation Number 56 of 2021 (Permenkumham 9 of 2022). It mentions that anyone can commercially use songs

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[55] Tay Eu-Yen, "Collective management of musical copyright in a self-regulated regime: Singapore's copyright review and the hope for transparency," *Singapore Academy of Law journal* 32, no. 2 (2020): 1071.

[56] *Ibid.*

[57] Yong Hyeon Yang, "Copyright Royalty Regulation and Competition in the Music Retail Market," *KDI Journal of Economic Policy* 39, no. 1 (2017): 85.

[58] *Ibid.*

[59] *Ibid.*

and/or music in public commercially by applying for licenses to authors or copyright holders through NCMO.[60] Such stipulation, in essence, is in contrary to the Article 23 (5) of the 2014 Copyright Act, which suggests that authorization from authors or copyright holders is not necessary if royalty has been paid to the CMO.

There is a fundamental difference between the practice of granting public performance licenses in the United Kingdom, Singapore, South Korea and the system established in Indonesia. In those countries, performers apply for licenses directly to the CMO, which acts as the authorised representative of the copyright holders. In contrast, under the Government Regulation on No. 56/2021, performers must submit their license application to the copyright holder or related rights holder through NCMO. This mechanism is considered less effective, as the application still requires direct approval from the author or copyright holder.[61] To improve the simplicity and efficiency of the royalty licensing process, Indonesia could adopt the best practices from other jurisdictions, where public performance licenses are processed solely through the CMO, without the need for individual approval. This would be consistent with the provision of both the 2014 Copyright Act and Government Regulation No. 56/2021, which already recognises CMOs as the legal representatives of copyright holders.

CONCLUSION

The research arrives at two main conclusions. First, the right to prohibit others from performing a copyrighted work is not part of the author's economic rights but rather falls under moral rights as regulated in the Indonesian Copyright Act. This right may only be exercised under very restricted circumstances, namely when the performance is considered to cause harm to the author's honour or reputation. Second, Articles 9(2) and 23(5) of the 2014 Copyright Act are not conflicting but rather serve complementary functions. Article 9(2) establishes the general rule that any commercial use of a copyrighted work requires prior permission from the

[60] Regulation of The Ministry of Law and Human Rights number 9 of 2022, Article 37(1).

[61] Government Regulation on No. 56/2021 (Indonesia), Article 9(1)

author or copyright holder. Meanwhile, Article 23(5) provides a specific exception for performers, allowing them to use a work in a performance without obtaining prior consent, as long as compensation is paid through a CMO. In the event of interpretive tension between the two, the principle of *lex specialis derogate legi generali* (in the case of conflict, the more specific law takes precedence over the more general law) should apply. This is also consistent with the role of CMOs in collecting and distributing royalties to protect the economic interests of authors.

Based on these findings, this research recommends that Government Regulation No. 56/2021 be revised. Specifically, the licensing mechanism for public performances should be simplified by eliminating the requirement for direct consent from authors or copyright holders. Instead, licenses should be granted through CMOs, acting as authorised representatives of the authors. This approach is in line with the spirit of the 2014 Copyright Act and consistent with international best practices in copyright management.

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