

Criminal Law Enforcement of Music Copyright in Indonesian Public Spaces: Proportionality and *Ultimum Remedium* in Balancing Copyright Protection and Cultural Access

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ABSTRACT

The use of music in public spaces is a common social practice, yet it often gives rise to tension between music copyright protection and public access to culture. Conventional enforcement measures, including sweeping activities directed at the use of music in public spaces, may adversely affect public appreciation of music and risk constraining the development of local musical expression. This study examines the legal dynamics of that tension through a normative juridical approach, with a focus on the use of music in Indonesian public spaces. The data were collected through a literature-based analysis of copyright legislation, legal doctrine, and practices of criminal law enforcement. The findings show that copyright protection remains essential to safeguard the economic and moral rights of creators and to sustain creative production. However, its enforcement must also take into account the principles of proportionality, tolerance, and the broader public interest in cultural access. This article argues that criminal law enforcement against music copyright infringement should be applied only when the elements of mens rea and actus reus are clearly established, and when alternative dispute resolution mechanisms or other legal remedies are insufficient to protect the rights of copyright holders. The study concludes that criminal sanctions should be limited to intentional and legally significant infringements, while ordinary licensing disputes should primarily be addressed through civil, administrative, or other non-penal mechanisms. This study contributes to Indonesian copyright scholarship by conceptualizing criminal liability for public music use through the doctrinal framework of mens rea, actus reus, proportionality, and ultimum remedium.

Keywords: Music Copyright, Public Space, Criminal Law Enforcement, Proportionality, Mens Rea.

ABSTRAK

Penggunaan musik di ruang publik merupakan praktik sosial yang umum, namun seringkali menimbulkan ketegangan antara perlindungan hak cipta musik dan akses publik terhadap budaya. Langkah-langkah penegakan hukum konvensional, termasuk kegiatan yang luas yang ditujukan pada penggunaan musik di ruang publik, dapat berdampak buruk pada apresiasi publik terhadap musik dan berisiko membatasi perkembangan ekspresi musik lokal. Studi ini mengkaji dinamika hukum dari ketegangan tersebut melalui pendekatan yuridis normatif, dengan fokus pada penggunaan musik di ruang publik Indonesia. Data dikumpulkan melalui analisis berbasis literatur tentang undang-undang hak cipta, doktrin hukum, dan praktik penegakan hukum pidana. Temuan menunjukkan bahwa perlindungan hak cipta tetap penting untuk melindungi hak ekonomi dan moral pencipta dan untuk mempertahankan produksi kreatif. Namun, penegakannya juga harus mempertimbangkan prinsip proporsionalitas, toleransi, dan kepentingan publik yang lebih luas dalam akses budaya. Artikel ini berpendapat bahwa penegakan hukum pidana terhadap pelanggaran hak cipta musik hanya boleh diterapkan ketika unsur-unsur mens rea dan actus reus telah ditetapkan dengan jelas, dan ketika mekanisme penyelesaian sengketa alternatif atau upaya hukum lainnya tidak cukup untuk melindungi hak-hak pemegang hak cipta. Studi ini menyimpulkan bahwa sanksi pidana harus dibatasi pada pelanggaran yang disengaja dan memiliki signifikansi hukum, sedangkan sengketa perizinan biasa sebaiknya terutama ditangani melalui mekanisme perdata, administratif, atau mekanisme non-pidana lainnya. Studi ini berkontribusi pada kajian hak cipta di Indonesia

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dengan mengkonseptualisasikan tanggung jawab pidana atas penggunaan musik publik melalui kerangka doktrin mens rea, actus reus, proporsionalitas, dan ultimum remedium.

Kata Kunci: Hak Cipta Musik, Ruang Publik, Penegakan Hukum Pidana, Proporsionalitas, Mens Rea.

INTRODUCTION

Music is one of the copyrighted works most frequently used in public and commercial settings, including hotels, restaurants, shopping centers, and other shared spaces. In this context, the legal issue does not lie merely in the everyday presence of music, but in the tension between the exclusive rights of copyright holders and the public interest in cultural access within public spaces. Under Indonesian copyright law, musical works are protected as part of the creator's economic and moral rights, particularly through Law No. 28 of 2014 on Copyright. The increasing enforcement of licensing obligations in public spaces has raised questions about how far criminal law may be used against the use of music in settings that are socially common, commercially varied, and not always clearly regulated (Muhamad, 1999; Morea, 2005; Yanto, 2015; Demers, 2006; Ministry of National Education/*Departemen Pendidikan Nasional*, 2015).

From a legal-policy perspective, the problem is not whether copyright protection should be enforced, but how it should be enforced proportionally. Excessive reliance on sweeping practices or punitive approaches may produce overcriminalization, especially where the elements of intention, unlawful conduct, and actual harm are not clearly established. In copyright disputes involving music in public spaces.

This tension becomes more visible when the use of music in public spaces shifts from a licensing or administrative issue into a matter of criminal enforcement. Recent disputes, including the Bali food outlet case and the allegation involving Pranaya Boutique Hotel, may be read not merely as isolated incidents but as doctrinally important examples of uncertain criminal qualification. The legal issue in such cases concerns whether the alleged conduct falls within unauthorized commercial use under Article 9 in conjunction with Article 113 of the Copyright Law, and whether the relevant actus reus consists simply in playing music in a business environment or in a more specific form of unauthorized commercial exploitation. Equally important is whether mens rea can actually be established, namely whether the users acted intentionally and with awareness of the legal requirement for authorization, rather than merely failing to resolve a licensing obligation. For this reason, these disputes also raise the question whether some forms of public music use are more properly treated as licensing, civil, or administrative matters rather than as criminal infringement (Moohr, 2004; Fishman, 2023).

The issue of using musical works in public places begins when there is a difference in perspective between individual protection of music copyright and the protection of the public interest in the right to enjoy entertainment and culture in public places (Lopes, 2013; Murfianti, 2020; Andrea et al., 2020; Ruth, 2024). The balance between protecting the interests of rights holders and protecting the public interest has actually been limited by the principle of fair use. Paul Goldstein (1989) defines fair use as a privilege granted to others other than the copyright owner to use copyrighted material in a reasonable manner without their consent, notwithstanding the monopoly granted to the owner by the copyright.

Music as part of copyright must receive protection from the state based on law, so the state must grant special rights to rights holders (Syafrialdi & Almaksur, 2008). The existence of laws that provide legal protection for musical works is based on Article 9 in conjunction with Article 113 of Law Number 28 of 2014 concerning Copyright, while public protection of entertainment and cultural rights is based on Article 28 letter c of the 1945 Constitution of the Republic of Indonesia.

The problem of musical works becomes increasingly complex when the use of music in public places becomes a legal dispute. This can be seen, for example, in the legal dispute over the use of music in public places that occurred at a food outlet in Bali, which named the director of the food outlet (PT Mitra Bali Sukses) as a suspect for playing songs without the copyright holder's permission (Arjanto, 2025), in addition to the legal dispute that occurred at the Pranaya Boutique Hotel, which was accused by the National Collective Management Institute (LMKN) for playing music in a public area without a license (Rafni & Huda, 2025).

Overly restrictive enforcement may also generate unintended consequences for the circulation of music in public spaces. However, such implications should be understood cautiously and as a normative concern rather than as an empirically verified claim within this study (Marpaung, 2025).

A brief comparative perspective helps situate the Indonesian debate within broader copyright doctrine. In Indonesia, copyright disputes over music in public spaces are often framed through the Copyright Law's protection of economic rights, while criminal sanctions should be treated as exceptional and subject to strict interpretation. In the European Union, the doctrine of communication to the public has played a central role in determining whether the use of protected works in commercial premises falls within the scope of copyright control. In the United States, the relevant framework is commonly discussed through the doctrine of public performance, especially in relation to business establishments and licensing obligations. In the United Kingdom, the issue is generally approached through the infringement of economic rights and licensing compliance rather than through expansive reliance on criminal law. This comparison does not seek to equate these systems, but to show that the Indonesian debate also requires careful differentiation between ordinary licensing disputes and conduct that may justify criminal liability.

This article addresses the following primary research question: under what legal conditions can the use of music in Indonesian public spaces legitimately give rise to criminal liability consistent with the principles of proportionality and *ultimum remedium*, and a secondary question is how Indonesian law may be situated in comparison with selected doctrines in the EU, the US, and the UK concerning public communication and public performance.

The purpose of this study is to comprehensively analyze the implications arising from the conflict between efforts to protect music copyright and the public's right to enjoy various forms of art in public spaces. This study also aims to formulate a strategy for enforcing criminal law on music copyright that not only provides certainty and protection for copyright holders but also encourages increased public appreciation of Indonesian music through a more educational, proportional, and equitable legal mechanism.

RESEARCH METHOD

This study employs a normative juridical method to analyze the legal tension between music copyright protection and the use of musical works in Indonesian public spaces (Marzuki, 2005). This method is appropriate because the research focuses on examining legal norms, principles, and doctrines governing copyright protection, criminal liability, and law enforcement in relation to the public use of music. In this context, the study is directed not only at identifying the applicable legal framework, but also at assessing how those norms should be interpreted and applied in addressing the criminalization of music use in public spaces (Soekanto, 1986).

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. The primary legal materials include Law No. 28 of 2014 on Copyright, provisions concerning criminal liability in Indonesian positive law, and regulations related to the management and collection of music royalties in

public and commercial spaces. Secondary legal materials consist of books, scholarly journal articles, and legal doctrines discussing copyright law, criminal law, proportionality in law enforcement, and cultural access in public spaces. Tertiary legal materials, including legal dictionaries and reference works, are used to clarify key legal terms and concepts relevant to the research (Ibrahim, 2007).

The approaches applied in this normative legal research are the statutory approach and the conceptual approach. The statutory approach is used to examine the relevant legislation governing copyright, royalty obligations, and criminal sanctions, while the conceptual approach is employed to analyze legal principles such as *mens rea*, *actus reus*, proportionality, legal certainty, and *ultimum remedium*. The legal materials were analyzed through qualitative legal analysis, namely by systematically interpreting and evaluating legal norms, doctrines, and related legal arguments in order to answer the research problem. Through this method, the study seeks to formulate a more balanced framework for copyright enforcement, particularly in determining the conditions under which the use of music in public spaces may justify criminal law intervention (Ibrahim, 2007).

Legal materials were selected based on their relevance to Indonesian copyright law, criminal law doctrine, and comparative discussions on copyright-related criminalization. The analysis applies systematic and teleological interpretation to assess whether criminal sanctions under copyright law remain coherent with general principles of Indonesian criminal law, including legality, fault, proportionality, and *ultimum remedium*. This study does not involve empirical fieldwork; accordingly, all implications advanced in the article are normative and theoretical rather than empirically verified.

RESULTS AND DISCUSSION

Implications of the Utilization of Musical Works Between the Private and Public Spheres

Copyright protection over musical works arises automatically upon creation and secures both the economic and moral rights of creators. However, when musical works are used in public and commercial settings, legal tension emerges between the exclusive rights of copyright holders and the broader public interest in cultural access. The core issue, therefore, is not whether copyright deserves protection, but how such protection should be enforced in a manner that remains proportionate within the context of music use in Indonesian public spaces (Saliman, 2010).

Disputes over the use of music in public spaces arise from different legal positions. Copyright holders emphasize the exclusivity of economic and moral rights, while users in public or commercial settings often view music as part of the ordinary ambiance of shared social spaces. This divergence becomes more complex where the legal framework does not clearly distinguish between licensing non-compliance, civil infringement, and conduct that may justify criminal liability.

This difference in perspective between the public and private sectors has, in fact, been exploited by the commercial sector to increase the economic value of a product without considering the copyright protection of musical works in the public sphere. The commercial use of musical works in the public sphere has significantly harmed music rights holders, although in the public sector, the use of musical works has significantly contributed positively to public appreciation and respect for copyright holders. The use of musical works in public spaces should ideally still consider two basic rights held by rights holders: economic rights and moral rights. Economic rights are the right to profit, while moral rights are rights related to the personal interests or reputation of the creator (Djumhana & Djubaedillah, 2003).

From a normative legal perspective, enforcement initiatives concerning the unauthorized use of music in public spaces may produce several potential benefits, particularly in strengthening legal

awareness, encouraging licensing compliance, and improving administrative order in royalty management. These possible benefits should not be overstated as automatic social outcomes, especially in the absence of empirical field data. Within the scope of this study, such implications are better understood as possible legal and institutional effects of enforcement rather than conclusively established social impacts.

The public's sweeping of musical works has had significant positive implications for the protection of musical copyright, such as:

1. Contribute to legal awareness of respect for musical works.

The widespread sweeping of musical works has raised public awareness of the importance of respecting and protecting every rights holder in a musical work. The public is aware that every musical work reflects the efforts, struggles, and economic value of the rights holder in creating a work that is beneficial to society.

2. Improving law enforcement against music copyright infringement.

Law enforcement must be carried out to protect music rights holders and the public's right to enjoy music. Therefore, the sweeping of musical works has raised awareness among law enforcement officials to enforce the law against violations of musical works that occur in the community. Law enforcement officials are aware that musical copyright infringement is not limited to cases of piracy on visually detectable recording media, but can also occur in the use of musical works in public areas.

3. Improving administrative order for business actors.

Awareness of the importance of administrative order must be implemented by the government and businesses to protect the rights of the public and music rights holders. Administrative order must be implemented by the government and businesses in several ways, such as:

- a. The government must immediately prepare a system that facilitates and facilitates the use of music in public areas for commercial purposes; and
 - b. Businesses must prepare internal company administration and financial systems to utilize music in ways that increase the company's commercial value.
4. Normatively expected to reduce uncertainty regarding the distribution of royalties among music copyright holders.

Transparency and proportionality in the distribution of royalties among music copyright holders are crucial to may contribute to legal awareness of the importance of respecting the efforts of each individual (creator and rights holder). Therefore, a system of transparency, professionalism, and open information regarding the compensation and royalties that music rights holders receive from each use of music is needed.

5. Strengthen licensing compliance

Improving the welfare of musicians will directly impact their creativity, so that the public can continue to enjoy the development of musical art. The sweeping activities carried out massively in society are intended to directly improve the welfare of rights holders, even though in fact they have resulted in an indirect decline in the welfare of rights holders of musical works, so that sweeping activities carried out massively in society must be carried out wisely and proportionally.

A brief comparative perspective helps situate the Indonesian debate within broader copyright doctrine. In Indonesia, copyright disputes over music in public spaces are often framed through the Copyright Law's protection of economic rights, while criminal sanctions should be treated as exceptional and subject to strict interpretation. In the European Union, the doctrine of communication to the public has played a central role in determining whether the use of protected works in commercial premises falls

within the scope of copyright control. In the United States, the relevant framework is commonly discussed through the doctrine of public performance, especially in relation to business establishments and licensing obligations. In the United Kingdom, the issue is generally approached through the infringement of economic rights and licensing compliance rather than through expansive reliance on criminal law. This comparison does not seek to equate these systems, but to show that the Indonesian debate also requires careful differentiation between ordinary licensing disputes and conduct that may justify criminal liability.

Criminal Law Enforcement Strategy Between Creator and Public Protection

Criminal law enforcement in copyright matters should not be directed at every instance of unauthorized use as if all violations were equally criminal in nature. Penal intervention becomes legitimate only where the conduct satisfies the doctrinal requirements of criminal responsibility and where non-penal responses are insufficient to protect the relevant legal interests. According to Ginting (2012), the legal analysis must distinguish between ordinary licensing violations, civil infringement, and conduct that may properly be classified as criminal copyright infringement.

The position of the copyright holder remains relevant in identifying the protected legal interest, since copyright may be held either through legal events or by statutory attribution under the Copyright Law. The existence of a protected right does not by itself determine the existence of criminal liability, which still depends on the fulfilment of the statutory and doctrinal elements of the offence. (Ginting, 2012).

Unauthorized use of musical works in public and commercial spaces may affect the economic interests of creators and copyright holders, but the existence and seriousness of harm cannot be presumed in every case. Some forms of use may involve substantial commercial exploitation, while others may involve limited, incidental, or reparable licensing non-compliance. For this reason, the legal response should depend not only on the existence of unauthorized use, but also on the degree of harm, the commercial context, and the presence of criminal fault.

In Sudarto's view, criminal law is the law tasked with addressing crime and deviant acts to achieve public welfare and protection. Therefore, criminal law must be used to prevent or address any undesirable actions that could have consequences for society (Sudarto, 1986).

The use of music in public spaces can only be treated as a criminal matter where both the mental element (*mens rea*) and the prohibited conduct (*actus reus*) are sufficiently established. In doctrinal terms, Article 113 of the Copyright Law should not be read as imposing strict liability merely from the fact of unauthorized use. Criminal punishment requires fault-based attribution, particularly where the provision refers to conduct undertaken "without authorization" and "for commercial purposes." These formulations indicate that criminal liability must be linked to intentional or knowingly wrongful exploitation rather than to mere technical non-compliance. The offence therefore should not be approached as a purely formal offence satisfied by any act of use, but must be interpreted in light of criminal law principles requiring fault, legal significance of conduct, and proportionality of punishment.

Mens rea in this context should be understood as a demonstrable intention or conscious awareness that copyrighted music is being used without authorization in a commercially meaningful way. Such intention may be inferred where a business knowingly uses pirated recordings, deliberately avoids licensing obligations despite prior notice, or intentionally exploits music as part of a profit-oriented business model without legal authorization. By contrast, the existence of *mens rea* is far less clear where music is accessed through lawful consumer platforms, where the legal duty to obtain a separate license is not transparent, or where the conduct is closer to administrative non-compliance than deliberate infringement.

A perpetrator who has the intention and will to widely distribute music to the public with the intention of providing the public with the opportunity to enjoy the music repeatedly without contributing to the creator or rights holder, may be deemed to have met the mens rea requirement.

A perpetrator who has met the mens rea requirement cannot automatically be considered to have committed a crime if the perpetrator does not meet the actus reus requirement under criminal law. Using musical works in public or commercial spaces does not necessarily meet the actus reus requirement.

For analytical purposes, the use of musical works in public or commercial spaces may be divided into at least three categories, each of which raises different questions concerning actus reus, mens rea, and the proportionality of criminal enforcement.:

1. Business actors intentionally playing musical works in their commercial areas.

Business actors who intentionally use music in commercial premises such as restaurants, supermarkets, or shopping centres may satisfy the actus reus requirement where the music is deliberately exploited as part of the business environment without authorization and for commercial advantage. Even so, not every unlicensed use in a commercial space should automatically be treated as a crime. The legal analysis must still distinguish between ordinary licensing non-compliance and conduct amounting to intentional commercial misuse of copyrighted works. Criminal qualification becomes stronger where the business knowingly continues unauthorized use despite clear legal notice, uses pirated sources, or treats music as a deliberate profit-generating component of the business model.

2. Business actors provide equipment that can function as a medium for listening to musical works.

The mere provision of equipment such as television sets in hotel rooms, office spaces, or other general-use facilities should not automatically be treated as fulfilment of the actus reus of criminal copyright infringement. The availability of a device is not identical to a direct act of unauthorized public performance or communication to the public by the business operator. To attribute criminal liability to a hotel or similar corporate actor, there must be a clearer basis for imputing the allegedly infringing act to the management itself, such as active control over the communication, deliberate commercial exploitation of the protected work, or corporate decision-making that intentionally substitutes lawful licensing. Without such a basis, the case is more accurately viewed as involving the provision of facilities rather than direct criminal exploitation of music. This distinction is particularly important in relation to corporate criminal liability, because the corporation should not be punished merely for making available a neutral device unless the prohibited act and the requisite fault can be attributed to the corporation through its organs, policies, or intentional business practices.

Live performance cases should also be differentiated according to their commercial character and the legal significance of the performance:

- a. Commercial performances, such as ticketed concerts, paid entertainment events, or organized performances designed to generate revenue, may satisfy the actus reus requirement where protected musical works are intentionally performed for commercial gain without the necessary authorization. In such circumstances, the commercial purpose of the event strengthens both the legal relevance of the conduct and the possible inference of mens rea.
- b. Non-commercial or socially incidental performances, such as private weddings, family celebrations, or community gatherings without a ticketing structure or organized profit orientation, should not automatically be classified as criminal acts. Even where licensing questions may still arise in some contexts, the absence of a clear commercial purpose and the limited social harm make criminal punishment far more difficult to justify. Such

situations therefore require careful distinction between private or culturally ordinary uses and genuinely exploitative commercial performances.

The foregoing analysis shows that criminal enforcement in cases involving music in public spaces cannot rest on a single assumption that all unauthorized use is equally wrongful. The decisive issue is whether the conduct fulfils the doctrinal requirements of criminal liability, including culpable intent, legally significant conduct, and a level of harm that justifies penal intervention. Where those conditions are not clearly established, the matter should be treated with caution and, where appropriate, addressed through civil, administrative, or licensing-based mechanisms rather than criminal punishment.

The findings of this study support a proportional enforcement model grounded in the principle of *ultimum remedium*. In criminal law doctrine, *ultimum remedium* signifies that penal sanctions should be used only as a last resort, particularly where other legal mechanisms are capable of protecting the relevant interests more appropriately and with less coercive impact. In the context of music copyright disputes, this means that criminal sanctions should be reserved for serious and intentional infringements, while ordinary disputes concerning licensing, royalty compliance, or regulatory uncertainty should first be addressed through preventive, civil, administrative, or compensatory mechanisms. A coherent enforcement strategy therefore requires clearer differentiation between civil-administrative violations and criminal infringement, proportional enforcement aimed at deliberate commercial misuse, and the availability of mechanisms that can directly restore the interests of copyright holders.

The findings of this study support a proportional enforcement model grounded in the principle of *ultimum remedium*. Within this framework, criminal sanctions should be reserved for serious and intentional infringements, while ordinary disputes over licensing and royalty compliance should first be addressed through preventive and non-penal mechanisms. Such a model requires at least three institutional conditions: clearer regulatory clarification on the use of music in public spaces, between civil-administrative violations and criminal infringement, proportional enforcement directed at deliberate commercial misuse, and the availability of restorative or compensatory mechanisms that more directly protect the interests of copyright holders:

1. Protection can be provided through massive and structured legal outreach.

Providing massive and structured legal outreach can provide legal knowledge and awareness regarding the limitations of the use of musical works in public places. This aligns with the principle of legality (*nullum crimen sine lege*), which requires the existence of law before criminal responsibility. Therefore, the public needs to understand the legal rules before being subjected to criminal sanctions. This is also part of the expression of legal positivism in criminal law (Kelsen, 1944).

2. Applying the principle of proportionality in law enforcement.

Applying the principle of proportionality in criminal law enforcement is crucial to prevent excessive criminalization, as criminal enforcement focuses on large commercial actors who intentionally violate the law.

3. A restorative justice approach in the application of criminal sanctions.

Restorative justice should be understood primarily as a normative policy proposal rather than as an automatically available doctrinal solution in every copyright case. The main idea is that, where the dispute concerns compensable economic loss rather than serious criminal wrongdoing, mechanisms oriented toward compensation, royalty settlement, acknowledgement of wrongdoing, and future compliance may better protect copyright holders than imprisonment. Such mechanisms may also offer a more direct remedy to victims while avoiding the excessive use of penal sanctions in cases that remain closer to licensing disputes than to core criminality.

4. Establishing regulations for the use of music in public spaces.

The formation of regulations on the use of music in public spaces can provide certainty in criminal law by clarifying the classification between violations and crimes, in addition to providing a clear classification of the forms of violations that can be subject to criminal sanctions on the perpetrators.

CONCLUSION

This study demonstrates that the legal tension surrounding the use of music in Indonesian public spaces should not be understood merely as a conflict between copyright protection and an abstract public entitlement to enjoy art, but rather as a question of how copyright enforcement can be carried out within a proportionate and legally certain framework that also accommodates public access to culture. The findings show that copyright protection remains essential to safeguard the economic and moral rights of creators; however, its enforcement must be carefully limited so that not every unauthorized use of music in public or commercial settings is automatically treated as a criminal matter. The principal contribution of this study lies in its argument that criminal law enforcement against the use of music in public spaces is justified only under strict conditions. Such enforcement is appropriate only where there is a demonstrable element of *mens rea*, a clearly identifiable *actus reus*, and the inadequacy of civil, administrative, or alternative dispute resolution mechanisms to provide effective protection for copyright holders. In this regard, criminal sanctions should function as *ultimum remedium*, not as the primary response to every licensing dispute or instance of non-compliance. A balanced enforcement model is required in Indonesian copyright law, one that protects rights holders while preserving proportionality, legal certainty, and public cultural access. Such a model is important not only for preventing overcriminalization, but also for supporting a normatively expected to reduce uncertainty for music appreciation, copyright compliance, and the continued development of Indonesian musical creativity.

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