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The national collective management institution's place in the government of the republic of indonesia's institutional system

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Abstract

The position of the National Collective Management Institution (LMKN) as a manager of copyright royalties in the government's institutional system is still an interesting discussion in terms of its duties and functions as well as its regulation in Government Regulation Number 56 of 2021 (PP 56/2021). Aiming to identify and analyze the legal construction of arrangements related to the position of LMKN and the ideal form of LMKN in the institutional system of the government of the Republic of Indonesia, this research uses normative legal research methods. The normative legal research method is used as a way to examine the norms that regulate this matter, which is currently still considered unclear in the provisions of PP 56/2021. In addition to the statutory approach, this research also uses a conceptual approach and a factual approach, with the result that the legal construction of the position of LMKN built by PP 56/2021 directs LMKN to a form of auxiliary institution that belongs to the category of Non-Structural Institutions (LNS). Based on its duties and functions and the purpose of its establishment, ideally LMKN should be realized as a government auxiliary institution and positioned in the government's institutional system, whether categorized as LNS, Non-Ministry Government Institution (LPNK), Independent Institution or other similar institutions to facilitate supervision by the government.

Keywords: National collective management organization, royalties, position

1. Introduction

Government Regulation Number 56 of 2021 concerning the Management of Royalties for the Copyright of Songs and/or Music (hereinafter referred to as PP 56/2021) is a legal basis that strengthens the position of the National Collective Management Agency (LMKN) as a government auxiliary institution in the field of song and/or music copyright management in Indonesia (Hafiz *et al.* 2021) ^[7]. In PP 56/2021, it is explicitly stipulated that LMKN is a non-State Budget government auxiliary state institution formed by the government, in this case the Minister based on the Copyright Law, which is given the authority to attract, collect and distribute royalties and manage the interests of the economic rights of creators and owners of related rights in the field of songs and / or music.

After PP 56/2021 was present, several other problems arose related to the position of LMKN. The existing LMKs feel that LMKN's authority is too broad, so their functions are largely taken over by LMKN, which has an impact on the sustainability of LMK operations. LMK only plays a role in distributing royalties that have been withdrawn by LMKN, even in the latest system designed by LMKN; LMK only functions to validate membership and the amount of royalties of creators/copyright owners and related rights under its auspices. In addition to the reduced jobdesk, LMK also feels that LMKN does not yet have qualified human resources and tariff calculation systems because the people who are competent in this field are in the existing LMK-LMK. Moreover, in terms of supervision, LMK questioned the status of LMKN which is different from LMK which is clearly a private legal entity.

Judging from the legal relationship created, as a state institution, LMKN tends to focus more on the civil relationship between LMKN and copyright owners and related rights, whereas LMKN looks more like focusing on managing economic rights instead of its primary function of coordinating and supervising existing LMKs. The more royalties that can be withdrawn by LMKN, the higher the 20% percentage obtained. This tends to be like an effort to provide additional income to the state and of course to LMKN. Judging from this phenomenon, it is necessary to get clarity again on whether the position of LMKN as a state

Correspondence Author, Jimmy Z Usfunan Faculty of Law Udayana University, Indonesia institution is appropriate, especially since LMKN is also not given a budget by the government/state or there is an ideal format that can be used in optimizing LMKN performance and overcoming the situation and conditions of LMK-LMKN to be more conducive.

Some previous studies that discuss similar issues include, the first is entitled "The Role of the National Collective Management Institution as a Manager of Song and Music Copyright" written by Labib Rabbani in the journal Lex LATA (Rabbani 2023) [10]. In this study, the focus of the study is the role of LMKN in managing royalties for copyright songs and music where LMKN has been agreed as a one-stop integrated institution in royalty management and the legal consequences that occur if you do not pay royalties for commercial use of music and songs. The second research was written by Mohamad Alen Aliansyah with the title "Normative Review of the Position of the National Collective Management Institution (LMKN) as a State Auxilary Organ Based on Government Regulation No. 56 of 2021 concerning Management of Copyright Royalties for Songs and/or Music" published in the journal Dialogia Iuridica (Aliansyah 2022) [2] with the results of the discussion that LMKN as a State Auxiliary Organ is considered invalid based on statutory analysis where many norms in PP 56/2021 are not in accordance with those stipulated in Law Number 28 of 2014 concerning Copyright (hereinafter referred to as UUHC).

The novelty of this research lies in the substance of LMKN's position as a state institution, If in the first study the position of LMKN is considered valid based on the agreement of LMK-LMK and the Government and the regulation of PP 56/2021 as a one-stop integrated institution in the management of royalties for copyright songs and / or music, while in the second study LMKN is considered invalid as a State Auxiliary Organ seen from the aspect of the hierarchy of laws and regulations, namely many discrepancies between UUHC as a higher regulation and PP 56/2021 as a lower regulation in regulating LMKN, the author focuses more on the effectiveness of LMKN's position as a state institution in terms of the duties and functions it carries out, the provision of budgets and the legal relationships that occur based on these duties and functions so that later it is known whether LMKN is appropriate as a state institution as regulated in PP 56/2021, budget and legal relationships that occur based on these duties and functions so that later it will be known whether the LMKN is appropriate as a state institution as regulated in PP 56/2021.

Based on the description above, it can be identified that the problem to be discussed in this research is the legal construction of the position of LMKN in PP 56/2021 and the ideal form of LMKN as an institution appointed by the state to manage royalties for copyright songs and / or music with the aim that this research can provide identification and analysis of the position of LMKN as an auxiliary state institution in the institutional system in Indonesia seen from the implementation of its duties and functions and the legal relationships that occur.

2. Research Methods

This paper uses a normative legal research method with the focus of the study on the legal norms contained in PP 56/2021, especially regarding the regulation of the LMKN's position as an auxiliary state institution of the government because there are still problems that arise after the issuance

of PP 56/2021. The normative legal research method is a method used to examine the law from an internal perspective with the object of research being legal norms (Diantha 2016) [4], As well as being seen from the characteristics of normative legal theory, the point of view of the establishment of legal theorization is from the internal point of view of the norm (from the within) which is mandatory (the ought), but sometimes also sees external symptoms of the norm in the application of law (the Is) as feedback to perfect its internal point of view (Diantha 2016) [4]. Departing from this understanding, it is felt that the method used in this paper is appropriate because it focuses on examining internal norms, but the author also sees in terms of external symptoms of norms as a form of refinement of analysis. The approaches used are legislative approach, conceptual approach and factual approach. In addition to primary legal materials, this paper also uses secondary and tertiary legal materials and is supported by the results of interviews.

3. Results and Discussions

3.1 Legal Construction of the LMKN Position in PP 56/2021 Based on its Duties and Functions

Before being regulated in PP 56/2021, UUHC regulates LMKN in only one article, namely in Article 89 with the writing National Collective Management Institution or LMKn (small n), where the regulation of LMKn's authority in UUHC is very minimal. UUHC regulates more about the position and duties and functions of the Collective Management Institution (LMK). In the UUHC, the purpose of this LMKn arrangement is as an effort to coordinate the existing LMK-LMK in the withdrawal and collection of royalties to be one door, so that users or copyright users are facilitated in paying royalties (Faisal 2022) [5]. This is a form of government responsibility in protecting the economic rights of its citizens, in this case the songwriters and / or music or copyright owners or related rights so that royalties which are their rights can still be fulfilled or obtained fairly (Siahaya and Permata 2022) [13].

In its regulatory development, LKMn is then regulated in Minister of Law and Human Rights Regulation Number 29 of 2014 concerning Procedures for Application and Issuance of Operational Permits and Evaluation of Collective Management Institutions (hereinafter referred to as Permenkumham 29/2014). Permenkumham 29/2014 contains further arrangements regarding LMKn which is divided into two, namely the National LMK of Creators and the National LMK of Related Rights, also outlined its authority, duties and functions, but from the arrangement there is a change in writing which originally in the UUHC was written LMKn changed to National LMK (LMKN with a large 'N') (Faisal 2022) [5].

Permenkumham 29/2014 was then replaced by Minister of Law and Human Rights Regulation Number 36/2018 concerning Procedures for Application and Issuance of Operational Permits and Evaluation of Collective Management Institutions (hereinafter referred to as Permenkumham 36/2018). In Permenkumham 36/2018 there is a change where previously in Permenkumham 29/2014 it was regulated about the National LMK for Creators and the National LMK for Related Rights but in Permenkumham 36/2018 it is referred to as LMKN. LMKN is clearly regulated as a government auxiliary institution for the first time in Permenkumham 36/2018 which then gets

reaffirmed with the issuance of PP 56/2021. PP 56/2021 is a form of providing legal certainty for the position of LMKN (Setiawan and Prabowo 2022).

Categorized as a non-State Budget auxiliary state institution in GR 56/2021, LMKN has broader authority than in previous arrangements. In fact, the authority granted by GR 56/2021 to LMKN goes beyond that stipulated in the UUHC. Established by the Minister based on the Law on Copyright, LMKN has the authority to attract, collect, and distribute royalties and manage the economic rights interests of creators and owners of related rights in the field of songs and/or music. If examined more deeply the authority of LMKN which is regulated in PP 56/2021, LMKN actually plays a very large role in realizing / maintaining and protecting the economic rights of copyright owners, and there is an economic turnover in the LMKN work environment. Commercial public sectors related to songs and music such as hotels, restaurants, karaoke places, music performances / concerts, etc. will automatically be directly related to LMKN because there are royalties for copyrighted works that must be paid through LMKN. LMKN is tasked with collecting the royalties as a whole and then distributed to each copyright owner through the LMK where the copyright owner is registered. LMKN also conduct license agreements with parties who will use copyright, especially songs and music as a business commercialization support.

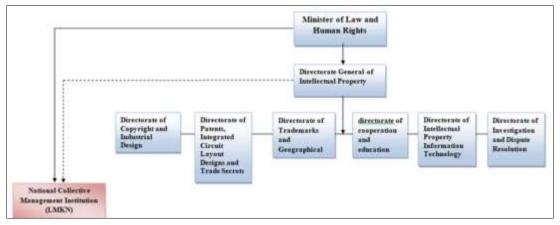
PP 56/2021 regulates the position of LMKN as a non-State Budget government auxiliary institution established by the minister, in this case the Minister of Law and Human Rights of the Republic of Indonesia. For now, LMKN is still based at the Ministry of Law and Human Rights office, especially at the Director General of IPR. In its arrangement, LMKN is not given a budget by the government, however LMKN is still facilitated by office facilities and infrastructure by the Ministry of Law and Human Rights. The use of operational funds can still be provided from the withdrawal of royalties with the amount determined by statutory regulations, namely 10% of the total amount of royalties collected and its allocation has been regulated. Regarding the provisions of the duties and organizational structure of LMKN, it will be regulated by Ministerial Regulation, indicating that LMKN remains under the structure of the Ministry of Law and Human Rights.

In contrast to the notion of independent institutions, which are institutions that are free from existing powers, although their nature is close to the category of power or can be said to be quasi but still cannot be classified as executive agencies (Ramadani 2020) [11], LMKN has been clearly

regulated in PP 56/2021 as an auxiliary institution of the government in the context of the sentence it is clear that LMKN is under the power of the executive / government so that it cannot be said to be an independent State institution. In addition, policies in the LMKN are still regulated by ministerial regulations. However, the government does not provide a budget (State Budget) to LMKN so that the position of LMKN in the government's institutional system is still questionable.

In its development, there are institutions categorized as Non-Structural Institutions (LNS). LNS is an institution formed to support the implementation of the duties of the State / government, but this LNS is outside the government structure like an independent institution or can also be quasi from the existing power (Kasim, Moenta, and Ruslan 2019) ^[9]. As a supporting institution, LNS is formed based on laws and regulations and can involve elements of the government, private sector, and civil society and is financed by the government (Kasim *et al.* 2019) ^[9]. However, the regulation of LNS itself has not been regulated in legislation, which has led to a wide variety of institutions that can be categorized as LNS (Kasim *et al.* 2019) ^[9].

If it is related to the position of LMKN as regulated in PP 56/2021, from the aspect of a positive legal approach, it can be constructed that LMKN is placed as one of the government auxiliary institutions that can be categorized as LNS. LMKN is formed based on laws and regulations, currently regulated by PP 56/2021, which was originally mandated by the UUHC, under the authority of the executive or government, in this case the Ministry of Law and Human Rights. Even though LMKN is quasi-executive in nature and even clearly an extension of executive power. in carrying out its duties and functions LMKN still has the independence to regulate how it works without being intervened by parties outside LMKN. In carrying out its duties and functions, LMKN is under the supervision (monitoring and evaluation) of the Ministry of Law and Human Rights. LMKN itself is outside the ministerial structure and does not receive a budget from the State Budget. The difference with other LNS is that LMKN is one of the few LNS that does not use the State budget while other LNS tend to get a budget from the State Budget. The fact that the budget is not provided by the State Budget does not necessarily indicate the invalidity of LMKN as a government institution because LMKN funding has been regulated in PP 56/2021 sourced from the Royalty percentage as previously described.



Picture 1: Institutional Structure of the Ministry of Law and Human Rights of the Republic of Indonesia

If seen in the chart, the position of LMKN as one of the LNS is formed by the Ministry in this case the Minister of Law and Human Rights and is under the supervision of the Directorate General of Intellectual Property (DJKI) precisely under the Directorate of Copyright and Industrial Design, but LMKN is not directly included in the institutional structure of the Ministry. In other words, LMKN is a government auxiliary institution within the Ministry of Law and Human Rights which is placed based on its duties and functions in the realm of DJKI's power where the direct supervision carried out by the Ministry to LMKN is through DJKI, namely the Directorate of Copyright and Industrial Design.

3.2 Ideal Form of LMKN as a State Institution in the Institutional System of the Government of the Republic of Indonesia

PP 56/2021 regulates that LMKN has the authority to manage copyright royalties and related rights, which means this management is to attract, collect and distribute royalties. The extent of this authority affects LMKN's capacity as a state institution in carrying out legal relations with related parties including: Ministry of Law and Human Rights, LMK, Creator, Copyright Owner, Related Rights Owner, User / User. However, examined from a theoretical point of view, the authority possessed by LMKN in managing royalties is an attributable authority because it is given directly by the legislator because it is explicitly regulated and editorially contained in one of its articles (Gandara 2020) [6] namely Article 1 number 11 of PP 56/2021 with the following arrangements:

"The National Collective Management Institution, hereinafter abbreviated as LMKN, is a non-State Budget government auxiliary institution established by the Minister under the Copyright Law that has the authority to attract, collect, and distribute royalties and manage the interests of the economic rights of creators and owners of related rights in the field of songs and/or music."

Thus, the authority possessed by the LMKN should not be a problem, but further study is the implementation of this authority and the implications that will arise from the breadth of this authority.

Departing from the problem of the broad authority of the LMKN, one of the implications is the legal relationship that occurs. A legal relationship is a relationship between a legal subject and another legal subject or a relationship between a legal subject and a legal object that is regulated by legal rules so as to cause legal consequences (Warjiyati 2018) [14]. Public legal relations are legal relations between LMKN and the Ministry of Law and Human Rights where LMKN has the status of a non-State Budget state institution under the Ministry of Law and Human Rights. The establishment of LMKN itself is an attribution of the UUHC which is then translated by Minister of Law and Human Rights Regulation Number 36 of 2018 which regulates the existence of LMKN for the first time. As an institution under the Ministry of Law and Human Rights, LMKN is directly supervised and supervised by the Ministry of Law and Human Rights, even initially 2 (two) commissioners at LMKN were from the Ministry of Law and Human Rights.

PP 56/2021 gives LMKN the authority to manage royalties followed by the responsibility to report this, in the context of legal relations this is a right and obligation for LMKN as an institution in the field of public law. However, public

legal relations are not explicitly regulated by PP 56/2021, Article 17 only stipulates that LMKN's accountability is carried out in the form of conducting financial audits and performance audits conducted by public accountants at least once a year and the results are announced through print media and electronic media at least once each.

Private legal relations are reflected in the implementation of the duties and functions of LMKN, namely managing royalties where in the management there are elements of attracting, collecting and distributing royalties. In terms of royalty withdrawal, there is a license agreement made by the user/user with LMKN as the power of attorney of the copyright owner or related rights, in this case LMKN acts as a representative of the rights owner. Related to collecting royalties, LMKN also acts as the power of attorney of the right owner to make transactions for royalty payments made by users. While in the distribution of royalties, LMKN acts in determining the amount of royalties earned by the rights owner to be distributed through LMK.

Basically, the granting of royalties to rights owners has been determined directly by LMKN, it's just that to validate it, the role of LMK is needed. From the description of duties and functions, it can be analyzed that the legal relationship that occurs is a legal relationship in the private sphere because in addition to acting as a legal subject in the sense that LMKN is authorized by the right owner to enter into an agreement, the interests that are regulated or become objects in this legal relationship are actually private interests. It is said to be a legal relationship because it is regulated in PP 56/2021, especially in Chapter III concerning royalty management procedures. Related to this, as an auxiliary state institution or an extension of the government, LMKN has more aspects of private law than public law, where the state should not have to make dominant arrangements in the private sphere and should not even interfere in private matters as long as it does not conflict with the public interest (Aliansyah 2022)

Apart from the legal relationship that occurs where the existence of LMKN as a government auxiliary institution implies a form of State intervention in the private sector, the other side is that there are private institutions whose functions are limited, namely LMK. Another thing is the question from LMK which questions the status of LMKN's position as an institution that also functions to supervise LMK but is not a legal entity while LMK as a private institution is required by legislation to be a legal entity and is non-profit in nature. To address these matters in depth, the LMKN in its position as a government auxiliary institution needs to be examined for its ideality.

Back to its essence, copyright in the UUHC philosophically has a strategic role in supporting the development of the nation and the general welfare, and in its development requires protection in ensuring legal certainty for creators, copyright holders and owners of related rights where it is contained in the consideration of the UUHC. In a fragment of the explanation of the UUHC also contained efforts to provide legal certainty for creators, copyright owners and owners of related rights as follows:

"...earnest efforts from the state to protect the economic rights and moral rights of creators and owners of Related Rights as an important element in the development of national creativity. The denial of economic and moral rights can erode the motivation of creators and owners of Related Rights to create. This loss of motivation will have a broad

impact on the collapse of the macro creativity of the Indonesian nation. Reflecting on developed countries, it appears that adequate protection of copyright has succeeded in bringing significant growth in the creative economy and making a real contribution to the economy and the welfare of the people...."

Seeing the rapid development of copyright, especially music and songs that increasingly make a significant contribution to economic growth, especially in the field of creative economy, it is the duty of the State / government to pay attention in the form of legal protection of copyright that can actually be felt by the creators, copyright owners and owners of related rights in the form of royalties. The establishment of LMKN is one of the efforts to ensure economic rights in the form of royalties in order to reach the right parties, namely copyright owners, creators and owners of related rights.

Deeper State intervention can be interpreted as a form of protection of economic rights that must be obtained by citizens in this case the creators, copyright owners and related rights. In the conception of the rule of law, every State is obliged or absolute in providing guarantees of human rights protection (Aswandi and Roisah 2019) [3], This concept is one of the bases that can be used in building the argument that the State has an obligation to intervene in matters relating to the protection of the human rights of its citizens.

Another thing is that if you look at the concept of Intellectual Property, the Intellectual Property system is a private right, which means that the exclusive rights given by the state to individuals are nothing but a tribute to their work or creativity and so that others are stimulated to further develop it (Alfons 2017) [1]. The development is expected to be documented so that it can avoid being taken by other parties. With the development can be given a higher added value, especially when talking about the acquisition of royalties from copyrighted works.

Referring to the background of the establishment of LMKN as the only institution in charge of managing royalties by the Minister of Law and Human Rights at that time was the occurrence of things that could result in harm to creators, copyright owners and related rights and harm users as well. Although there have been Royalty collection agencies such as Karya Cipta Indonesia (KCI), Wahana Musik Indonesia (WAMI) and or other similar institutions. However, because there is no legal certainty about the collection and distribution of royalties in the form of clear legislation so that many creators, copyright holders and owners of related rights are often harmed by users who use their work for commercial purposes but do not provide feedback or reciprocity of these economic benefits in the form of royalties (Karim 2021) [8]. Similarly, there are repeated royalty payments to users from different institutions.

LMKN which has been strengthened by PP 56/2021 should be an ideal institution to be given the authority to manage royalties or economic rights from copyrighted works produced by creators, copyright owners and related rights owners. The ideal form of LMKN should indeed be contracted as a government auxiliary institution whether it is referred to as LNS, LPNK or other institutions as long as its position is still within the government's institutional system. This is intended to facilitate the State in this case the government and more specifically the Ministry of Law and Human Rights provide protection or legal guarantee against

royalties that should be received by citizens who should obtain in this case is the creator, copyright owners and owners of related rights. Legal protection can also be done in the form of supervision (monitoring and evaluation) of LMKN when its form is a government auxiliary institution / public institution so that the performance audit process by the government is easier to do.

Related to the form of LMKN is not a legal entity, it is not a crucial issue because although not a legal entity, LMKN is directly an extension of the government that is given the task to assist and facilitate the government in its function of providing guarantees of protection of the economic rights of citizens who act as creators, copyright owners and owners of related rights. Conversely, it will be a crucial problem if LMKN is not an auxiliary institution of the government and does not have the authority to manage royalties. Thus the problems that occur as a result of the current form of LMKN can basically be resolved by reevaluating the system that has been running and then making adjustments to the relevant parties so that no one feels disadvantaged because in essence in addition to guarantees in the management of royalties LMKN was formed also to ensure public welfare and support national economic growth.

4. Conclusion

From the results of the discussion, it can be concluded that when viewed from a positive legal approach, PP 56/2021 constructs the position of LMKN as a government auxiliary institution that is outside the structure of the Ministry, in this case the Ministry of Law and Human Rights. With such a position, currently the term commonly given is as a Non-Structural Institution (LNS). Another thing is that PP 56/2021 clearly strengthens the position of LMKN as an auxiliary institution or an extension of the government with the task and function of managing copyright royalties. Theoretically, the authority possessed by the LMKN is attributable because it is determined directly explicitly in the legislation and is a mandate from the formers. In essence, which is a guarantee of the general welfare and economic development of the State and seen from the purpose of the formation, the background of the formation and refers to the protection of human rights and the concept of Intellectual Property, LMKN should ideally have been in the form of a government auxiliary institution, whether called LNS or other institutions as long as it is still in the government's institutional system to facilitate supervision (monitoring and evaluation) by the government as a form of effort to protect the economic rights of citizens in this case are creators, copyright owners and owners of related rights.

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