



Juridical Analysis of the Regulations of the National Collective Management Institute (LMKN) in terms of Copyright Institutions in Indonesia

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ABSTRAK

Songs and/or music are copyright protected works. As the holder of Copyright and Related Rights, works belonging to the author that are used for commercial purposes have the right to obtain exclusive rights arising from declarative principles after the work of the author is heard. The emergence of Government Regulation No. 56 of 2021 concerning Management of Copyright Royalties for Songs and/or Music which has come into force since March 2021 as a rule to be able to optimize the function of

of the establishment of the National Collective Management Institute, the Legal Basis of the National Collective Management Institute, the powers and duties of the Collective Management Institute (LMK) and the National Collective Management Institute (LMKN) in managing music royalties used for commercial and protection purposes. Laws carried out by the National Collective Management Institute and based on Intellectual Property (IP). This thesis was written using a normative legal research method, which is an approach method through legislation whose norms are used as the main source in this research.

In addition, in this thesis research the author also uses an approach with the concept of understanding the principles regarding copyright as the exclusive right of the creator. From the research results, it has been concluded that there are two institutions that have different duties and authorities, the urgency of the importance of establishing a National Collective Management Institute for the management of Song and/or Music Copyright royalties, the legal basis of the National Collective Management Institute and the legal protection provided by LMKN on the management of royalties for Song and/or Music Copyrights in Indonesia.

1. Introduction

Along with the times, the concept of law is very, very

Halaman

managing copyright royalties from the use of works and related rights products, especially in songs or music. This thesis analyzes the urgency

important. There is no exception regarding Intellectual Property Rights. Nowadays, along with the advanced development of a creativity or even the ability possessed by every human being to be able to produce a work of high value¹. Human creativity to

¹ H.OK.Saidin, 2003, Intelektual (Intellectual Property Right), PT.Raja Grafindo, Jakarta, Hlm.56
Aspek Hukum Hak Kekayaan

produce a work does not just come, but is supported by the presence of intellectual intelligence in mastering technology and even existing knowledge. positive and advance the development of an IP. A copyrighted work produced by every human being is an intellectual work that must be protected.

The purpose of such protection is to make arrangements in Intellectual Property (KI) in order to provide benefits and legal certainty for a work produced. As is known, KI or commonly called Intellectual Property is a material right, the right to an object or also a copyrighted work originating from the work of brains² and the results of ratio work.

In this case the song and/or music which is one of the protected works is related to Law Number 28 of 2014 concerning Copyright (UUHC) and is also related to and regulated in Government Regulation Number 56 of 2021 concerning royalties for song and copyright copyrights. /or music. Because it relates to the exclusive rights owned by the creator. Copyright consists of economic rights

and moral rights. Economic rights are rights to obtain economic benefits from creations and related rights products. Economic rights themselves can be found and regulated in Article 2 of Law Number 28 of 2014 concerning Copyright (UUHC).

While moral rights are rights inherent in the creator or actor that cannot be removed or deleted without any reason even though the copyright has been transferred. Moral rights in this case are the rights of the creator to give permission to other parties or prohibit plagiarism or plagiarism, removing the name

of the original creator, changing the title of the work, etc. Moral rights are regulated in Article 24 of Law Number 28 of 2014 concerning Copyright (UUHC). A creator as a copyright holder has the right to determine whether or not a work is produced to be used and also announced which is related to a work of creation.

Otto Hasibuan said that Intellectual Property (IP) is divided into two major groups, namely: Industrial Property Rights (Industrial Property Rights) and Copyrights (Copyrights). Industrial property rights include, among others:

1. *Patent* (Paten),
2. *Trademark* (Merek),
3. *Industrial Design* (Desain Industri),
4. *Layout Design of Integrated Circuit*
Desain Tata Letak Sirkuit Terpadu
(Desain Tata Letak Sirkuit Terpadu),
5. *Tradeseecret* (Rahasia Dagang),
6. *New Variety of Plant* (Perlindungan Varietas Tanaman),³

Meanwhile, those included in the Copyright group are distinguished between Copyright (on arts, literature, and science) and also rights related to Copyright (Neighboring Rights). Copyright has the meaning that a form of ownership that gives the holder the exclusive right to control the use and use of an intellectual creation, literary, drama, music, and artistic work, as well as sound recordings, films, radio, and television broadcasts, as well as written works reproduced through publication⁴.

Broadly speaking, the protection system for a copyrighted work, especially songs and/or music, requires the development of a controlling and monitoring system carried out by an institution, namely the National Collective Management Institute. Where in practical implementation, one of these institutions functions as a

² The brain meant in this case is the one that acts as the regulatory center all physical and psychological activities that are divided into two halves, right and left.

³ Otto Hasibuan, 2008, Hak Cipta Di Indonesia, Tinjauan Khusus Hak Cipta Lagu, Neighbouring Rights dan Collecting Society, (Bandung, PT Alumni), Hlm,21.

⁴ Kombespol Aminato, 2017, Hukum Hak Cipta, Peran Hukum terhadap Kreasi Intelektual Manusia, (Jember, Katamedia), Hlm, 3.

collection of royalties for Song and/or Music Copyrights whose copyrighted works are used commercially in accordance with the provisions of Government Regulation Number 56 of 2021 concerning the management of Song and/or Music Copyright royalties. Talking about the withdrawal of royalties, it can be found in Article 12 of Government Regulation Number 56 of 2021 concerning the management of royalties for Song and/or Music Copyrights, where Article 12 states that for Copyright holders and related rights who have joined in a Collective Management Institution (LMK), then the party who will withdraw the royalties is the National Collective Management Institute (LMKN) for song and/or music users, which is of course in the form of public and commercial services. Not only that, for Copyright holders and related rights owners who have not joined an LMK, LMKN still has the authority to make withdrawals of the royalties.

Based on this background, the author has an interest in studying Copyright in Intellectual Property with the title "Juridical Analysis of the Regulations of the National Collective Management Institute in View from

Copyright Institutions in Indonesia ."

2. Results and Discussion

a. The Urgency of Establishing a National Collective Management Institute

The National Collective Management Institute or commonly abbreviated as LMKN is an institution in the form of a not-for-profit legal entity where in practice it will be empowered to consist of creators, copyright holders, and related rights owners with the aim of managing economic rights in the form of collecting and then distributing royalties as economic rights which are a part of Copyright after moral rights. However, in its application, it is certainly not possible with the provisions stipulated in Law Number 28 of 2014 concerning Copyright (UUHC) and Government Regulation Number 56 of 2021.

The creator's National Collective Management Institute, hereinafter referred to as the creator's National LMK, is the LMK which represents LMK elements from

creators, academics, and legal experts in the field of Copyright to manage the economic rights of creators, especially in the field of songs and/or music. Based on the above definition, we can see carefully that the main function of LMKN is to represent creators in the field of songs and/or music. In this case, representing and managing the results of the commercialization of Copyright economic rights or related rights owned.

The term Royalty can be found literally in the Big Indonesian Dictionary (KBBI). Where the KBBI itself divides the definition of royalty into three explanations. Royalties are amounts paid for uses, such as patents, or natural resources; for example, creators are paid royalties when their work is produced and sold; the author can earn royalties when the books he wrote are sold; the land owner leases his land to an oil company or mining company will earn royalties on the basis of the amount produced and the land. then according to Law Number 28 of 2014 concerning Copyright, the term Royalty is defined as a reward for the use of economic rights in a creation of related rights products received by the creator or owner of the related rights.

Royalties are at the core of the Economic Rights of Creators and Associated Rightsholders. The existence of royalties shows appreciation for the efforts and talents of the Creators and Related Rights Holders, as well as gives hope and motivation to the Creators and Related Rights Holders to produce new creations or to create. Without royalties, there is no proper award to the Author and Related Rightsholders. As a result, the

process of creation or creativity will stop⁵. Therefore, the Creator or Copyright Holder must get legal protection. According to Hadjon, legal protection is divided into two, namely preventive legal protection and repressive legal protection.

Preventive legal protection is a form of protection given to raise objections to opinions before a government decision is given. Meanwhile, repressive legal protection is given after legal rules are violated or if someone feels that their rights have been violated⁶. The preventive legal protection is given to prevent the occurrence of a violation of a copyrighted work, especially in this case in the form of songs and music. Preventive action that can be taken is by recording the work as regulated in Articles 66 to 67 of the Copyright Law Number 28 of 2014. The work has been protected since the creation was born so it is not required to be registered, but the function of recording Copyright is intended to facilitate evidence in the event of a dispute regarding Copyright. Furthermore, repressive protection, this is done after an infringement

is committed on a copyrighted work belonging to this Creator. In addition, this protection is given to seek a form of settlement in order to maintain the rights of the Creator.

b. LMKN's Legal Protection for the Management of Song and/or Music Copyright royalties

Users when viewed further consists of two kinds, namely:

- a. Users of Songs and/or Music are non-commercial, i.e. users who use Songs and/or/Music only to be heard or enjoyed personally for a copyrighted work.
- b. Users of songs and/or music are commercial in nature, namely users of songs and or/music with the aim of obtaining profits from the copyrighted work, in this case songs and/or/music.

Basically, everyone can use music commercially, this is stated in Article 3 paragraph (1) of Government Regulation Number 56 of 2021, but must pay royalties to Copyright owners through the National Collective Management Institute (LMKN). In addition, the provisions of Article 3

paragraph (2) also state that one form of public service place is said to be commercial in nature and subject to royalties, namely as follows:

- a. Commercial seminars and conferences;
- b. Restaurants, cafes, bars, pubs, nightclubs, bistros and discotheques;
- c. Music concert;
- d. Airplanes, buses, trains and ships;
- e. Exhibitions and bazaars;
- f. Cinema;
- g. Call waiting tone;
- h. Banks and offices;
- i. Shops;
- j. Recreation Center;
- k. Radio broadcasting institutions;
- l. Television broadcasting institutions;
- m. Hotels, hotel rooms and hotel facilities;

⁵ Bernard Nainggolan, 2011, Pembedayaan Hukum Hak Cipta dan Lembaga Manajemen Kolektif,

Bandung: Alumni, Hlm. 164

⁶ Philipus M. Hadjon, 2005, Perlindungan Hukum Bagi Rakyat Indonesia, Surabaya: Bina Ilmu. Hlm 2

n. Karaoke business; implementer of Law Number 28 of 2014 concerning Copyright (UUHC).

Therefore, when it comes to public services, for example, a hotel with its facilities for holding live music, the first thing the hotel owner must do is make sure whether the owner of the song and/or music concerned has taken care of his Copyright royalties or not. If this has been done, then the hotel owner is obliged to pay some royalties.

The existence of Government Regulation Number 56 of 2021 is a form of strengthening of Law Number 28 of 2014 concerning Copyright (UUHC). The obligation to pay royalties previously existed, however, through the Government Regulation Number 56 of 2021, it can strengthen its implementation and implementation, especially for the economic rights of Copyright owners or related rights. The existence of this government regulation is the basis for strengthening the previous legislation, namely Law Number 28 of 2014 concerning Copyright (UUHC). Both are useful for protecting the economic rights of the creator or copyright holder as well as related rights. The Government Regulation Number 56 of 2021 can be said to be one of the law enforcement instruments which is an extension and

According to Lawrence Meir Friedman, law enforcement is a process of making efforts to uphold or function a legal norm in a tangible form as a guide in good behavior in relationships in social and state life. Law enforcement has the aim of providing legal protection for creators due to a violation of certain copyrighted works. The legal instrument of Government Regulation Number 56 of 2021 already exists, as an optimal power and effort for the function of managing Copyright royalties in terms of the use of creations and related products, in this case songs and or/music.

Another thing that deserves special attention is regarding the construction of SILM⁷ by the National Collective Management Institute (LMKN). This is because SILM has a fairly important role in the issuance of Government Regulation Number 56 of 2021 so that LMKN can manage royalties to the maximum, because the distribution of royalties refers to the SILM, if it can run optimally then the owners of royalty rights can certainly enjoy the same rights. they accept. In its transitional provisions, Government Regulation Number 56 of 2021 has stated that it mandates SILM to be immediately formed within 2 (two) years from the promulgation of PP 56/2021.

The author is of the opinion that the construction of SILM must be carried out immediately, because in the provisions of Article 21 of Government Regulation Number 56 of 2021 concerning royalties for Song and/or Music Copyrights states that distribution cannot be carried out through SILM, the applicable provisions are the laws and regulations prior to the Regulations. This government was formed, so that without the SILM there will be problems in the implementation and implementation of the Government Regulation.

3. Conclusion

Legal instruments in the implementation related to institutions authorized to enforce law regarding Song and/or Music Copyrights as well as protection related to commercialization rights have arrived at the conclusion, that the National Collective Management Institute has the authority if you look at the provisions of Government Regulation Number 56 of 2021 concerning management royalties for Song and/or Music Copyrights. So the conclusion consists of several points, namely as follows:

- a. The Urgency of the Establishment of

the National
Collective
Management
Institute (LMKN)

Talking about collecting royalties on Copyrights, in this case Songs and/or Music, of course requires clarity and legal certainty regarding which institution has the duties and authority over it. The institutions in question are the Collective Management Institute (LMK) and the National Collective Management Institute (LMKN) as stated in the provisions of Law Number 28 of 2014 concerning Copyright (UUHC) which are further regulated by technical regulations, namely Government Regulations. Number 56 of 2021 concerning the management of royalties for Song and/or Music Copyrights. The establishment of this Government Regulation certainly has its own purpose, namely as an effort to optimize the function of the management of Song and/or Music Copyright royalties.

Indonesia. Surabaya: Bina Ilmu. Hasibuan, Otto. 2008. Hak Cipta di Indonesia Tinjauan Khusus Hak Cipta Lagu, Neighbouring Rights, dan Collecting Society. Bandung: PT. Alumni.

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Saidin, 1995. Aspek Hukum Kekayaan Intelektual. Jakarta: Raja Grafindo Persada.

Perundang-undangan :

Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta
Peraturan Pemerintah Nomor 56 Tahun 2021 tentang pengelolaan royalti Hak Cipta Lagu dan atau/Musik Kitab
Undang-Undang Hukum Perdata.

4. Daftar

Pustaka

Daftar Bacaan

:

Hadjon, M Philipus.
2005.
Perlindungan
Hukum Bagi
Rakyat