# Personal Data Protection in Relation with Data Exchange for the Purpose of Collection and Distribution of Economic Rights of the Copyright of Indonesian Songs in Digital Worldwide

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**ABSTRACT**

Personal data are important things that need protection. In the context of the withdrawal, collection, and distribution of the use of economic rights over copyrighted songs, the author's personal data is provided, used, and transferred to other parties through various mechanisms. Withdrawal, collection, and distribution of Copyright outside the territory of Indonesia is usually executed by copyright holders or collective management organizations in collaboration with other parties, for example, music aggregators or other collective management organizations ("CMO") in the respective area using an agreed digital or electronic system. For example, CISAC ( Confédération Internationale des Sociétés d'Auteurs et Compositeurs) provide specific regulations related to personal data exchange in relation to cooperation in such withdrawal, collection, and distribution of royalty for performing rights, for example, under the European Union General Data Protection Regulation (EU GDPR) No. 679/2016. Meanwhile, performing rights is only one of many economic rights of the authors/songwriters that may be economically exploited. Although several Indonesian laws and regulations have accommodated the protection of personal data, there is no single law that becomes a comprehensive, accountable, and appropriate legal umbrella for personal data protection that can protect the personal data of authors/songwriters in relation to data exchange policies, in this case mainly related to withdrawal, collection, and distribution of song copyright. This urgency for digital personal data exchange policy on copyrights is very important. This research was conducted by analyzing data based on a literature review. This study aims to analyze the regulation regarding the protection of personal data that is shared for the purpose of collecting and distributing royalties of copyright of the song works in Indonesia and compare it with the personal data protection regulations related to the collection and distribution of song copyright royalties in other countries around the world.

***Keywords:*** *Copyright, Protection, Royalty, Exchange of Personal Data.*

## 1. INTRODUCTION

One of the intellectual property rights recognized and protected in Indonesia is copyright. Copyright in Indonesia is regulated by Law No. 28 of 2014 on Copyright ("Copyright Law")[1]. Copyright is the exclusive right of the writer raised automatically based on the declarative principle after creation is embodied in real form without reducing the provisions of prevailing regulations.

Copyright is an exclusive right consisting of moral rights and economic rights. Songs and music contain copyright where songwriter has moral rights and economic rights to his creation that is protected by law. In addition to moral rights protected by laws, songs and music also contain economic rights that can be used and monetized by the author to obtain the economic benefits of his creation. Economic rights are the exclusive rights of authors or copyright holders to obtain the economic benefits of creation; in this matter are songs and music.

Intellectual Property Rights (IPR) is one of the human rights that should be protected by the Indonesian government. Human rights are the basic rights of all humanity without any difference. Given the basic rights are a gift from the Almighty God, the sense of human rights is as a grace of God Almighty attached to humans, nature, universal and eternal, related to human honor and dignity[2].

For the use of the copyright of the song and music owned by the author, the author entitles to royalties. Based on the provisions of the Copyright Law, the collection and distribution of royalties of the copyright of the song and music owned by the author can be carried out either by the Author, Copyright Holders, or by a collective management organization. The collection and distribution of the copyright royalty can be done by collaborating with other parties for international use outside the territory of the Republic of Indonesia.

Along with the development of science and technology, the collection and distribution of royalties can be done not only manually but also by using technology through an electronic system. The systemization of the collection and distribution of royalties is important not only to facilitate the process and implementation but also to minimize human errors in its implementation. For the collection and distribution of royalties crossing the country or state border, the use of such a system is important because of the easiness of its implementation without limitation of distance and time.

As property rights, personal data is valuables owned by a person in the form of personal information, in the sense that not everyone knows and has access to such personal data, and only personal data owners and people who are permitted may know such personal data.

Most people don't think that personal data is an important thing that requires special protection both in handling and storage, but simply believe that personal data has been protected and regulated by its use both by the government and those who request and use the personal data. In transactions carried out through an electronic system, for example, users as personal data owners provide and enter personal data into the electronic system without knowing whether their personal data will be processed, used, and stored correctly and properly.

The position of the owner of the personal data is weak because the owner of personal data must agree to the terms and conditions of transactions in the electronic system and enter all the requested data – which may not necessarily be needed by the electronic system to be able to make transactions. The terms and conditions of the transaction are often standard and cannot be negotiated, in the sense that the user of the electronic system does not approve the terms and conditions set as unilaterally, the transaction cannot be processed and continued. In practice, for example, users must click small boxes with the words "I have read and accepted the terms and conditions in this electronic system (application)" as an approval on the ClickWrap Agreement regarding the use of the application.

## 2. RESEARCH METHOD

This research is conducted by juridical-empirical method analyzing both primary and secondary data. The primary data is regulations on copyright and protection of personal data; even tough specific regulations on personal data protection in the field of copyright of the song and/or music in Indonesia have not been stipulated yet. The secondary data consists of literature, journal, and dictionary related to the problems persisted in this research. All data needed is collected by literature review.

That data and information, then, is analyzed qualitatively and combined with facts in Indonesia regarding the implementation of collection and distribution of royalties of copyright of the song and/or music in Indonesia. This topic has been discussed with relevant experts in this matter from practitioners and academics.

## 3. FINDINGS AND DISCUSSION

### *3.1. Personal Data Protection in Indonesia Regarding the Collection and Distribution of Royalties of Song and/or Music*

Song and music are forms of copyright protected by the law of Indonesia, both in the form of notation with lyrics and without lyrics (instrumental). The wealth of diverse Indonesian culture is also influential on numbers and variety of songs and/or music played and growing in Indonesia.

As part of copyright, songs and/or music are protected by laws and regulations in Indonesia under Law No. 28 of 2014. Copyright protection for songs and/or music includes copyright and neighboring rights. Copyright consists of moral rights and economic rights of authors, while neighboring rights include the right of producers of phonograms, performers, and broadcasting institutions. For his creation in the form of songs and/or music, the author entitles to royalties, namely rewards for the use of economic rights of songs and/or music. Royalty is paid for the use of songs and/or music for various interests, for example, being performed in a musical concert, being played in public places for commercial use, synchronization on an advertisement, used as back song or theme song in a movie, etc.

PP No. 56 of 2021[3] states that commercial use of songs and/or music in public services includes performing songs and/or music, performing rights, and communication of songs and/or music, both analogously and digitally. It is mentioned in PP No. 56 of 2021 that 14 types of public services are considered as commercial use of songs and/or music. Commercial use of copyrighted songs and/or music or distribution in digital platforms, for example, on YouTube, Spotify, JOOX, Facebook, Tiktok, and others, are not mentioned to regulated in PP No. 56/2021.

In practice in Indonesia, an author can collect royalties of his copyright of the song works himself or authorize copyright holders (music publishers) and the Collective Management Organization of Author (“CMO Author”). Royalty management held by the author himself is rarely found for various reasons. Administratively it will be difficult for an author to manage such use of songs and/or music and engage with a lot of distributors and users. For example, if songs and/or music will be distributed not only using physical media such as vinyl, tapes, CDs, or DVDs but also distributed digitally (Digital Electronic Media Distribution or DEMD) in the form of music distribution on digital platforms, and in the form of RBT (ring back tone), Full Track Download and others, the amount of effort, time and costs that must be incurred by the author of songs and/or music will be unimaginable. There are also problems with the power of author's bargaining power if he

only creates only a few songs, especially for the authors who have just started a career in the world of music and do not have a number of streaming/viewers with high economic value. Another reason is that the ability of the author to collect royalties of copyright of his songs and/or music is commercially more effective and efficient if executed together with other authors. Therefore, most of the authors will join as a member of the Music Publishers and CMO Authors.

In carrying out the collection and distribution of royalties, usually both music publishers and CMO work together with electronic system owners who can help the collection and distribution of royalty of the song and/or music.

Music Publishers or CMOs will provide data related to the collection and distribution of royalties, both personal data related to itself and related personal data of the author of the song they represented.

One of the economic rights of the copyright of the song and/or music is the performing rights collected and distributed by the CMO Author. The CMOs Author to collect and distribute royalties of copyright of the Song and/or Music authorized by the Ministry of Law and Human Rights of the Republic of Indonesia are Wahana Musik Indonesia (WAMI), Karya Cipta Indonesia (KCI), and Royalty Anugerah Indonesia (RAI). For other economic rights of copyrights of the songs and/or music, the author can manage it through his own management or appoint a copyright holder, namely the music publisher.

Despite the existence of the National Collective Management Organization (Lembaga Manajemen Kolektif Nasional/LMKN) causing controversy because it was deemed not to meet the mandate of the Copyright Law, LMKN performs the collection and distribution of royalties for the public use of songs and/or music commercially based on the power given by CMO, copyright holders, and authors. LMKN itself consists of the CMO Author and Collective Management Organization of neighboring rights.

On 30 March 2021, the government issued Government Regulation No. 56 of 2021 on Management of Royalties of Copyright Songs and/or Music as the legal basis for the design, development, and implementation of a song and/or music information system (Sistem Informasi Lagu dan/atau Musik/SILM), which is expected to provide legal protection for the Author, Copyright Holders and Neighbouring Rights Owners of economic rights of the songs and/or music and everyone who commercially use the songs and/or music. SILM is the data and information system used in the distribution of royalties of songs and/or music in Indonesia.

In comparison, the music world acknowledges DRM or Digital Rights Manager. DRMS is a technology that explains and identifies the protection of digital contents through intellectual property rights and enforces rules as stipulated through the rights holder or described through the law governing the digital content itself[4]. It is a technology employed to protect the rights of the Copyright Holder, whether it be the author or subsequent owner of the content[5].

Utilization of technology to manage the copyrights of songs and/or music and its royalties can be done through a digital rights manager, and several world-class digital platforms have used the rights manager to be able to control intellectual property rights and content displayed on the platform.

SILM will contain a report on the use of songs and/or music that will be the basis for LMKN to collect and distribute royalties. The configuration of its contents and details involved in the contents of the SILM still have not been discussed in more detail in PP No. 56/2021.

As a system of information, it will certainly contain more than 1 of information about songs and/or music, both related to the author, copyright holders, CMO, and related to songs and/or the music itself.

In carrying out the collection and distribution of royalties of the song and/or music, each CMO and/or music publisher is allowed to cooperate with other parties through a reciprocal agreement. To optimize the implementation of the collection and distribution of royalties, obviously, the personal data needs to be given and distributed to other CMOs throughout the world as the extended hand of the CMO Author in Indonesia. Therefore, personal data authors need to get protection so as not to be used by irresponsible parties or for unpermitted reasons.

The author of songs and/or music, as an important part of the ecosystem of intellectual property, need to obtain protection for his economic rights of the copyright of the song and/or the music, in the form of certainty of royalties' payment for the use of copyright on songs and/or music by users.

Copyright Law regulates that collection and distribution of royalties for the copyright of the song and/or music can be done by the author, copyright holders, or collective management organizations where they join as a member. But Copyright Law does not regulate further on how to collect and distribute royalties of copyrights of the song and/or music in-depth, comprehensive, and accountable manner.

Indonesia actually has already had a rule about personal data protection in the digital era as stipulated in the form of a Ministerial Regulation No. 20 of 2016 on Private Data Protection (PDP) dated 7 November 2016, prevailed and has been valid since 1 December 2016. This Ministerial Regulation is one of the 21 ministerial regulations, derivatives of Government Regulation (PP) No. 71/2019 on the implementation of electronic systems and transactions (Penyelenggaraan Sistem dan Transaksi Elektronik/PSTE), promulgated and valid on 10 October 2019.

However, the implementation of regulations regarding personal data protection does not specifically regulate personal data related to copyright, in this case on data exchange with other parties in other countries. These regulations also do not provide sufficient protection for personal data shared for the purpose of collection and distribution of royalties of the copyright of the song and/or music.

It is possible that when Indonesia does not set specific personal data protection related to the provisions regarding

data transfer to other countries such as Japan, but Japan itself has a policy that private data protection is privately regulated by the related sector. Therefore in the event of personal data protection not be stipulated in a specific law, at least regulations on the copyrights of songs and/or music that regulate the collection and distribution of royalties must contain provisions regarding personal data protection, in this case, related to commercial use in public as stipulated in PP No. 56/2021, and commercial use in DMD.

If Indonesia has one rule of law that comprehensively regulates personal data protection, including data transfer, this is certainly good news to guarantee personal data protection in Indonesia, especially related to the digital collection and distribution of song royalties and songs and/or music throughout the world.

In addition, the implementation of personal data protection laws also requires an institution that regulates, oversees, and enforces the provisions and regulations related to the protection of personal data. The institution operates in accordance with the mandate of the law and conducts its function in serving complaints, accepting complaints, conducting socialization, and other activities related to personal data protection.

### *3.2. International Personal Data Protection for Indonesian Song Digitally Distributed Worldwide in relation with Collection and Distribution of Royalties of Copyright of the Song and/or Music*

The era of globalization and digital disruption are the game changers in international business, in this matter is songs and/or music business. Digitally, there is no such thing as a state or nation border. People can listen, play, download, and do other activities using Indonesian songs through digital platforms without even have to be or ever be in Indonesia.

One of the IP regimes that received very large attention in the protection was copyright. Copyright is the exclusive right of the Author or Copyright Holder to regulate the use of the outcome of the idea or certain information. Basically, copyright is "the right to copy a creation." Copyright can also allow these rights holders to limit illegal doubtful reproduction. Domestic copyright protection is not enough. International protection is a must.

In carrying out the collection and distribution of royalties of performing right of song and/or music throughout the world, Author, Copyright Holders, and Collective Management Organization are in collaboration with the authorized local party, usually the collective management organization of the country. Related to the performing right of the song and/or music, the CMO association that has quite number of members is CISAC (Confédération Internationale des Sociétés d'Auteurs et Compositeurs). Indonesian CMO Author / LMK Wahana Musik Indonesia (WAMI) is a member of CISAC.

Information related to authors, for example, may be requested in the form of a name, alias or pseudonym (pseudonym), and IPI / Cae Number.

The IPI / Cae Number is an international identification number assigned to songwriters and publishers to uniquely identify rights holders. IPI stands for Interested Parties Information. CAE stands for Composer, Author, and Publisher[6].

These data need to be available and must be submitted to be digitally processed in electronic systems to be identified internationally. The commercial use will be recorded so that can be known not only the information regarding copyright users but also the value of royalties that are entitled to be obtained by the author for the use of copyright.

CICAS tools, personal data identifying you and your work (include names, alias or pseudonym, title, related persons, year of birth, occupation/role, titles of artistic works, ISNI and IPI numbers, and other work identifiers, allocation of rights collected from our members and clients[7].

The aforementioned personal data are the personal data of the author, data on the copyrighted song and/or music, and data related to the use of copyrighted song and/or music.

International copyright regulations are combined regulations of public law regulations and international civil law, embodied in international convention.

International protection is usually carried out in the international agreement. The terms that are often used for international agreements are tracts, pacts, conventions, charters, declaration, protocol, arrangement, accord, mode, Vivendi, covenant, and so on[8].

This shows that if the personal data related to collection and distribution of Indonesian song' royalties that are digitally monetized throughout the world, its protection in Indonesia is not in accordance with the standards of the country where such monetization will be executed, then the applicable regulations shall be the provision of personal data protection from that country, not Indonesia.

Therefore, it is very important to determine the appropriate, effective, and efficient protection of the use of personal data distributed related to the collection and distribution of Indonesian songs and/or music that are digitally monetized throughout the world.

There are no special rules in Indonesia that provide protection against personal data related to the exchange of personal data and/or data transfer with respect to the collection and distribution of royalty of copyright of the song and/or music, while most developed countries have regulated its personal data protection in relation with data transferred or exchanged for the purpose of collection and distribution of royalties of copyright of the song and/or music.

European Union (EU) strictly protects the personal data of its citizens, as stipulated in The European Union General Data Protection Regulation (EU GDPR) 679/2016 and supervised by the European Data Protection Supervisor. In addition, as security of all types of data transfer to third countries that may not guarantee adequate protection levels for the data, standard contractual clause according to EU Directive no 95/46 / EC shall be applied.

CISAC organizes data transfer related to the personal data of the author/composer/publisher related to the collection and distribution of music royalties in a high degree of care.

When the recipient is located in a country whose legislation has not been the subject of an adequacy decision from the European Commission, and the transfer is not strictly necessary to the performance of or our members contractual duties toward you, We (CISAC) make sure that the transfer is governed by the European Commission's Standard Contract Clauses that guarantee a sufficient level of protection of privacy and the fundamental rights of persons, or equivalent guarantees.

For France, supervisory body regarding personal data protection is Commission Nationale de l'Informatique et des Libertés. The French Data Protection Act ("LOI N ° 7-17 DU 6 JANVIER 1978") which supplements The GDPR.

The US has a so-called sectoral approach in data privacy law, where each sector develops its own data protection system, including the related regulations. The US Copyright Office is required under 17 u.c. §§ 705 (a) - (b) to maintain records of copyright registrations and to make them available for public inspection.

Japan has Personal Information Protection Act, supervised by the Personal Information Commission[9]. JASRAC (Japanese Society for Rights of Authors, Composers, and Publisher) provides Stipulation for Administration Trust Contract where in Article 25 on Provision of Information regulates Data Protection[9].

## 4. CONCLUSION

Along with the development of digital technology in the world, the use and commercial use of copyright of the song and/or music have expanded throughout the world without exception. The use of economic rights to the copyright of the song and/or music as digitally monetized needs to have sufficient and adequate protection not only to get its maximum economic benefits but also for the implementation of personal data transferred for the purpose of the collection and distribution of the royalties of the song and/or music to be treated in a high degree of care and considered strict confidentiality. The personal data protected are the personal data of the author, copyright of songs and/or music, and the use of copyright of the songs and/or music.

Protection of personal data shared for the purpose of the collection and distribution of digital royalties both in Indonesia and throughout the world have not been regulated in detail, complete and comprehensive in Indonesian law but still separated in various forms of laws and regulations. This is where the role of politics of law in the protection of personal data shared related to the withdrawal, collection, and distribution of Indonesian songs and/or music that is digitally monetized throughout the world is very important and urgent to be regulated and enforced.

The protection of personal data shared for the purpose of collection and distribution of royalties in several countries has been more fully regulated, for example, the EU through the GDPR, which provides a Standard Contractual Clause that has been adopted by CISAC; and Japan which has the Personal Information Protection Act which has been accommodated by JASRAC.

The Indonesian government needs to make special umbrella regulations or implementing regulations related to the protection of personal data on the author, copyright of the song and/or music, and the use of copyright of songs and/or music. The personal data is distributed and transferred to many parties in various countries digitally with potential abuse, treatment, and/or protection that may not apply the principle of prudence or the treatment of personal data that follows the provisions of other countries; where the data is used to provide maximum benefits author.

Protection of personal data through a comprehensive, reliable, and accountable special regulation will fulfill the function of the state in providing protection against the human rights of Indonesian citizens in the field of intellectual property rights.

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