

Existence of Performing Rights: An Analysis of Implications and Orientations for Café Singers

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Keywords: Copyright; performing rights; Royalties.	Introduction: Performing rights are rights attached to copyright as an integral part of the creation of a work. In the context of copyrights to songs or music, performing rights relate to the need to pay royalties to songwriters or music for attempts to use songs or music commercially. Purposes of the Research: Implications of performing rights for café singers to continue paying royalties based on statutory regulations and how the performing rights orientation for café singers is ideal in ensuring justice for songwriters or music as well as for café singers. Methods of the Research: Normative legal research with a concept and statutory approach. Results / Findings / Novelty of the Research: The implications of performing rights for café singers to continue paying royalties based on statutory regulations, namely that there is no legal certainty for café singers because there is no specific regulation governing them. The performing rights orientation for café singers is ideal in ensuring justice, namely by excluding royalty payments for café singers because the commercialization impact received by café singers is not large and only sufficient to make ends meet. Keywords: Copyright; Performing Rights; Royalties.	

1. INTRODUCTION

Songs or music are intellectual property rights because making songs or music requires human creativity and innovation. As intellectual property rights, the song or music must be guaranteed to fulfill the rights in every intellectual work, namely moral and economic rights.¹ Moral rights have an ethical dimension that, in the context of a song or music, requires confirmation regarding the creator or maker of the song or music. The importance of including the creator of the song or music is intended as an effort to appreciate morally someone's work that must be listed as a form of appreciation or intellectual work.² The rights relating to songs or music hereinafter are economical. Economic rights relate to rights that have monetary value and benefits for a work of song

¹ Yonghao Li et al., "Business Model Comparison Between Spotify and NetEase Cloud Music," *Proceedings of the 2021 4th International Conference on Humanities Education and Social Sciences (ICHESS 2021)* 615, no. Ichess (2022): 2514–21, <https://doi.org/10.2991/assehr.k.211220.436>.

² Taufik H. Simatupang, "Hak Asasi Manusia Dan Perlindungan Kekayaan Intelektual Dalam Perspektif Negara Hukum," *Jurnal HAM* 12, no. 1 (2021): 111, <https://doi.org/10.30641/ham.2021.12.111-122>.

or music.³ That is as emphasized in Article 9 of Law no. 28 of 2014 concerning Copyright (hereinafter referred to as UU HC) emphasizes the importance of fulfilling economic rights for songwriters or music to commercialize the song or piece. The commercialization of songs or music is an effort to optimize the utilization of the economic benefits of a song or music.⁴ Because it is utilized and has commercial value, Article 9 of the HC Law requires the fulfillment of economic rights to the creators of a song or music.

Fulfilling economic rights to the creator of a song or music used commercially is carried out by giving royalties to the creator of a piece or music.⁵ That is emphasized in Article 35, paragraph (2) of the HC Law that if a copyrighted work in the form of a song or music is intended for specific commercial purposes, the creator of a song or music must receive royalties. The importance of royalties for a copyrighted work in the form of a song or music is intended for specific commercial means for the creator to appreciate and fulfill the economic rights guaranteed in the HC Law. The state also explicitly regulates the importance of royalties for copyrighted work as a song or music through PP No. 56 of 2021 concerning the Management of Song and/or Music Copyright Royalties (hereinafter referred to as PP Royalties). Article 2 of PP Royalty emphasizes the importance of performing rights, namely rights that are announced or used sedation to be played in a commercial event. Construction Article 2 of PP Royalty emphasizes that performing rights must be given to the creator of a song or music when the song or music is played in a commercial performance. Article 3 of the PP Royalty emphasizes that one of the parties obliged to pay performing rights is a café singer who uses a song or music in his performance.

The provision in Article 3 of PP Royalty states that cafes are one of the parties that are required to pay royalties for a song or music through the National Collective Management Institute (hereinafter referred to as *Lembaga Manajemen Kolektif Nasional* or LMKN). The obligation of café singers to be one of the parties obliged to pay royalties creates a problem. After all, even if café singers use a song or music commercially, the profits of café singers can be said to be minimal and not like professional singers who are eligible to pay royalties because professional singers generally have a fee sound stage and have a professional management system.⁶ The provisions regarding the obligation of café singers to pay royalties are also strengthened by Article 11 of the PP Royalty, which confirms that royalty rates are provided for Micro, Small, and Medium Enterprises (MSMEs). Even so, referring to the provisions of Article 11 paragraph (2) PP Royalty that royalty rates for MSMEs are determined explicitly by the minister, but until 2023, arrangements by the minister discuss royalty rates for café singers and their management with little income is categorized as MSME – mandatory rules as mandated in Article 11 paragraph (2) PP Royalty. Because there is no regulation as stipulated in the

³ Sitti Nabila and Sanusi Bintang, "Copyright Infringement in Youtube Under Indonesian and Malaysian Laws: The Cases of Aisyah Istri Rasulullah and Karna Su Sayang Songs," *Syiah Kuala Law Journal* 5, no. 1 (2021): 41–49, <https://doi.org/10.24815/sklj.v5i1.20963>.

⁴ Raffaele Trequattrini et al., "Intangible Assets Management and Digital Transformation: Evidence from Intellectual Property Rights-Intensive Industries," *Meditari Accountancy Research* 30, no. 4 (2022): 989–1006, <https://doi.org/10.1108/MEDAR-03-2021-1216>.

⁵ Francisca Skoogh and Henrik Frisk, "Performance Values - an Artistic Research Perspective on Music Performance Anxiety in Classical Music," *Journal for Research in Arts and Sports Education* 03, no. 01 (2019): 1–15, <https://doi.org/10.23865/jased.v3.1506>.

⁶ Chien-chih Jesse Lu, "Copyright Licensing and the Regulation of China 's Music Market: Searching for Transactional Efficiency and Fair Compensation," *Washington Journal of Law, Technology & Arts* 17, no. 1 (2022).

provisions as mandated in Article 11 paragraph (2) PP Royalty, the royalty payment provisions for singers and café managers are based on LMKN Decree No. 20160512RKBD/LMKN-Pleno/Royalty Tariff/2016 (LMKN Royalty Decision) which has not yet provided a special rate for café singers to pay royalties as mandated in Article 11 paragraph (2) PP Royalty.

From the description of the problem above, there is a legal problem, namely the settlement of regulatory law regarding specific rates of royalty payments for café singers. Therefore, this research aims to realize the performance rights for café singers to continue to pay royalties based on laws and regulations and how to ideally orient the performance rights for café singers in ensuring justice for songwriters or music as well as for café singers. Research on performance rights in songs or music has been carried out by three previous researchers: (i) research conducted by Sinaga (2020), which discusses the management of royalties for a work of song or music. The study results show that legal awareness of both the creator and a work of a song or music impacts the non-optimality of LMKN users in managing royalties. The difference between the research conducted by Sinaga and this research is that if the research conducted by Sinaga focuses on the management of royalties for a song or piece of music, the research focuses on the existence of performance rights for café singers.

Subsequent research was conducted by (ii) Kholil et al. (2021), which discusses legal protection for commercializing songs/music through the YouTube platform.⁷ The study results show that the YouTube platform often carries out copyright violations. Therefore, enforcement of copyright regulations is also essential on digital platforms. The difference between the studies conducted by Kholil et al. and this research is if the research conducted by Kholil et al. focuses on legal protection for the commercialization of songs/music through the YouTube platform. In contrast, this research focuses on disclosing and orienting the rights of café singers to continue to pay royalties based on statutory regulations.

Further research was conducted by (iii) Tiaraputri et al. (2022) on the study of the right to exercise national legal regulations and international conventions.⁸ The results of the research state that the implementation of rights in Indonesia has been regulated in Article 20 of the HC Law and through PP Royalty. In international conventions, performance rights have been regulated in the WIPO Performances and Phonograms Treaty 1996/WIPO Treaty, which has been ratified by the Indonesian government. The difference between the research conducted by Tiaraputri et al. and this research is if the research conducted by Tiaraputri et al. focuses on national and international regulatory aspects related to exercising rights. In contrast, this research focuses on disclosing and orienting the exercise of rights for café singers to continue to pay royalties based on statutory regulations.

Of the three previous studies above, this research is original because this research seeks to answer legal issues, namely agreements on legal arrangements regarding specific rates of royalty payments for café singers.

⁷ Munawar Kholil Btarifia Filza Zahra, "Perlindungan Hukum Hak Cipta Karya Lagu Terhadap Komersialisasi Dengan Cara Menyanyikan Ulang Yang Diunggah Di Media Youtube (Studi Kasus Lagu Akad Milik Payung Teduh)," *Privat Law* 9, no. 2 (2021): 459–71.

⁸ Adi Tiaraputri Fakultas Regyna Putri Willis, Zulfikar Jayakusuma, "Hak Pencipta Atas Performing Rights Dalam Peraturan Hak Cipta Indonesia Dan Konvensi Internasional," *Lex Generalis* 3, no. 1 (2022): 58–72.

2. METHOD

This research which discusses the implicit orientation of exercising the right for café singers to continue to pay royalties based on statutory regulations is normative legal research. The normative legal research method was chosen because this research focuses on analyzing exercise rights based on applicable laws and regulations.⁹ The primary legal materials in this study include the 1945 Constitution of the Republic of Indonesia, the HC Law, PP Royalty, and LMKN Royalty Decrees. Secondary legal materials are journal articles, websites, and books that discuss performance rights, royalties, and copyrights for songs or music. The non-legal material used is a language dictionary. The approach used in this study is the concept and statutory approach.

3. RESULTS AND DISCUSSION

3.1 The Legal Implications of Performing Rights for Café Singers : Should They Pay the Royalties?

Performing rights are generally understood as rights attached to creators or parties legally entitled to obtain economic benefits from creating copyright used in a performance with a commercial purpose (economic orientation).¹⁰ Article 9 of the HC Law emphasizes that to be able to use a copyrighted work in a performance that has a commercial purpose, it is mandatory to obtain permission from the creator of a work. Although it is mandatory to obtain permission from the creator of a work, permission in this context does not mean personal permission and is "one by one" for the creator of a work. Permits concerning performing rights are collective, where the permit is facilitated by a particular body or institution representing a work's creator.¹¹

Concerning performing rights referring to a systematic reading of the provisions in Article 9, Article 35, as well as Article 87, Article 88, and Article 89 of the HC Law, it can be concluded that, first, in principle performing rights can be used by anyone as long as they obtain permission from the creator work. Permits here must be interpreted collectively as in Article 87, Article 88, Article 89, and Article 35 of the HC Law, namely permits are managed and processed through one institution, LMKN, where the orientation of these performing rights is the obligation to provide royalties for creators of works as consequences of performing rights. This confirms that the phrase "permit" in Article 9 of the HC Law must be interpreted extensively and broadly, namely permits in the context of performing rights are related to efforts to regulate and manage LMKNs that aim to provide creators royalties of works properly.¹²

Second, performing rights are derivative rights from copyrights to work. That means that the existence of performing rights and the royalties that should be received refers to the copyright status of a work.¹³ *Third*, performing rights emphasizes the state's role in maintaining a harmonious and proportional relationship between the creator of a work

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017).

¹⁰ Diana Silfiani, "Indonesian Legal Protection for Song Commercialization and Music Copyrights in Digital Platforms," *Padjadjaran Jurnal Ilmu Hukum* 9, no. 2 (2022): 152–69, <https://doi.org/10.22304/pjih.v9n2.a1>.

¹¹ Nabila and Bintang, "Copyright Infringement in Youtube Under Indonesian and Malaysian Laws: The Cases of Aisyah Istri Rasulullah and Karna Su Sayang Songs."

¹² Mohamad Alen Aliansyah, "Tinjauan Normatif Kedudukan Lembaga Manajemen Kolektif Nasional (LMKN) Sebagai State Auxiliary Organ Berdasarkan Peraturan Pemerintah No. 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik," *Dialogia Iuridica* 13, no. 2 (2022): 001–020, <https://doi.org/10.28932/di.v13i2.4215>.

¹³ Natasha Noor, "Copyright Law in Protecting Creators' Exclusive Rights in The Creative Industry: A Comparative Study," *The Lawpreneurship Journal* 1, no. 2 (2021): 200–217, <https://doi.org/10.21632/tlj.1.2.200-217>.

and the user of a work for commercial purposes. The presence and role of the state in the HC Law are constructed with the existence of LMKN. LMKN is the only one that manages, regulates, and implements the distribution of royalties related to performing rights. This implies that the performing rights must be exercised by the LMKN so that, personally, the creator of the work does not have the authority to force royalty payments directly from the user of a work for commercial purposes.¹⁴

From the three conceptions regarding performing rights in the HC Law above, it can be concluded that it must be managed, regulated, and implemented by LMKNs to channel royalties to the creators of works. In the context of copyrights to songs or music, musicians who sing songs created by one particular party to perform and be commercial, the performance rights in the form of royalties that must be received by the composers of the songs or music must be managed and distributed by the LMKN. Regarding the payment of royalties for songwriters or music, there are three pressing arguments for why giving royalties is essential for songwriters or music. First, royalties are a form of implementation of economic rights inherent in intellectual property rights.¹⁵ Intellectual property rights were historically born from the development of the industrial revolution, which emphasized the importance of utilizing and optimizing economic aspects to support human life. In the context of copyrights to songs or music, the financial element becomes essential because it is the primary orientation in developing ideas regarding intellectual property rights. Therefore, royalties are part of implementing economic rights, a necessary aspect of intellectual property rights, particularly regarding copyrights to songs or music.

Second, royalty is a form of appreciation as well as motivation for the creator of a work.¹⁶ As an appreciation, royalties are a form in which the creator of a work endeavored to have his economic rights respected because creating a result is not easy. A work, especially a song or music, is completed through a long process and is not simple. Even efforts to get inspiration in creating a song or piece are made in certain places and ways so that inspiration can be easily obtained. Therefore, because creating a work, especially a song or music, is not easy, appreciation must be given to the creation, especially in song music. The preference, in this case, is in the form of royalties that seek to provide economic rights for the creator of a work. Apart from that, royalties are also a form of motivation for future work creators to remain productive in creating work so that the existence of royalties can trigger adequate work.¹⁷

Third, royalties are regulated by a particular institution, in this case, the LMKN. The distribution of royalties through certain institutions (LMKN) is intended so that the distribution of royalties takes place in a conducive, fair, transparent manner and reflects the value of justice.¹⁸ This is because the potential distribution of royalties privately between creators of works and users of works for commercial purposes can cause an

¹⁴ Asma Karim, "Kepastian Hukum Lmkn Sebagai Lembaga Terpadu Satu Pintu Penghimpun Dan Pendistribusi Royalti Hak Cipta Dan Hak Terkait Bidang Musik Dan Lagu," *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 64, <https://doi.org/10.33087/legalitas.v13i1.232>.

¹⁵ Fauzan Indra and Faisal Santiago, "Intellectual Property Rights in Legal Perspective in Indonesia," in *MIC*, 2022, 4, <https://doi.org/10.4108/eai.30-10-2021.2315779>.

¹⁶ Stefanus Oliver and Tommy Winarta, "The Lack of Enforcement of the DRM Policy," *Journal of Applied Information, Communication and Technology* 7, no. 1 (2021): 15–25, <https://doi.org/10.33555/ejaict.v7i1.73>.

¹⁷ Jimmyn Parc and Patrick Messerlin, "The True Impact of Shorter and Longer Copyright Durations: From Authors' Earnings to Cultural Creativity and Diversity," *International Journal of Cultural Policy* 27, no. 5 (2021): 607–20, <https://doi.org/10.1080/10286632.2020.1829608>.

¹⁸ Hasudungan Afrisyono Panjaitan, "Pengelolaan Royalti Hak Cipta Lagu Dan Musik Berdasarkan PP 56/2021," *Nommensen Journal of Business Law* 1, no. 56 (2022): 47–59.

inharmonious relationship between creators of jobs and users of results.¹⁹ Therefore, the presence of LMKN is an effort to facilitate the distribution of royalties to refer to the substance of justice in the relationship between creators and users of works. Based on the three arguments for the importance of royalties above, it emphasizes that royalties are essential to provide appreciation and motivation for creators of works to produce better subsequent outcomes.

The payment of royalties concerning being a form of appreciation to the creator of a work, creates problems when the party obligated to pay it is a café singer. Café singers are generally identified as singers who sing songs composed by others for performance and commercial purposes. Even so, commercials here must be understood in the context of café singers, where there are not too many commercial aspects, and the fees earned by café singers are not much and are only enough to fulfill their daily lives. Apart from that, the café singer is also self-taught by vocation and does not have professional management. This creates problems because by referring to Article 11 paragraph (2) PP Royalty, for MSMEs, there is a special royalty payment arrangement that can make royalty payments easier and not burden MSMEs with royalty payments.

Although the provisions in Article 11 paragraph (2) PP Royalty only refer to MSMEs, the construction of Article 11 paragraph (2) PP Royalty needs to be understood in two aspects, namely: first, Article 11 paragraph (2) PP Royalty emphasizes the importance of fulfilling economic rights in copyrights, mainly through performing rights so that all parties can fulfill royalty payments without burdening those with little or no commercial advantage. Therefore, Article 11 paragraph (2) PP Royalty is oriented to separately regulate royalty payments made by parties with little economic benefit, such as MSMEs. Second, even though it has made special efforts to handle royalty payments for MSMEs which incidentally have a slight advantage in the commercialization of song or music copyrights, Article 11 paragraph (2) of the Royalty PP and the substance of the Royalty PP have not regulated the payment of royalties for café singers who only get little or just enough economic benefits to make ends meet from the use of a song or music copyright. This raises the problem of the legal vacuum of regulating royalty payments for café singers because it is impossible to qualify café singers as MSMEs. This is because café singers are not a business entity but a kind of simple organization that earns profit from their performances while singing in a café

Royalty concerning performing rights also creates problems when the café is in the form of a simple coffee shop that invites small singers because the provisions of Article 11 paragraph (2) PP Royalty do not yet have specific requirements regarding the arrangement of royalty payments by small cafes which in this case qualify as MSMEs. Because there are no particular provisions as mandated by the provisions of Article 11 paragraph (2) PP Royalty. Royalty payments after PP Royalty's graduation still refer to the LMKN Royalty Decree, which imposes a single royalty payment rate so that it does not regulate royalty payments for café singers or small café parties classified as UMKM. So they must pay royalties in the same nominal as royalty payments made by the café, hotels, or professional venues where the economic benefits are significant in utilizing the commercialization of copyrighted works in the form of songs or music.

¹⁹ Dyah Permata Budi Asri Karel Martinus Siahaya, "Perlindungan Hukum Hak Pencipta Lagu Melalui Peran Lembaga Manajemen Kolektif Nasional (Lmkn) Berdasarkan Pp No. 56 Tahun 2021," *Hasil Kajian Penelitian Hukum* 6, no. 1 (2022): 244, <https://www.who.int/news-room/fact-sheets/detail/autism-spectrum-disorders>.

Based on the results of the analysis above, it can be concluded that the intention of realizing the rights of café singers is that there is no legal certainty for café singers or small café parties who are classified as MSMEs because there are no regulations that have been formed as mandated by Article 11 paragraph (2) PP Royalty which distinguishes between payments royalties for professional users of copyrighted songs or music which have significant commercial benefits with café singers and small café parties who are classified as MSMEs which should be regulated separately according to the mandate of Article 11 paragraph (2) PP Royalty.

3.2 Performance Rights Orientation for Cafe Singers and Songwriters: The Ideal Way to Ensure Justice

Performing rights for café singers require special arrangements to make it easier and more accessible for café singers or café managers to pay royalties.²⁰ That is legally regulated in Article 11 paragraph (2) PP Royalty, which mandates special arrangements in royalty payments for parties with slight commercial advantage in utilizing copyrights to music or songs. Even so, the provisions in Article 11 paragraph (2) PP Royalty have not received further regulation, even though, as mandated in the article, special rules should discuss special provisions for royalty payments for parties who only benefit a little from copyright music or songs.²¹ Regarding the café singer himself, concerning royalty payments, Ahmad Dhani as the songwriter and musician of Band Dewa 19, has also emphasized that royalty payments should be mandatory for parties who use copyrights on songs or music commercially and professionally.²²

This professional provision refers to singers and shows organizers such as hotels, cafes, and event organizers who are professionally managed with transparent management and high-profit orientation.²³ Moreover, as a songwriter, Ahmad Dhani doesn't mind if singers in small cafés or cafes such as coffee shops sing his songs. Because singers in small cafés or restaurants such as coffee shops are not professional singers, they only sing to other people's songs solely to entertain and aim to earn honors, which is just enough to meet their daily needs.²⁴ Therefore, because they are not professional singers, singers in cafés or small cafés such as coffee shops should not have to pay royalties related to performance rights.

²⁰ P V Gagliardi, "TikTok the Musical: Copyright Issues Raised by the "Ratatouille" Musical," *Washington Journal of Law, Technology & Arts* 17, no. 2 (2022): 152, <https://digitalcommons.law.uw.edu/wjlta/vol17/iss2/1/%0Ahttps://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1320&context=wjlta>.

²¹ Amanda Reid and Alex Kresovich, "Copyright as a Barrier to Music Therapy Telehealth Interventions: Qualitative Interview Study," *JMIR Formative Research* 5, no. 8 (2021): 1–13, <https://doi.org/10.2196/28383>.

²² Rintan Puspita Sari, "Dukung Penyanyi Kafe Pakai Lagu Dewa 19, Ahmad Dhani: Itu Salah Satu Faktor Dewa Eksis Sampai Sekarang" (www.kompas.com, 2023), <https://www.kompas.com/hype/read/2023/03/17/162417466/dukung-penyanyi-kafe-pakai-lagu-dewa-19-ahmad-dhani-itu-salah-satu-faktor?page=all> (Diakses Pada Tanggal 7 April 2023).

²³ E Junaidi, K W Indrayanti, and M G AZ, "Protection and Management of Royalty Rights for Utilization of Works and Authors Rights in the Field of Songs and Music," *Ijlrhss* 06, no. 01 (2023): 8–14, <http://www.ijlrhss.com/paper/volume-6-issue-1/2-HSS-1655.pdf>.

²⁴ Sari, "Dukung Penyanyi Kafe Pakai Lagu Dewa 19, Ahmad Dhani: Itu Salah Satu Faktor Dewa Eksis Sampai Sekarang."

Referring to the views put forward by Ahmad Dhani as the practitioner, it is necessary to construct the working rights concept applied in Indonesia, especially by referring to the PP Royalty provisions. At least three improvements are needed to the idea of performance rights involved in Indonesia, especially regarding the PP Royalty provisions, namely: first, the concept of copyright emphasizes the need to pay royalties for those who use copyrights on songs or music commercially and professionally. The word professional is a point of emphasis because professional means that there is orderly, structured management, and it impacts large commercialization.²⁵ That should exclude this from café singers who have small profits and do not have professional control so they do not have a significant commercial impact.

Second, the concept of performing rights in the PP Royalty is relevant because it regulates the payment of royalties from two aspects, namely the regular payment of royalties for cafes, hotels and event organizers in the music sector, which have a significant commercial impact in the use of a copyright on songs and royalty payments specified in the PP Royalty whose income is equated with "UMKM" so royalty payments need to be given a special nominal so that it is not burdensome. Even though PP Royalty's spirit can be said to be good, the need for special arrangements regarding royalty payment standards for parties whose income is equal to "UMKM" in using copyrights for music or songs has not been regulated in a separate arrangement. As a result, royalty payments are still based on the LMKN Royalty Decree, which equates all royalty payments according to standards for café, hotels, and event organizers in the music sector, which have a significant commercial impact in the use of a copyright on a song.

Third, the renewal of the concept of performing rights, especially in PP Royalty, must be oriented towards empowering economically weak parties and trying to provide a justice orientation for creators and copyright holders of music or songs as well as users of copyrights for music or songs, especially for those who are non-professional. This means that parties who use copyrights on music or songs that are not professionally managed, such as café singers, should be exempted from royalty payment arrangements related to rights related to performance rights.

Efforts to realize justice for creators and copyright holders of music or songs and users of copyrights for music or songs can be based on John Rawls's view of justice, which emphasizes justice as fairness or the distribution of economic exchanges fairly and adequately. According to John Rawls, one of the critical orientations of the conception of justice is on the "original condition" or original condition of the related parties, so justice,

²⁵ Ruth Towse, "Dealing with Digital: The Economic Organisation of Streamed Music," *Media, Culture and Society* 42, no. 7–8 (2020): 1461–78, <https://doi.org/10.1177/0163443720919376>.

as appropriate, must refer to the "original condition" of the parties.²⁶ That can be seen in why cafe entrepreneurs, hotels, and event organizers in the field of music that have a significant commercial impact must pay royalties according to the provisions in the Royalty PP because it is intended to reward creators and copyright holders of music or songs for the economic benefits that they generate obtained. If small café singers or small café entrepreneurs such as coffee shops are ordered to pay royalties following the provisions carried out by café entrepreneurs, hotels, and event organizers in the field of music. Of course, that is irrelevant because small café singers or small café entrepreneurs such as coffee shops have no impact—large commercialization as experienced by cafe entrepreneurs, hotels, and event organizers in the field of music.

Based on the results of the analysis above, the performing rights orientation for café singers, ideally in guaranteeing justice for song or music composers as well as for café singers, can ideally be carried out by excluding royalty payments for café singers because the commercialization impact received by café singers is not large and only enough to meet the necessities of life. Apart from that, realistically, if café singers are still required to pay royalties from performing rights, then the nominal royalties paid are expected to be following the royalty payment arrangements for MSMEs as stipulated in the PP Royalty, which should be regulated in special regulations regarding royalty payments for MSMEs specifically. which also applies to café singers.

4. CONCLUSION

Implikasi *performing rights* bagi penyanyi café untuk tetap membayarkan royalti berdasarkan peraturan perundang-undangan yaitu tidak terdapat kepastian hukum bagi penyanyi café maupun pihak café kecil yang tergolong UMKM karena belum terdapat peraturan yang dibentuk sebagai amanat Pasal 11 ayat (2) PP Royalti yang membedakan antara pembayaran royalti bagi pengguna karya cipta lagu atau musik secara profesional yang memiliki manfaat komersial yang besar dengan penyanyi café maupun pihak café kecil yang tergolong UMKM yang seharusnya diatur secara tersendiri sebagaimana amanat Pasal 11 ayat (2) PP Royalti.

Orientasi *performing rights* bagi penyanyi café secara ideal dalam menjamin keadilan bagi pencipta lagu atau musik serta bagi penyanyi café secara ideal dapat dilakukan dengan mengecualikan pembayaran royalti bagi penyanyi café karena dampak komersialisasi yang diterima oleh penyanyi café tidak besar serta hanya cukup untuk memenuhi kebutuhan hidup. Selain itu, secara realistis, seandainya penyanyi café tetap diwajibkan untuk membayar royalti dari *performing rights*, maka nominal royalti yang dibayar diharapkan sesuai dengan pengaturan pembayaran royalti bagi UMKM sebagaimana diatur dalam PP Royalti yang seyogyanya harus diatur dalam peraturan khusus mengenai pembayaran royalti bagi UMKM secara khusus yang juga diberlakukan bagi penyanyi café.

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²⁶ Nazia Saleem, "Rawls' Theory Of Justice," *IJCRT* 9, no. 1 (2021): 1625–30.

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