

# Reorienting the Economic Rights of Creators: A Constitutional Analysis of Copyright Licensing Post-Constitutional Court Decision No. 28/PUU-XXIII/2025

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## ARTICLE INFO

### Keywords:

Constitutional Court Decision No. 28/PUU-XXIII/2025;  
Copyright;  
Creators' Economic Rights;  
Digital Content Industry;  
Digital Licensing

### Article history:

Received 2025-10-27  
Revised 2025-11-30  
Accepted 2025-12-30

## ABSTRACT

This research examines the implications of Constitutional Court Decision No. 28/PUU-XXIII/2025 on digital copyright licensing in Indonesia. The study addresses the anomaly where rapid creative industry growth fails to enhance creator welfare due to exploitative "direct licensing" mechanisms in Article 40 of Law No. 28 of 2014. This provision is deemed to violate constitutional property rights by allowing digital platforms to exploit works without explicit consent. Using normative legal research with statutory and conceptual approaches, the study analyzes primary and secondary legal materials. The results reveal that Decision No. 28/PUU-XXIII/2025 serves as a constitutional correction, prioritizing substantive justice over industrial efficiency. The ruling strengthens creators' bargaining positions, mandates transparency in royalty systems, and triggers a paradigm shift from efficiency-oriented to justice-oriented licensing. Practical implications include the mandatory renegotiation of licensing contracts, the integration of digital technologies like blockchain within the National Collective Management Organization (LMKN), and the realignment of global platform business models. Ultimately, this decision establishes a robust legal foundation to ensure equitable economic rights protection within Indonesia's digital ecosystem.

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## 1. INTRODUCTION

Copyright is not merely a legal instrument for protecting creativity but an embodiment of the personal relationship between creators and their works, encompassing both moral and economic dimensions. In the Indonesian legal order, economic rights grant creators the exclusive authority to derive financial benefits through licensing mechanisms. However, in the era of digital disruption, the copyright ecosystem landscape has undergone a paradoxically fundamental transformation. On one hand, internet penetration in Indonesia, which reached 221.5 million people by 2024, combined with the dominance of user-generated content platforms such as TikTok and YouTube, has opened massive distribution access

(APJII, 2024; Kemp, 2024, Sunarti, 2022). On the other hand, the creative industry's growth, which has surpassed IDR 1,414 trillion per year, is surprisingly not proportional to the welfare of the creators (Kemenparekraf, 2024). This disparity highlights a significant gap between the commercial exploitation of works and the actual economic returns received by the rightful owners.

This anomaly in the distribution of economic value is rooted in the structural bargaining position imbalance within conventional licensing models and exploitative "sold-flat" (jual putus) practices. Empirical reality shows systemic losses experienced by musicians and creators due to content distribution without transparent licensing mechanisms, resulting in potential income losses reaching billions of rupiah (Yuniar, 2024). Although the state has established the National Collective Management Organization (Lembaga Manajemen Kolektif Nasional or LMKN) to manage royalties, its effectiveness in protecting economic rights remains hindered by the lack of digital system integration and weak inter-organizational coordination (Silalahi & Mbalng, 2025; Limanto et al., 2023). Consequently, creators often find themselves marginalized within the digital economy, unable to exercise their exclusive rights effectively against global digital intermediaries.

The root cause of this inadequate protection stems from normative ambiguity within Article 40 of Law Number 28 of 2014 concerning Copyright. The provisions regarding "direct licensing" in said article have been criticized for creating legal loopholes that allow digital platforms to exploit works without the explicit and informed consent of creators. Such a mechanism is deemed to constitutionally violate the guarantee of property rights protection as regulated in Article 28H paragraph (4) and Article 28J of the 1945 Constitution, which mandates that the fulfillment of fair demands must be in accordance with moral considerations and human rights values (Saputra et al., 2025, Pratama Putra., 2024). The lack of clarity in this mechanism not only causes substantial financial harm but also disregards the state's fundamental obligation to respect and protect the intellectual property of its citizens as a form of human rights (Sunarti., Ardiansyah, & Saputra, 2024).

The issuance of the Constitutional Court Decision Number 28/PUU-XXIII/2025 serves as a significant legal turning point that reorients the legal essence of licensing in Indonesia. This decision explicitly nullifies parts of the norms in the Copyright Law that previously prioritized industrial efficiency over substantive justice for creators. With this constitutional correction, copyright licensing can no longer be viewed solely as a private, free contractual relationship but must be placed within the framework of fundamental constitutional rights protection. This shift aligns with the role of the Constitutional Court as the "guardian of the constitution," ensuring that no statutory norm undermines the economic sovereignty of individual citizens (Saputri et al., 2025).

Therefore, this research aims to analyze in depth the legal implications of the Constitutional Court Decision Number 28/PUU-XXIII/2025 on the transformation of creators' economic rights protection. The study is directed at how the partial annulment of these norms redefines the boundaries of licensing and demands a paradigm shift for digital content industry players in Indonesia. Through a normative legal approach, this research maps the new direction of licensing regulations post-decision to ensure the creation of a digital ecosystem that is more balanced, transparent, and substantively just for all stakeholders involved in the creative economy.

## 2. METHODS

This research is a prescriptive normative legal study, focusing on the vertical synchronization between statutory norms and constitutional values (Marzuki, 2017). A statute approach is employed to examine Article 40 of Law No. 28 of 2014 concerning Copyright and the Constitutional Court Decision No. 28/PUU-XXIII/2025 as the primary objects in assessing the validity of direct licensing (Soekanto & Mamudji, 2015). This approach is further strengthened by a conceptual approach, which analyzes the doctrine of creators' economic rights, the theory of justice in royalty distribution, and the concept of licensing in the digital era to provide a theoretical foundation for the occurring legal paradigm shift.

The legal materials used include primary legal materials such as the 1945 Constitution, the Copyright Law, and relevant Constitutional Court decisions. Additionally, secondary legal materials are obtained

through a review of scientific journals, copyright literature, and empirical data regarding the effectiveness of the National Collective Management Organization (LMKN) in protecting creators' economic rights amidst the disruption of global platforms (Silalahi & Mbaling, 2025; Limanto et al., 2023). All legal materials are collected through library research techniques and subsequently analyzed using a qualitative-prescriptive method. This analytical method aims to draw deductive conclusions to address the issue of the constitutionality of norms and provide recommendations regarding the future direction of a more equitable and transparent copyright licensing system for the digital content industry (Ibrahim, 2008).

### 3. FINDINGS AND DISCUSSION

Before providing a comprehensive explanation of the research findings, it is essential to understand that the analysis in this study is predicated on an evaluation of the normative consistency of Article 40 of the Copyright Law with the constitutional rights guaranteed by the 1945 Constitution. The examination is conducted by observing how the current reality of the digital content industry has created a significant disruption to traditional licensing mechanisms, where digital platforms often possess a disproportionate dominance over the creators' economic rights. By bridging the theoretical aspects of intellectual property rights and the empirical realities on the ground, the following discussion will elaborate on the identification of the unconstitutionality of direct licensing norms and how the Constitutional Court Decision Number 28/PUU-XXIII/2025 functions as a corrective instrument in restoring justice for creators in Indonesia.

#### *3.1. Deconstructing the Constitutionality of Direct Licensing: The Failure of Intellectual Property Protection in Article 40 of the Copyright Law*

Economic rights constitute the "lifeblood" of creative sustainability, positioning the creator as the primary legal subject with exclusive authority. However, the findings of this study indicate that Article 40 of the Copyright Law has experienced a functional disorientation. The regulation of direct licensing, originally intended to create transactional efficiency, has in practice transformed into a legal instrument for digital platforms to reduce the creator's sovereignty.

Theoretically, licensing is predicated on the principle of freedom of contract. Nonetheless, in an asymmetric digital ecosystem, this freedom is merely a pseudo-freedom. Creators are frequently confronted with adhesion contracts (take-it-or-leave-it) by global platforms. This finding aligns with and expands upon the research by Permata et al. (2024), which highlights that legal protection for economic rights on social media is often undermined by unauthorized use and the lack of creator control over their works. While Permata focused on unauthorized use, this study identifies a deeper systemic flaw: the law itself (Article 40) provided a normative loophole that allowed such exploitation under the guise of "direct licensing."

A constitutional analysis of Article 28H paragraph (4) of the 1945 Constitution reaffirms that every individual has the right to personal property, and such rights shall not be arbitrarily seized. By permitting direct licensing mechanisms without stringent protective boundaries, the state has passively allowed the disproportionate appropriation of the economic value of creative works. This reflects the "territorial limitation" concerns raised by Saputra et al. (2025), who argued that Indonesia's royalty system is weakened by the dominance of global streaming platforms. However, this research argues that the issue is not merely territorial, but constitutional; the previous wording of Article 40 failed to uphold the state's obligation to protect the creator's property rights against the "bargaining power" of digital giants.

Constitutional Court Decision No. 28/PUU-XXIII/2025 serves as a constitutional correction, asserting that economic rights are not merely industrial commodities but fundamental rights protected by the Constitution. This marks a significant departure from the "efficiency-first" paradigm. In contrast to Yuniar (2024), who suggested that copyright issues in the creative economy are primarily caused by

a lack of creator understanding and high legal costs, this study posits that the fundamental problem was a "normative injustice" embedded in the Copyright Law. The partial annulment of these norms proves that industrial efficiency must not sacrifice substantive justice. The Court conveys a powerful message that the law must intervene to balance the disparate bargaining power between individual creators and massive-scale digital platforms, ensuring that the "protection" promised in the Copyright Law is not merely an illusory concept.

### ***3.2. Reorienting the Digital Content Industry Paradigm: From Efficiency-Oriented to Justice-Oriented Licensing***

The implications of Constitutional Court Decision No. 28/PUU-XXIII/2025 transcend mere normative adjustments, sparking a transformative wave across the creative industry's business models in Indonesia. Historically, the digital content industry has thrived within a "safe harbor" environment, a byproduct of regulatory ambiguity that allowed platforms to bypass stringent licensing obligations. For years, the operational logic of digital intermediaries was dominated by an efficiency-oriented paradigm, where ease of access and rapid distribution were prioritized over the equitable distribution of economic value. However, this ruling mandates a fundamental paradigm shift toward "Justice-Oriented Licensing." This shift necessitates that every commercial exploitation of creative works in the digital sphere must be balanced with substantive legal protection for the creator's economic rights, effectively ending the era where industrial growth was subsidized by the systematic underpayment of creators.

The first strategic implication lies in the mandatory redefinition of licensing contracts, particularly concerning the abolition of exploitative "sold-flat" or "buy-out" schemes. Historically, platforms and production houses utilized their superior bargaining power to impose permanent transfers of economic rights for a one-time nominal fee, leaving creators with no residual income despite the long-term viral success of their works. As highlighted by Yuniar (2024), such exploitative contracts have been a primary hurdle in the creative economy. This study expands that argument by asserting that post-MK ruling, digital platforms no longer possess the normative legitimacy to enforce these archaic schemes. The ruling mandates a transition toward transparent and periodic renegotiations of revenue-sharing mechanisms. This is consistent with the principle of "fair remuneration" found in international copyright trends, ensuring that the economic benefits of a work are shared proportionally between the distributor and the original creator throughout the work's commercial lifecycle.

Secondly, the correction of the "direct licensing" mechanism by the Court significantly elevates the strategic importance of Collective Management Organizations (CMOs), known in Indonesia as LMKN and LMK. With the reduction of unilateral direct licensing loopholes, CMOs must now function as a collective "fortress" that bridges the gap between individual creators and global digital conglomerates. However, this study underscores that the mere existence of CMOs is insufficient. Drawing from the concerns raised by Silalahi and Mbalang (2025) regarding the current lack of transparency in royalty distribution, this research emphasizes that the post-ruling era demands a technological revolution within CMOs. To prevent "royalty leakage" and ensure trust, the implementation of blockchain technology and smart contracts is no longer an option but a necessity. These technologies can provide an immutable ledger of usage and automated distribution, ensuring that every "click" or "stream" translates accurately into the creator's account, thereby operationalizing the justice intended by the Court.

Furthermore, the transnational nature of digital platforms like YouTube and TikTok introduces complex jurisdictional challenges that Indonesia must navigate. Because these platforms operate across borders, a purely territorial approach to copyright enforcement is no longer viable. This research proposes the development of a "Transnational Hybrid Licensing Framework" as a prescriptive solution. This Court decision serves as crucial legal leverage for the Indonesian government to demand greater compliance from global platforms, compelling them to align their global algorithms and payment systems with Indonesia's new domestic economic rights standards. This aligns with the "re-evaluation

of royalty systems" suggested by Saputra et al. (2025), but adds a layer of judicial authority. By asserting its constitutional sovereignty over digital economic rights, Indonesia can lead a regional movement to ensure that global digital intermediaries respect local intellectual property values, thereby creating a more balanced global creative ecosystem.

Finally, it is imperative to clarify that the legal certainty established by this ruling should not be misinterpreted as a barrier to digital investment or a hindrance to the "ease of doing business." On the contrary, this judicial intervention is an essential effort to create a "healthy level playing field." A digital industry built on the precarious foundation of creator exploitation is inherently unsustainable; without robust protection of economic rights, Indonesia will inevitably lose its creative talent, leading to the eventual collapse of the creative economy ecosystem itself. Therefore, the immediate prescriptive step for the government is to harmonize derivative regulations, such as Government Regulations (Peraturan Pemerintah), to operationalize this court decision into an automated, transparent, and integrated digital royalty collection system. This harmonization will ensure that the growth of the digital industry and the welfare of creators are not mutually exclusive, but are rather two sides of the same constitutional coin.

#### 4. CONCLUSION

This study concludes that the regulation of direct licensing as stipulated in Article 40 of the Copyright Law has induced a "constitutional deficit" for creators within the Indonesian legal framework. This mechanism is empirically proven to disproportionately restrict economic rights by neglecting the extreme bargaining power asymmetry inherent between individual creators and global digital platforms. Constitutional Court Decision No. 28/PUU-XXIII/2025 serves not merely as a normative annulment of an ambiguous provision but as a fundamental manifesto for the restoration of creator sovereignty. Through this landmark ruling, economic rights are elevated from being treated as mere industrial commodities to their rightful status as constitutional property rights, which cannot be compromised for the sake of mere business efficiency or technical convenience. This paradigm shift reaffirms that any exploitation of intellectual works in the digital sphere must be fundamentally predicated on the principles of substantive distributive justice.

Furthermore, the partial annulment of the Copyright Law triggers a profound structural transformation within the digital content industry ecosystem in Indonesia. The legal implications compel industry stakeholders and digital platforms to reconstruct their business models—shifting from unilateral and exploitative contractual patterns toward partnership schemes that are transparent, equitable, and accountable. Although this transitional phase may incur short-term legal turbulence and interpretive challenges, the Court's decision fundamentally establishes a more robust and resilient foundation for long-term legal certainty. The future sustainability of the national digital creative industry no longer relies on the ease of unauthorized or under-compensated exploitation, but on an ecosystemic balance that respects the constitutional rights of creators as the primary engine of the creative economy.

**Acknowledgments:** The authors wish to express their deepest gratitude to the Faculty of Law, Universitas Jambi, for the academic support and facilities provided throughout this research. We would also like to extend our sincere appreciation to our colleagues for their insightful critiques and suggestions, which significantly improved the quality of this manuscript. Furthermore, the authors are grateful to the legal practitioners and intellectuals in the field of Intellectual Property Rights whose scholarly discussions helped in analyzing the implications of the Constitutional Court Decision on copyright licensing. It is hoped that this research will contribute meaningfully to the evolution of copyright law in Indonesia.

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